

Banning the Tradition of Vani (Giving Female as Consideration for Compromise)

Report No. 51

Banning the Tradition of Vani (Giving Female as Consideration for Compromise)

A Reference was received by this Secretariat from the President Secretariat (Public) alongwith copy of a letter of Ansar Barni Welfare Trust regarding the tradition of Vani (giving female as consideration for compromise). Ansar Barni Welfare Trust mentions the evil practice of giving girls in a Badal-i-Sulah (consideration of compromise) for compounding the offence of murder. They have referred to a case in Aba Khail, Mianwali District. They stated that one Muhammad Yousaf was killed some 30 years ago in Dher Yanowala village and five people were nominated in the FIR for the alleged murder, of whom two were sentenced to life imprisonment while three were acquitted.

About 20 years ago, both the families involved in the vendetta, decided to compound the offence. The accused party paid Rs.16,000/- in cash and agreed to give their three daughters in marriage to the men of their rival party. When the Nikah was solemnized, the girls were of minor age i.e. 4, 8 and 18 months. The Rukhasti of the elder girl was performed five years ago, whereas the youngest girl, who is now a student of M.A., refused to accept her marriage and threatened to commit suicide if she was forced to marry her illiterate would-be husband. The Jirga imposed a fine of Rs.300,000/- for violating the agreement and the guardian / uncle of that girl agreed to pay the fine.

The Trust requests for strong action to be taken to stop this nefarious tradition in the greater interest of justice and so as to protect the rights of women.

Having examined the proposal, the views of the Secretariat follow:

According to the traditional Islamic law, a boy or a girl who has not attained puberty is not competent to enter into a contract of marriage, but he or she may be contracted in marriage by his or her guardian. However, under the principle of option of puberty, the marriage of a minor female, made by her Wali (guardian), is not effective and may be set aside by her on attaining puberty. But the marriages of these girls were not solemnized by her guardian in a normal situation, the girls were forcibly given under an agreement as Badal-i-Sulh in a murder case. It seems that the third girl, after attaining puberty, wishes to avail her option of puberty. Indeed, she is within her Islamic right to do so.

Under the Islamic law, the offence of murder is compoundable. The Quran permits the legal heir to claim Qisas or Diyat (blood money). The heirs may also pardon the accused by righting off

the claim (Quran-Surah 2, 178-179). The value of the Diyat (compensation of blood) has also been fixed as follow: -

“The Prophet (p.b.u.h) ordained the value of the Diyat 800 Dinar or 8000 Dirham.”
(Sunan-e-Abi Daud Vol IV, Kitab-ul-Diyat, page 307)

During the period of 2nd Caliph i.e. Hazrat Umar Farooq, the State increased the value of Diyat and fixed 1000 Dinar or 12000 Dirham. (Book of Qisas & Diyat translated by Muhammad Mian Siddiqui, Islamic Research Institute, page 57)

Under President’s directive No.57/1/CMLA/MS(P) dated 6th August, 1979, the Council of Islamic Ideology examined the draft law of Qisas and Diyat, prepared by the Law Division. The Council finalized the draft in 1981 with the consultation of Ulemas/ Scholars of different schools of thought and forwarded to Law Division for implementation.

According to the draft ordinance relating to the law of Qisas & Diyat, prepared/revised by Council of Islamic Ideology (Section 16 of Draft Ordinance) the conditions for compounding of Qisas (Sulh) in Qatl-i-Amd (intentional murder) are prescribed as follows:-

Compounding of Qisas (Sulh) () in Qatl-i-Amd--(1) In the case of Qatl-i-Amd, an adult sane Wali may, in the presence of the Court or the authorized officer of the Court at any time before execution of Qisas, on accepting Badal-i-Sulh () compound the Qisas.

- (2) Where a Wali is a minor or an insane, the Wali of such minor or insane may compound the Qisas on behalf of such minor or insane Wali:

Provided that where the Wali is a minor or an insane person, the value of Badal-i-Sulh shall not be less than the value of Diyat.

- (3) Where the State is the Wali, it may compound the Qisas:

Provided that the value of Badal-i-Sulh shall not be less than the value of Diyat.

- (4) Where the Badal-i-Sulh is not determined or is a thing without value or is a property or a right which cannot be determined in terms of money under Shairah ()the Qisas shall be deemed to have been compounded and the offender or the convict shall be liable to Diyat.

- (5) Badal-i-Sulh may be paid on demand or on a deferred date as may be agreed upon by an offender or the convict

Explanation:-- In this section, Badal-i-Sulh means the mutually agreed compensation according to Shari'ah to be paid by the offender or the convict to a Wali in cash, or kind or in the shape of moveable or immoveable property.

It is pertinent to mention that the Government of Pakistan have followed the draft of Council of Islamic Ideology and amended the Sections relating to offences affecting the Human Body. The

amended Section 310 of Pakistan Penal Code 1860 provides the provisions regarding the compounding of Qisas (Sulh) in Qatl-i-Amd as follows:-

310. Compounding of Qisas (Sulh) () in Qatl-i-Amd. (1) In the case of Qatl-i-Amd, an adult sane Wali, may at any time of accepting Badal-i-Sulh, compound his right of Qisas:

Provided that giving a female in marriage, shall not be a valid Badal-i-Sulh ().

- (2) Where a Wali is minor or an insance, the Wali of such minor or insance Wali may compound the right of Qisas on behalf of such minor or insance Wali:

Provided that the value of Badal-i-Sulh shall not be less than the value of Diyat.

- (3) Where the Government is the Wali, it may compound the right of Qisas:

Provided that the value of Badal-i-Sulh shall not be less than the value of Diyat.

- (4) Where the Badal-i-Sulh is not determined or is a property or a right the value of which cannot be determined in terms of money under Shariah () the right of Qisas shall be deemed to have been compounded and the offender shall be liable to Diyat.

- (5) Badal-i-Sulh may be paid or given on demand or on a deferred date as may be agreed upon between the offender and the Wali.

Explanation. In this section Badal-i-Sulh means the mutually agreed compensation according to Shariah to be paid or given by the offender to a Wali in cash or in kind or in the form of moveable or immovable property.

It is further pointed out that the Child Marriage Restraint Act 1929 also prohibits the marriage of minor children i.e. below 16 years if female and 18 years if male. In case of violation of the Act, the Section 6 of the Act provides the punishment as follows:-

Section 6. Punishment for Parent or Guardian Concerned in a Child Marriage

(1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

The practice of offering a girl in marriage as 'Vani' or Badal-i-Sulh is prohibited under the proviso to Sub-section (1) of Section 310 as well as Section 338-E of the Pakistan Penal Code. However, the proviso can only be effective if the Court while passing order of compounding the offence, may certify in the order that no such deal has been made.

It is, therefore, proposed that the National Judicial (Policy Making) Committee may lay a policy that any court giving effect to Section 310 or Section 338-E of the Pakistan Penal Code may certify that the offence is not compounded in violation of proviso to Sub-section (1). The Chief

Justices of High Courts may issue directions to all trial courts and appellate courts to strictly follow the provisions of Sections 310 and 338-E of the Pakistan Penal Code. Such courts should record the statement of compounding of Qisas in Qatl-i-Amd or causing hurt liable to Qisas / Tazir and ensure that under the terms of compromise between the parties in such compoundable cases the female is not given as Badal-i-Sulh. Further, there is a need for strict enforcement of the Child Marriage Restraint Act 1929.

Commission's deliberations

The Commission considered the draft in its meeting on 21 December 2002. The Chairman informed the meeting that the matter has already been examined by National Judicial (Policy Making) Committee. The members appreciated the decision taken by the Committee to check the evil practice of Vani (giving female as consideration for compounding disputes/offences), as such practice is contrary to the injunctions of Islam. The Commission observed that Sections 310 and 338-E of the Pakistan Penal Code clearly and categorically prohibit the giving of female as Badal-i-Sulh (consideration for compromise) and the law should be strictly enforced. The Chief Justices of the High Courts would therefore issue instructions to the Trial Courts and Appellate Courts to ensure compliance with the law, by recording statements while compounding offences, to ensure that under no circumstances, a female is given as Badl-I-Sulh (exchange for compromise). The Commission further emphasized on the need for effective enforcement of the Child Marriages Restraint Act 1929, which prohibits the marriages of minors and prescribes punishment for those who organize or solemnize or promote the solemnization of such marriages.