**Does anyone care about life?**

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Another brutal murder – this time, an 11-year-old, who was raped, tortured and dumped in the washroom of an empty I-10 Metro Bus station. A precious life tragically cut short much before her time. Many more such cases no doubt go unreported.

The constitution promises that the state will make every endeavour to protect life (Article 9) and guarantees to uphold dignity as inviolable (Article 14), so it begs the question: did the state do all in its power to prevent such incidents? What is the worth and value of these precious rights and guarantees?

In a 2015 case, commenting on the state of the criminal justice system, the former chief justice of Pakistan, Jawwad S Khawaja, succinctly described the principle and standard of conduct that the rights to life and dignity demand from us all, both as individuals and institutions, as a duty of “due diligence to life.” That is the duty of care that we owe to each other and the state owes to its citizens.

In a similar vein, in the 1994 Shehla Zia case, the Supreme Court of Pakistan endorsed a precautionary approach. Justice Saleem Akhtar maintained that “prevention is better than cure”, and therefore “In this background if we consider the problem faced by us in this case, it seems reasonable to take preventive and precautionary measures straightaway instead of maintaining status quo…” (para 9). As such, a failure to observe a sufficient due diligence to life approach that is both precautionary and preventive is a breach of a constitutional and legal standard and duties.

There is therefore an entirely reasonable expectation that, subject to resource and knowledge constraints, the state will do its utmost, exercising due diligence to prevent any reasonably foreseeable harm to person and property.

In any incident, the question therefore is: was the event or incident reasonably foreseeable? If it is reasonably foreseeable, then those failing to take the necessary “due diligence to life” precautions must be held to account and liable for their failure to implement adequate protections and safeguards.

In this latest incident, one question that we may ask: given our society and criminality, do such empty unguarded constructions or spaces in isolated locations pose a public safety risk? If that question was never considered, and there is no valid justification for not considering the risk, then that is negligence. If it was considered, the adequacy of the state’s response needs to be tested before the courts of law to ensure that they met the rights to life and dignity standards. And where authorities are so reckless about the safety and wellbeing of others that the failure to take the necessary precautions has resulted in hurt or fatality, that is criminal negligence. Offenders are liable for compensating for the injury that they have caused and/or punishment.

In practice, unfortunately, every monsoon season, people continue to be electrocuted. Roads not fit for purpose are resulting in fatalities. All too often there are rail accidents due to the quality of traffic signaling and tracks. There is no effective traffic management system – reckless driving, under-age drivers, public and heavy transporters speeding, absence of insurance. The urban sprawl is causing flooding resulting in property damage and loss of lives. Regulatory failure is resulting in medical negligence. Children being killed by falling into open drains, nullahs and potholes. But rarely is anyone held responsible or victims compensated, which betrays the total absence of any notion of duty of care in our thinking, governance or working.

Such ‘accidents’ therefore continue with such regularity that the state and government no longer feel compelled to investigate and prosecute the loss of life or hurt. Nor do they feel under any obligation to meet the ‘due diligence to life’ obligations. And in the rare instances where independent investigations have been conducted – for example, the National Commission of Human Rights’ ‘The Kasur Incident of Child Abuse: Fact Finding Repor’ – were the recommendations seriously considered by the relevant authorities? After the incident, such “accidents” are effectively accepted as inevitable – rails, roads, open electric cabling, police, judiciary all continue as business as usual.

There are other contributory factors that include a religious fatalistic outlook – by reason of which ‘accidents’ are rarely pursued legally by the victims – under-developed legal frameworks and system, in particular the tort law; weak accountability and justice systems have all given rise to a culture of impunity that enable such fatal lapses to escape liability. The impact of Qisas and Diyat laws on public safety needs to be studied so that influential offenders cannot bully or ‘purchase’ their way out of punishment. What has been the impact of the Safe Cities initiatives on public safety and investigations?

These ‘accidents’ are not inevitable. The culture of impunity must be ended so that there are real and meaningful consequences for the offender. For this, an effective justice system is essential, which can quickly, impartially and effectively catch and punish such behaviour.

But we are tolerating a justice system whose reported conviction rate for kidnapping hovers around three percent, for rape six percent and murder around 28 percent. These are 2020 figures for Punjab, which is, arguably, the best resourced province – in reality, the conviction may be much lower. It evidences a system that is broken, ineffective and inefficient, which exacts a heavy cost in terms of human lives and safety. For an offender, it means that there is far greater likelihood that he or she will escape or avoid punishment. For the victim, despite the state’s constitutional obligation to provide “inexpensive and expeditious justice” (Article 37(d)), justice is a massive uphill struggle.

It's only in exceptional, particularly gruesome or high-profile reported cases, such as the Zainab or Noor cases, that capture public attention where the full force of the law is compelled to fall on someone.

But it is not enough that the Supreme Court takes suo-motu notice of an individual case and the matter is expedited, it must also address the broader “question of public importance” (Article 184(3)): what is being done to prevent such incidents? As part of due diligence to life requirements, have the rights to life and dignity protections and safeguards been met? What is the duty of care in the circumstances?

If we are going to assuage our individual and collective consciences and pain by designating such ‘accident’ victims, or for that matter soldiers in conflict, as shaheeds, then we must also know that shahadats impose a very heavy burden on state and society. The shaheed’s ultimate sacrifice demands that society confronts its shortcomings, learns, corrects itself and does its utmost to protect itself so that such a sacrifice will never be demanded again by society. At the very least, the state must do its utmost, in a measure reasonably commensurate to the ultimate sacrifice, to prevent such incidents.

Unfortunately, the evidence is that our state is content to perpetuate impunity with weak systems of governance and justice that are unable to protect citizens’ effectively, which is, arguably, itself a violation of the rights to life and dignity. This is state failure on a very significant scale.

Parliament and the judiciary must rise to their constitutional duty and find the moral courage to do what is right and stop this needless loss of life. The people of Pakistan have a right to life and dignity. Parliament and the judiciary must immediately order every organ of the state to forthwith conduct, what Justice Jawwad S Khawaja termed, the “due diligence of life” audits; implement life, dignity and safety protections and safeguards, and end impunity – as we all remember our precious shaheeds in our prayers.