

HONOUR KILLINGS: A CRITICAL ANALYSIS OF THE EXISTING LAWS IN INDIA AND THEIR LACUNAE

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INTRODUCTION

In many cultures, an individual's identity is closely tied to their family unit. According to the Cambridge Advanced Learners Dictionary, the English word "Honour" stands for a quality that combines respects pride and honesty. Honour is about a right to respect, in the sense of claim for respect. In such a culture, the family's honour is viewed as a personal reflection on each member of the family. Human Rights Watch defines "honour killings" as the acts of violence, usually murder, committed by male family members against female family members, who are held to have brought dishonour upon the family whereas according to The Black's Law Dictionary, honour killing is "A crime motivated by a desire to punish a person whom the perpetrator believes has injured a person's or group's sense of honour". Mostly women or girls become victims of this crime. Each year, male family members murder thousands of girls and women across the globe in the name of family honour. Honour killings are executed for instances of rape, infidelity, flirting or any other instance perceived as disgracing the family's honour, and the woman is then killed by a male relative to restore the family's name in the community. Many women are killed based on the suspicions of a family member and are not given the chance to defend themselves. The allegation alone is enough to defile a man's or family's honour and is therefore enough to justify the killing of the woman. The men who commit the murder typically go unpunished or receive reduced sentences.¹ It is also one of the most extreme forms of honour-related violence against women in strictly patriarchal societies that are motivated by a wide variety of social, cultural, psychological factors. A report says that "the regime of honour is unforgiving: women on whom suspicion has fallen are not given an opportunity to defend themselves, and family members have no socially acceptable alternative but to remove the stain on their honour by attacking the woman"². The dishonour can be of different types for

¹ <http://www.womenissues.about.com/cs/honorkillings/a/honorkillings.htm>

² *Amnesty International Annual Report, 2001*

different families. The perceived dishonour is normally the result of the following behaviour, or the suspicion of such behaviour, which are dress codes unacceptable to the family/community; or wanting to terminate or prevent an arranged marriage or desiring to marry by own choice; or engaging in certain sexual acts, including those with the opposite or same sex, etc. “Honour killings can also be described as extra-judicial punishment of a female relative for assumed sexual and marriage offences. These offences, which are considered as a misdeed or insult, include sexual faithlessness, marrying without the will of parents or having a relationship that the family considers to be inappropriate and rebelling against the tribal and social matrimonial customs. These acts of killing women are justified on the basis that the offence has brought dishonour and shame to family or tribe”³. Honour killings elucidate that the custom is not related to a feudal societal arrangement, “There are also perpetrators who are well-educated university graduates. Of all those surveyed, 60 per cent are either high school or university graduate or at the very least literate” as per a study by Dicle University (Gezer 2001). India, being the rigid patriarchal society that it is, promotes men to enforce such norms and traditions and protect family and male honour from shame and women to conduct themselves honourably. This understanding of the notion gives legitimacy to all forms of social regulation of women’s behaviour and to violence committed against them. Honour killing is more prevalent where a member of a lower class (wrt. social status or wealth status) marries a person of relatively higher class (high social or wealth status). Relatives, usually male members, commit acts of violence against their wives, sisters, daughters and mothers mostly to reclaim their family honour from real or suspected actions that are perceived to have compromised it. However, honour killings are often a pre-planned crime, which is done by the family members, sometimes including women who take a collective decision to punish the offenders on the basis of mere perception, suspicion, or rumour in certain cases without giving the victim an opportunity to prove his/ her dishonouring actions.

³ *Amnesty International Annual Report, 1999*

HISTORY OF HONOUR KILLINGS IN INDIA

The practice of honour killings in India dates back to thousands of years. This colonial past was one wherein India witnessed a whole mix of ideological influences from the modern west and a return to the traditional but forever marked by an interpretative framework that was an unintended consequence of colonial-ism. This would be equally true of Orientalist celebration of ancient India as much as it would be that of an arrogant rational dismissal of India's past. The very concept of honour killing was unknown and did not exist in the Vedic time. However, the honoured position, which the wife enjoyed in the family and society during the Vedic era gradually, started declining. In the matrimonial home, she was considered to be a commodity and thus, less satisfactory. Manu was the first to suggest the ways and means to keep a wife under subjugation and over the years, men have adopted those ways and cruelly exploited women through ages. However, there existed no law in India in that period to curb such a heinous social evil. This evil practice was carried out even after the independence of India. Several Indian Hindu girls, often minor were forced to marry Muslims men from Pakistan and vice versa. The family members then traced these girls with a sense of vengeance as they were considered as dishonour to the family, community and religion and in order to preserve and to protect the honour and purity of family of caste, several women and girls. The tradition was first viewed to be most brutal and horrible during 1947 and 1950. In India, traditionally women were considered as objects and commodities and not as equal and able as men of the family, but treated as properties of male members and family honour was deep rooted in her activities⁴. Her chastity and behaviour are considered as repositories of family honour, which is a thing of utmost value in the society and the community in which the family resides. With the increasing urbanization, education and employment of women in mode occupations and the emerging middle class have had a strong influence in paving the way for more inter-caste marriages. With the increasing influence of modernization and western education in India there has been a visible change in the traditional marriage practices. Socio-economic development and

⁴ Manreen Bhugra & Yasha Banthia, *HONOUR KILLINGS: A CRITICAL REVIEW OF PERSONAL LAWS AND SOCIETAL NORMS INTERNATIONAL JOURNAL FOR LEGAL DEVELOPMENTS AND ALLIED ISSUES*, page 208-222

globalisation of the Indian economy has also contributed to the changing trends in the marriage patterns. According to a recent report of the All India Democratic Women's Association (AIDWA), urban women in India have started to rebel and choose mates outside the 'arranged marriages' and caste commandments (Helfer, 2011). This has led to an increase in incidences of 'honour killings' of young brides and grooms⁵. However, certain misconceptions also exist with respect to honour killings. One major misconception about the practice of honour killings is that it is only limited to rural areas. However this is not the case and this evil is spread all over the country in both, rural and urban areas, though one must admit that the majority of incidents of honour killing took place in rural areas. Another misconception about honour killing practice is that it is only limited to women and young girls whereas, men and young boys also often suffer customary killing⁶.

LEGISLATIONS

The Government of India has recently circulated a draft law against crimes in the year 2015 in the name of honour to all the states for their opinion.' It has been reported that as many as 22 states have reacted to this proposal. The 19th Law Commission has proposed this draft law and aims to stop "interference with the freedom of matrimonial alliances in the name of honour" have proposed Law. The Bill punishes 'Khap Panchayats' and other assemblies for deliberating on or condemning any marriage or intended marriage and labels them as an "unlawful assembly". It further punishes any coercive action or pressure or intimidation exerted by this unlawful assembly. Khap panchayats have enjoyed legitimacy because of the support provided by the major political parties and police administration in states like Haryana and Uttar Pradesh where honour killings take place the most. Will a separate law that criminalises participation in assemblies that endorse honour crimes deter them when the existing laws against murder, abetment and conspiracy have not prevented them? There is a lot of weight in the gender activists' argument that such legislation will

⁵ Srinivas Golisep, Exploring the Myth of Mixed Marriages in India, *Journal of Comparative Family Studies*, Vol. 44, No. 2 (MARCH-APRIL 2013), pp. 193-206

⁶ Puneet Kaur Grewal, *Honour Killings and Law in India*, *IOSR Journal Of Humanities And Social Science (JHSS)*, PP 28-31

indeed work. Special laws such as the Commission of Sati (Prevention) Act have helped in deterring such crimes and have aided social reformists in their efforts to eradicate such practices. Honour crimes - a misnomer in itself - do fit the category of special crimes as they take place with social sanction and are very difficult to prove in court because of the social pressures that are placed on the victims or those who want to get justice on their behalf. Specific and special laws that clearly define these crimes and declare assemblies unlawful will aid activists in their struggles against these crimes. The Law Commission's bill tries to marry accepted principles of jurisprudence related to individual civil liberties with measures laws specifically designed to counter honour crimes. The commission could have stretched the principle of burden of proof to cover what gender activists are demanding as well in order to provide justice to victims of honour killings and in public interest. Yet it is also true that without comprehensive social and economic reforms that tackle caste hierarchy, patriarchy and skewed land ownership, the barbarity that is honour crimes cannot be totally eradicated from Indian society⁷.

HINDU AND MUSLIM PERSONAL LAWS

Though neither Islam nor Hinduism directly sanctions honour killing, both plays a role in legitimizing the practice in South Asia—if for no other reason than that such societies have not prosecuted this crime, have issued light sentences, or have failed to use their religious authority to punish and abolish it. Hindu society is divided into religiously mandated castes, membership in which is hereditary and effectively permanent. At the lowest rung of the ladder are roughly 150 million Indians who are called Dalits (the oppressed), commonly known in the West as "untouchables." Although many Dalits have reached high political office, notably former president K. R. Narayanan, they are still held in low regard by many other Indians⁸. According to Hindu religious law and tradition, marrying or having sexual relations with a member of a different caste is strictly forbidden. So, too, is romantic involvement with

⁷ *Half Steps against Honour Crimes: The Law Commission's bill on combating honour crimes falls short of what is required*^[1], *Economic and Political Weekly*, Vol. 47, No. 7 (FEBRUARY 18 2012), p. 7

⁸ "Caste-based Discrimination in South Asia," European Commission (Brussels) and the International Dalit Solidarity Network, June 2009; "Broken People: Caste Violence against India's 'Untouchables,'" Human Rights Watch, Washington, D.C., Apr. 1, 1999.

someone from the same sub-caste (*gotra*), a proscription that contrasts notably with Muslim cultures where first cousin marriage is widely accepted. The vast majority of Hindu honor killings target young Indians suspected of violating one of these two commandments. In northern India, the murders are often explicitly sanctioned or even mandated by caste-based councils known as *khap panchayats*. Although the Hindu Marriage Act of 1955 made inter-caste and intra-*gotra* marriages legal, both remain unacceptable to the large majority of Indian Hindus. According to a 2006 survey, 76 percent of the Indian public oppose inter-caste marriage. In some areas of the country, any marriage not arranged by the family is widely regarded as taboo. Young Hindus in the West are no less prone to violate traditional social codes than young Muslims, and their parents may be no less furious when they do, but Hindu families in the West do not feel the same degree of public humiliation and shame as they might experience back in India. They are eager to preserve their cultural identity but not at the expense of alienating their adoptive communities. The absence of dreaded *khap panchayats* no doubt mitigates the consequences of dishonour. 'Honour Killings' is something that is not permitted by Islamic Law. It is when someone kills another on the basis that they have defied family or social honour. This practice did not start within Islamic culture, although it is prominent in many so called 'Muslim' countries today. Although Islam does not specifically endorse killing female family members, some honor killings involve allegations of adultery or apostasy, which are punishable by death under Shari'a (Islamic law). Thus, the belief that women who stray from the path can be rightly murdered is consistent with such Islamic teachings. The refusal of most Islamic authorities to unambiguously denounce the practice (as opposed to merely denying that Islam sanctions it) only encourages would-be honor killers. While the Qur'an preaches the equality of all Muslims (or at least all Muslim males), and Islamic leaders frequently bemoan the evils of India's caste system, vestiges of caste identification are evident among some Pakistani Muslims, who are descended from Hindus who were forcibly converted to Islam in the Middle Ages and were part of India before 1947⁹.

⁹ Yoginder Sikand, "*Islam and Caste Inequality among Indian Muslims*," *Asianists' Asia*, first published in *Qalandar* (Paris), T. Wignesan, ed., Mar. 2004; Anatol Lieven, *Pakistan. A Hard Country* (New York: Public Affairs, 2011), pp. 101-2.

JUDICIAL JUDGEMENTS AND PRECEDENTS

The prime function of judiciary throughout the world is to help keep peace through their judgements, which is great safety value because it prevents criminal violence. The basic function of judiciary is to explain the existing laws and apply it to the appropriate cases. Judges should provide justice with utmost legal eminence impartial outlook and rational attitude. There are no any specific laws available to curb honour killing, by using existing laws to the appropriate cases of honour killing in several cases judges provides fair and impartial justice to the victim and tries to overcome problems of inter-caste marriages. In a landmark judgment, in March 2010, the Karnal District Court ordered the execution of five perpetrators in an ‘honour killing’ case of *Manoj & Babli*¹⁰, while giving a life sentence to the khap (local caste-based council) head who ordered the killings of Manoj Banwala (23) and Babli (19), two members of the same clan who eloped and married in June 2007 and later their mutilated bodies were found a week later from an irrigation canal. In her verdict, district judge Vani Gopal Sharma stated, "*This court has gone through sleepless nights and tried to put itself in the shoes of the offenders. Khap panchayats have functioned contrary to the constitution ridiculed it and have become a law unto themselves*". The case was both the first court judgement convicting *khap panchayats* and the first capital punishment verdict in an honour killing case in India. The Indian media and legal experts hailed it as a "landmark judgement". Also, few honour killing cases go to court, and this is the first case in which the groom's family in an honour killing filed the case. In another case of *Lata Singh v. State of U.P. and Another*¹¹ where Justice Ashok Bhan and Markande Katju expressed views on honour killing issue that, over the several instances of harassment, threats and violence against young men and women who marry outside their caste and held that, Such acts or threats or harassment are wholly illegal and those who commit them must be severely punished". Court also gives trace on that, Inter-caste marriages are in fact the national interest as they will result in destroying the caste system. Further, more the bench of court said that, ‘once a person

¹⁰ *CrI. Misc. No. M-42311 of 2007, IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH*

¹¹ *2006 (5) SCC 475*

becomes a major he or she can marry whosoever he or she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religion marriage the maximum they can do is that they can cut off social relations with the son or daughter, but cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter- caste or inter-religious marriage'. In *Arumugam Servai v. State of Tamil Nadu*¹² the bench stated that, the caste system is a curse on the nation and sooner it is destroyed the better. In fact it is dividing the nation at a time when we have to be united to the face the challenges before the nation untidily. Hence inter caste marriages are in fact in the national interest, as they will result in destroying the caste system. In this case the bench of Supreme Court has also directed the administration and police authorities throughout the country to see to it that if any boy and girl, who are majors, decide to get married, the couple is not to be harassed by any one nor subjected to threats or acts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation is taken to task by instituting criminal proceeding by the police against such persons and further action be taken against such persons as per the provision of law. In number of cases judiciary has directed that to the couples those who were major and faced threats or violence of atrocity from their family member or their close relatives or any non-authorised bodies in order to protect the right of human being judiciary has provided police protection. For example in case of *Geeta Sabharwal v. State of Haryana*¹³ and *Jiva bhai v. State of Gujarat*¹⁴ in these cases the Hon'ble court directed to the administration and police authorities thought out the country will see to it that if any boy or girl who is a major undergoes inter caste marriage or inter religious marriage with woman or man who is a major, the couple are not harassed by any one nor subjected to threats or facts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation is taken to task by instituting criminal proceedings by the police against such person and further stern action is taken against such person as provided by law. Honour killing is an evil and brutal customary practice, which is prevailing in the some state of the

¹² (2011) 6 SCC 405, AIR 2011 SC 1859

¹³ Criminal Miscellaneous No.M 27548 of 2008 in the High Court of Punjab and Haryana, Chandigarh

¹⁴ Criminal Miscellaneous No 585 of 2011 in the High Court of Gujarat

country. Basically it is the customary practices that whoever violates the social norms of the family or community and brought dishonour to the family or community resulting to cause death¹⁵. As per the rules and regulations of the *Khap Panchayats* and social norms of customary practices in India, marriages within the same *gorta* are strictly prohibited. However, the Indian judiciary has given green signal for performing such marriages. In the case of *Madhavarao v. Raghavendrarao*¹⁶ it was held that the marriage between the parties belonging to the same *gotra* was valid. Through this landmark judgement by the Bombay High Court, same *gotra* marriages were declared to be legal in the country.

CONCLUSION

Honour killings, also known as customary killing is the murder of a family or clan member by one or more fellow family members, in which the perpetrators and potentially, the wider community believe the victim to have brought dishonour upon the family clan or community. However, if looked at closely, one realizes that there exists no honour in these crimes at all. Crimes of honour may involve the violation or abuse of a number of human rights, which include the right to life, liberty and security of the person; the prohibition on torture or other cruel, inhuman, or humiliating treatment or punishment; the ban on slavery; the right to freedom from gender-based discrimination; the right to privacy; the right to marry; the right to be free from sexual abuse and exploitation; the obligation to amend customs that discriminate against women; and the right to an effective remedy. Honour Killings are a clear violation of human rights and States necessarily need to protect individuals from such violations. The solution to this problem mainly lies in the eradication of myths in the minds of people. They need to be educated with the provisions given in the Hindu Marriage Act and what kinds of marriages are actually considered invalid. Since the concept of Gotras and Sapindas are different from each other, it should be explained to them. Khap Pachayats should at last be ripped out of all its power so that it is unable to

¹⁵http://shodhganga.inflibnet.ac.in/bitstream/10603/89946/14/14_chapter%20-vi.pdf

¹⁶ AIR, 1946 Bombay H.C. 377

wrongly influence the naïve people and to instigate them to commit such inhuman acts. It is time India finally developed in the real sense. Building malls and increasing the standard of living of the common man is not really development. Cases such as these show that more than half of the Indians still lead lives within the strong crutches of caste system and even today youths don't have the power to make decisions regarding their own lives. To see that even today, people blindly commit such barbaric crimes and consider it as an act of sanctifying the impure shows that India has really not modernized. Development has to be from the very base, the core. Or else it's just a hollow wooden structure eaten on the inside by the termites that eventually comes crashing down. The State must not tolerate these so-called honour crimes which are violations of human rights of women for which the State bears ultimate responsibility. There have been more recently a number of changes brought about as far as the 'development and improvement of the status of women are concerned. But there is still the need for a revolution to be brought about in a number of countries before we can see a change in the mindset of people. There is not only the need to bring about a change to fill in the lacunae existing in the law. There also needs to be a change in the attitude of society to bring effective implementation of any law. Thus society itself must be taught that, like other human beings, women must be treated with dignity and have an equal right to live, at par with men. But there is also lack of protest from the victims. This is a major shortcoming, since women themselves need to become conscious of their rights and understand that the need of the hour is to join hands and raise a vision of a world free of exploitation by men on their counterparts.