

## The law that keeps on forgiving

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On October 6, another attempt was made by parliament to change the law on crimes committed in the name of so-called honour. And yet again the lawmakers have struggled to effectively and unambiguously change the law sufficiently, so as to ensure that the perpetrator is held to account. The floodgates are still open.

The previous law enabled the heir of the victim to forgive the perpetrator. The basic flaw in the law. The loophole, so wide, it allowed an accused of pre-mediated murder, to which he openly admits, to walk out a free man. Shoulders back, head high, acquittal. After October 16, whether or not the same offender will still have that same reassurance will be in the hands of the trial judge before whom the case is heard. Will there still be forgiveness, compromise, pardoning? We will have to wait and see.

So what has the new law amended? The lawmakers have provided for one basic fundamental change through the new amendments — increased discretion of the judge. The discretion of the judge may now be more widely invoked where ‘honour’ is found to be in issue. The new law states that taking into consideration the facts and circumstances of an individual case, the judge has the discretion to decide whether the principle of *fasad-fil-arz* (aggravated circumstances) is attracted, where the offence has been carried out in the name of so-called ‘honour’. The law defines aggravated circumstances as the past conduct of the offender and crimes, which are so brutal in nature that they are ‘outrageous to the public conscience’. Rightly, the penal code definition includes crimes committed in the name or pretext of ‘honour’.

Invoking the discretion of the judge is a very good development. But if the penal code is studied in depth, this discretion already existed. The new amendment only more clearly spells out what the law already provided for. What has been added to the discretion is that the judge will have no choice but to sentence the accused to life imprisonment should the principle of *fasad-fil-arz* be attracted.

The definition of *fasad-fil-arz* has not changed, only the positioning of it has. Why then in the past have judges not invoked their discretion by finding aggravated circumstances to ensure that justice for a victim is achieved? Because as long as the crime of ‘honour’ is linked to compromise between the parties and forgiveness of the accused, it is like expecting the captain to steer the ship to the lighthouse, strapped in a straightjacket.

The new law has now clearly provided the judge with the discretion to overrule any forgiveness granted by the victim’s family by invoking the principle of *fasad-fil-arz*. When invoked, this principle will also ensure that the accused, if found guilty, will serve a minimum sentence of life.

These powers have the capability of transforming how the criminal justice system has dealt with so-called ‘honour’ killings. However, with so much power and faith placed in the judges, judicial training and guidance from the appellate courts on how ‘honour’ killing cases should be approached will be pivotal.

The law must be followed up with clear and unambiguous Supreme Court guidelines that clarify how the new law should be interpreted and applied to ensure justice in cases of ‘honour’ crimes is achieved. This will leave room for the jurisdiction of the appellate courts to be invoked, should a trial court judge pass judgment not in line with the guidelines.

Furthermore, the government should become heirs of the victim in cases of ‘honour’ killings. It will show the government’s commitment. They did it in the case of Qandeel Baloch. It can happen again. It is only judicial guidance by the appellate court and actual cases before the trial judge that will bring to life the law and determine what the parameters of the new law are? How will the judge deal with cases where evidence points towards an ‘honour’ crime but the defence attempts to shy away from admitting it is honour to avoid attracting the principle of *fasad-fil-arz*? The right precedents, initially through test cases, must be set, to compel other judges to follow suit in similar circumstances.

Unless the legal framework accepts a heinous crime as just that — a heinous crime, without moral and societal connotations associated with it, there will be no justice, neither seen nor done. If the discretion of the judge is all the legislature is able to give at this time, the judiciary must be supported and guided not to miss the opportunity to be the catalyst of change, our collective conscience so badly needs. Without a well thought out and funded judicial training programme, this new law will fail the victims of ‘honour’ killings, just as the previous law did.

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