**Buying your path to freedom**

Rida Hosain

Friday, Feb 25, 2022

“I can’t believe they can get away with this. I’m toast, right? They’re going to drag me into this prison’s courtyard and stone me to death, aren’t they?,” said Raymond Davis to the US consul general, Carmela Conroy who replied, “No, Ray. That’s Qisas. Shariah law also allows for Diyat, which the families of the victims have agreed to accept’ she replied.

Despite the fact that Davis had murdered two Pakistani men in Lahore, the consulate knew that he would walk free. There was nothing close to what can be called an ‘agreement’. The counsel for the victims’ families was prevented from seeing and speaking to his clients while the ‘agreement’ was being made.

The Qisas and Diyat Ordinance 1990 was introduced during the caretaker government of former prime minister Ghulam Mustafa Jatoi. It became an act of parliament during Nawaz Sharif’s government in 1997. Since then, justice in cases of murder and/or infliction of injury has been privatised and the state has been absolved of its responsibility to punish criminals.

Talks about amendments to the Qisas and Diyat Ordinance have long been ignored due to the fear of opposition from the religious right. We must move beyond this and understand the context in which these laws emerged. Blood money played a different and specific role in seventh century Saudi Arabia when there was no formal judicial system. These laws cannot be looked at devoid of context. It was certainly never intended to lead to a system where a person’s fate is ultimately determined by the amount of money s/he has. And it was never intended to lead to a society where men who kill women in the name of ‘honour’ are greeted with thanks and pardoned by the victims’ family (which is often the same as the offender’s family).

The modern-day application of the Qisas and Diyat laws is against the Islamic principle of criminal justice, which says that if anyone slays a human being, it shall be as though s/he has slain all of humanity.

The Lahore High Court’s recent decision to acquit Qandeel Baloch’s brother Muhammad Wasim has once again reignited the debate surrounding the Qisas and Diyat laws. Wasim did not hold back when he spoke to the media after committing the crime. He said that he gave some tablets to her sister and then killed her. “Yes, of course, I strangled her,” he went on to elaborate.

He spoke with a sense of impunity. It was as if he knew that there would be no consequences even if he admitted to the crime in front of a huge audience. Wasim now is a free man, having been pardoned by his parents. For the sake of rule of law, this cannot continue any longer.

In the UK, the Crown Prosecution Service (CPS) determines whether to bring prosecutions. Provided that there is sufficient evidence and a realistic prospect of conviction, the prosecution usually takes place unless the prosecutor is satisfied that public interest factors tending against prosecution outweigh those tending in favour.

An area where the CPS has faced challenges is in domestic abuse cases as victims often withdraw their complaints. Even in the absence of evidence, the CPS pursues prosecutions. The decision to prosecute without the victim’s evidence is to protect the public interest, prevent future crimes, and ensure that there is the certainty of punishment.

It is this certainty of punishment which prevents criminals from boasting about the crimes they commit. The Qisas and Diyat laws have completely removed the role of the state and left it to individuals to determine the consequences for violent and dangerous criminals. The powerless state is a silent spectator as individuals decide whether to prosecute, pardon or use the victim as a bargaining chip.

Much has been said about how the court can reject a compromise under the principle of ‘fasad-fil-arz’ (mischief on earth). The reality is that this principle is rarely used by the courts. The Supreme Court held that “fasad-fil-arz shall include the past conduct of the offender as being a previous convict, habitual or professional criminal and the brutal manner in which the offence is committed.” A principle which is dependent on the crime being particularly heinous and left to the discretion of individual judges cannot be called a solution.

As Asad Rahim Khan put it in his recent piece for Dawn, “for deliberate murder, compromise must be cut out entirely. Otherwise, society will keep falling in on itself.” Until there is an amendment to this effect, society will fall. Article 25 of the constitution says, “all citizens are equal before law and are entitled to equal protection of law.” They are ‘equal’ before the law until they can buy their path to freedom.

Too many innocent lives have been lost while the world’s Raymonds and Wasims walk free. Qandeel left us far too soon. Shumaila, the wife of one of Raymond’s victims, committed suicide and was quoted as saying that she did not expect justice. It should be noted that these are highly publicised cases. There are thousands of criminals who are pardoned before the case is even tried. Who is our criminal justice system serving? Clearly not the victims. Or society.

The writer is a lawyer. She tweets @RidaHosain