

HONOUR KILLING IN INDIA – A SOCIO LEGAL STUDY

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Abstract

Indian society is a multicultural and pluralistic society where a lot of beliefs and faith regulate the human life of the citizens. In a patriarchal society, women are considered as bearer of honour of the family. This perception is so well entrenched that any attempt by women to assert their rights is seen as an attack on the cultural norms of the community and is strongly countered. And these counter activities taken by the family in the name of honour is known as Honour Killing. Though there are no specific laws on such killings, certain other provisions in statutes are used to punish the perpetrators. Due to this, such crimes go unreported or are passed off as suicide or natural deaths by the family members involved. This paper examines the factors responsible for prevalence of Honour Killings in India, how the honour killing violates human rights as well as other international instruments and about the steps taken by Indian Government to curb the practise. The aim of the paper is to analyze whether there is a need to enact specific law or not with respect to honour killing.

Keywords: honour killing, murder, culpable homicide, custom, legislation, honour, khap panchayat

INTRODUCTION

Indian society is a multicultural and pluralistic society where a lot of beliefs and faith regulate the human life of the citizens. The Indian spiritual holy books i.e., The Bhagvat Gita, The Mahabharata, The Quran, The Bible etc have been the model of thinking pattern on Indian Society. People are also influenced by the caste system and other traditional practices which they believe to follow throughout their lives. And one such thing, which Indian people consider very precious, is 'Honour'. In a patriarchal society, women are considered as bearer of honour of the family. This perception is so well entrenched that any attempt by women to assert their rights is seen as an attack on the cultural norms of the community and is strongly countered. And these counter activities taken by the family in the name of honour is known as Honour Killing. Women are targeted for various reasons, including, inter caste or inter religion marriage, refusal to enter into arranged marriage, being victim of sexual assault, seeking divorce even from an abusive husband or (allegedly) committing adultery. Sometimes men also fall victim of such killings, such as by members of women's family with whom he is perceived to have an inappropriate relationship. Though there are no specific laws on such killings, certain other provisions in statutes are used to punish the perpetrators. Due to this, such crimes go unreported or are passed off as suicide or natural deaths by the family members involved. The paper is done through doctrinal research and secondary sources such as journals, newspaper articles, e-sources, books and statutes are used for data collection. Based on the data collected and analysis, the study concludes that a separate law is needed to combat such honour killings.

REVIEW OF LITERATURE

In their article on this issue published in 2011, Jyothi Vishwanath and Srinivas.C Palakonda, have dealt with the honour killing evil practices in India and the major role played by Khap Panchayats in facilitating such crimes. The article has also explained about the role desired from the lawmakers, enforcement agencies and community members for protecting the victimized women and restoring their honour. The author has also given recommendation of enacting a specific law for curbing the menace of this Honour Killing and also to provide awareness to the women with regard to their legal rights.

In another article written by Sneha Singh and published in 2017, the author has dealt with honour killing or customary killing and the author has put light on the origin of the this social evil in India and various case studies which shows the grave nature of such killings. The

author has discussed about the need for enacting a specific law in India and about the steps taken by Government and various commissions to deal with such honour crimes.

LEGAL ASPECTS OF HONOUR KILLING

Constitutional Violation

Indian Constitution has been the basic document and guiding force which vests ample of rights to its citizens. Honour killing violates few such provisions in the Constitution thus contrary to the basic rights of people. Such rights are: Article 14(Right to Equality), Article 15(1) and (3) (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth), Article 17(Abolition of Untouchability), Article 19(1) (freedom to speech and expression) and Article 21(right to life and personal liberty).[1]

Most of the honour killings directly focus on women and very few on men and thus lead to gender violence. The freedom of expressing a women or men's choice is suppressed and this suppression further leads to such killings thereby violating the fundamental rights of that person. And the perpetrators use religion or caste as grounds for "dishonor" thereby trying to validate such killings. This act is totally contrary to the Constitution.

The Directive Principle of State Policy (DPSP) though not enforceable can be considered for good governance of the Country. Article 39(a) provides for the State to secure that all citizens are provided with adequate means of livelihood. But honour killing deprives the life of the woman in most of the cases. And Article 39 (e) and (f) provides for the State to ensure that the childhood and youth are protected from exploitation and against growing and material abandonment.[2] Whereas due to this customary practice of honour killing many young, youth and married couples are exploited of their life, they are placed in an unprotected circumstance. Hence it is the duty of the State to protect such vulnerable people and protect their lives against this evil practise.

National legislations

Indian Majority Act, 1859: Right to marry is a constitutional right granted by Article 21 and under Section 3 of Indian Majority Act, 1857, a person who is the citizen of India attains age of majority after completion of 18 years. A person who is major, wanting to get married to a person of another caste or inter community marriage is not prohibited by law and any honour killings initiated on this ground is unlawful and to be initiated severe measures (Surjit kumar v. State of Uttar Pradesh & Ors, 2002 (456) ACC 79).([Grewal 2012](#))[3]

Special Marriage Act, 1954: The objective of this Act is to provide a special form of marriage for citizens of India as well as for Indians residing in foreign nations. The marriage is done irrespective of caste, religion or faith of the intending parties to marriage. But the customary practice of honour killing is done contrary to this perspective amounts to violation of this Act. Since the registration process is a long one and there are chances of the couple being subjected to violence during such period. [4]

Protection of Human Rights (Amendment) Act, 2006: This Act provides for protection of human rights of every individual and constitution of Commissions and Courts for securing the respective objective. In spite of such legislation, still there is prevalence of honour killing practices leading to grave violation of human rights. ([Grewal 2012](#))[5]

Domestic Violence Act, 2005: Under this Act, if a woman is prevented from marrying the person of her choice amounts to emotional abuse of the woman. ([Vishwanath and Palakonda 2011](#))[6]

International laws and Their Applicability

Human rights are possessed by every person irrespective of his or her nationality, race sex, religion etc without discrimination. There is strong democratic freedom in India where human rights to all citizens are guaranteed by the Indian Constitution.[7] Human Right is not about the wealth of the country or world but about the dignity each and every individual in the society. ([Singh](#))[8] The customary killing of the people i.e., the killings done in order to comply with the customs of their culture is a complete violation of human rights. ([Volume 2 Issue 6 \[July, 2016\] 2016](#))[9]

This crime also violates the Universal Declaration of Human Rights, 1948. The Universal Declaration of Human Rights is not a legally binding instrument but has a greater persuasive value.[10] Article 1 and Article 2 of the Convention state that “all human beings are born free and equal in dignity and rights.” Article 3 states that “everyone has right to life, liberty and security”. Article 5 gives the “right to be free from torture or cruel, inhumane and or degrading treatment” these articles are violated as women or men are inflicted lot of mental and physical pain while commission of the crime. Article 16 talks about the choice of marriage given to men and women of full age without any limitation due to race, nationality or religion. ([UN 2013](#))[11]

But honour killing takes away the dignity and life of the person and affects the person's freedom of choice of marriage. Such practice subjects the person to cruel and inhumane treatment. Hence honour killing constitute grave disregard to universal human rights and violation of fundamental rights guaranteed in Constitution.

India is a signatory to United Nations Convention on Elimination of all forms of Discrimination against Women (CEDAW 1979) and has also ratified it. There is a legally binding obligation for India, as a state party to the Convention, to take measures to end all form of practices of honour killing and ensure all discriminations against women in matters relating to marriage and family relations are eliminated. Though there are provisions of CEDAW and various human rights provisions to eliminate violence against women, individuals continue to be the victims of murders in name of honour.[\(Santhi.V \)](#)[12]

REASONS FOR PREVALENCE OF HONOUR KILLING

1. Patriarchal Mindset

Honour Killing is often associated with the term "Honour". In defining honour, many theorists emphasize the power of the parallel concept of 'shame'. 'Honour' is a concept which is always linked with women of the family. And men are considered to monitor women and prevent women from abusing the so called honour.[\(IJHSSI \)](#)[13] This shows the patriarchal design still prevalent in our society. Men are allowed to move freely during late hours while women are not allowed to do so. From the way a women dress to the person she marries are related with the honour of the family. Women's rights and their will and choices are seen as oppression against these social norms and traditions. Hence, only when people become open minded and respect the choices of women or men in deciding their personal life, these honour killings can come to an end.

2. Caste system

The existence of caste system in Indian Society is a curse on the nation and will soon destroy the better. Though many reforms are brought in law, many documentaries and value education is given to people, this view towards caste is still stable. Where on inter-caste marriage is denied by certain cultural groups, certain intra caste marriage is also denied as a person is not allowed to marry in his/her gotra[\(Singhal 2014\)](#)[14] or of their parents gotra. And not only inter-caste marriage leads to large number of honour killings but also inter religious marriages. The National Commission of Women (NCW) study shows that among

326 cases of conflict surveyed, 72% due to couple crossed caste barriers and 3% due to couple from same gotra.[\(International Journal of Management R...\)](#)[15]

In a Supreme Court case (Latha Singh v. State of Uttar Pradesh (2006) 5 SCC 475), it was stated by Justice Markandey Katju that “Honour Killings are nothing but cold blooded murder and no honour is involved in such killings”. The Supreme Court also observed that “inter-caste and inter-religious marriages should be encouraged to strengthen the social fabric of society.”[16]

The younger generations could understand how much importance a caste has to be given and not while people of older age couldn't overcome their feelings on caste system and hold it tightly. Only if this primitive ideology of casteism is eradicated, there can be peace and equality and freedom of women's rights in the society.

3. Khap Panchayat and vote bank politics

Khap Panchayats are a group of persons or a community organization especially found in villages and in Northern India to exert a social influence within the community. Khap panchayat take law in their own hands and indulge in offensive activities which endanger the personal lives of persons marrying according to their free will. There are many judicial decisions provided by the Courts against the action of Khap Panchayats. One such landmark case is Smt Laxmi Kachhwaha v. the State of Rajasthan (1999). In this case a Public Interest Litigation was filed in the Rajasthan High Court against the illegal functioning of Khap Panchayat violating the individual's basic rights. The Court ordered State authorities to restrict the functioning of such Panchayat and ensure arrest and punishment of its members. And later in Arumugam Servai v. State of Tamil Nadu (2011), the Apex Court opined about the majority age of the person and their decision of marrying the person they like and observed that Khap Panchayats encourage honour killing and interfere with the personal lives of people.[\(IJCJS - previous issues \)](#) [17] Therefore it should be abolished completely. There are many other cases where Courts declared Khap Panchayats as illegal and ruled them out. And vote bank politics[\(Vote-bank politics delaying a law aga...\)](#)[18] is also major reason for not bringing a law against honour killings.

4. Lack of education

The lack of awareness and education of people on the rights guaranteed to them and how to claim their rights are one of the reason for such honour killings.

5. No separate and strict laws

Honour killings though seen as a customary crime is not yet recognized in Indian Laws. In spite of increase in honour related crimes and judgments and expressions of outrage in Courts across India, the Governments have displayed criminal negligence in their approach to these crimes. There is no definition of the crime, no legal recognition of various aspects of the crime, no protection afforded to self-choice couples, no measures to prevent such crimes, no accountability and no punishment. These killings are reported only under two categories – Murder (section 302 of Indian Penal Code) and Culpable Homicide (Section 304 of IPC). Due to this, most of the killings were unreported or reported under murder. Hence there is no proper statistics of such killings in India.

But only because of sustained campaign by women's groups, a separate category was created for compiling honour killing cases. Only in 2014, the National Crime Bureau (NCRB)([Volume 4 Issue 3 | IJIMS](#)) [19] started data collection of honour killings which revealed 297% number jump on rigorous data collection on this issue. The country has registered 251 honour killing cases in 2015 against 28 in 2014 recording a big spike in murders carried in the name of honour.

SATI AND HONOUR KILLING

Sati is an ancient evil practice where woman burned on pyre along with the dead body of husband. This is an orthodox practice where consent of woman is not asked but life is taken away as a rule. This was done out of the state of shock and social pressure. In 1987, after enactment of the legislation, 'The Commission of Sati (Prevention) Act, 1987' there was effective control of problem. When considering the customary practice of Sati and Honour Killing, the common driving factor is social pressure. Hence, there is a need for proper legislation to govern such menace.([Catalogue Search Results | University...](#))[20]

HOMICIDE AND HONOUR KILLING

Since there is no separate law for honour killing, cases are initiated under the provisions of murder and homicide. But there are major differences between homicide and honour killing. They are:

1. Offences under homicide are motivated by monetary gains or some strategic benefit while honour killings are for restoring the honour of the family.
2. In homicide, the perpetrator can be a stranger but in honour killing, the perpetrator is close relative of victim.

3. In honour killing, there is a stronger external pressure of community.
4. Perpetrators in honour killing do not have sole motivation. Therefore the guilt burden should not be solely on the trigger puller but rather on every person that was responsible for incitement and abetment of offence.[\(Catalogue Search Results | University...\)](#)[21]

UNIVERSALISM AND CULTURAL RELATIVISM

Human rights are universal rights vested in every human being. It cannot be restrained due to it being not accepted by any culture or by any particular community.[\(Sharma 2016\)](#)[22] The State not making a law on this issue is stating a right but not providing such right. The right to have constitutional right is the onus of human right.[\(Human Rights, Honour Killings and the...\)](#)[23]

INITIATIVES TAKEN AGAINST HONOUR KILLING

The United Nations Population Fund estimated that about 5000 women and girls were killed by the members of their families and relatives for the sake of honour around the world.[\(Honour Killings in India: A Study of ...\)](#)[24]

The issue of honour killing for the first time was heard in Parliament in 2009. The Rajya Sabha went into discussions on this issue. In July 2009, the members across party lines spoke on this issue and supported demand for separate law. In March 2010, there was a landmark judgment in Manoj and Babli honour killing case by the Karnal District Court which gave life sentence to Khap Panchayat head for ordering killings. The judge has stated that khap panchayat have functioned contrary to constitution and took law in its own hands.[\(Singh 2015\)](#)[25]

This issue was later referred to Law Ministry, which gave certain recommendations in 2010 called “The Indian Penal Code and certain other Amendment Bill 2010”. This flawed understanding resulted in dealing only with crimes of honour related murders and not of tortures faced by young couples.

In August 2010, the legal cell of All India Democratic Women’s Association (AIDWA) in consultation with other women’s organization drafted a comprehensive law entitled “The Prevention of Crimes in name of Honour and Tradition Bill” and gave it to government. This Bill addresses the violation of rights of young couples and lists various types of crime in addition to murder, suggests preventive measures and provides various

degrees of punishments. It included Khap Panchayats or other bodies in the name of caste or community and accountability of police and administration. [\(Karat \)](#)[26]

In 2012, the Law Commission of India brought its own version of the Bill in its 242nd report. This Bill became a conservative and narrow approach to honour killings. The Bill entitled “Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011”[27] dealt primarily with the “Unlawful Assemblies” called Khap panchayats. This recommendation of the Law Commission is still pending.

In March 2018, the Supreme Court gave preventive measures to combat honour crimes in India. The guidelines are to be followed till a proper law is legislated. Though the Supreme Court has framed guidelines, there is a need for proper and strict law without delay as delay in justice could lead to denial of justice. Till then proper implementation of the preventive measures is to be ensured. [\(Taneja \)](#) [28]

RECOMMENDATIONS

1. A Separate law should be passed against honor killings bringing strict penal provisions relating to honour killing.
2. Awareness should be created regarding the crime of honour killings and remedies which can be sought by the victim against the oppressions of perpetrators. People must be educated of ways through which a victim of such crime can express their grievances and of legal provisions they can resort to.
3. The mindset of people should change and importance should be given to the choices of women or men regarding marriage.
4. The importance given to caste system should be relaxed.
5. Khap panchayats having no legal recognition should be completely abolished and declared unlawful.
6. Education is a key to prevent honour killings. With most uneducated people living in rural areas and invariably hailing from economically and socially backward communities, women find themselves marginalized and more prone to victim of honour killing.[29]

CONCLUSION

Honour Killing, a barbaric customary practice though initially was not given much importance is now seen as a serious and heinous crime in India. Women’s choices are

oppressed while deciding about marriage and caste system plays a vital role in deciding a person's better half. The presence of honour killings even in 21st century shows how poor India has progressed all these years. In India where there are codified laws, these customary practices transgressing the fundamental rights should not be allowed to prevail. With special reference to honour crimes and killings, the CEDAW convention states that measure should be taken to legislate against the honour crimes to remove the defence of honour in regard to assault or murder of a female member. No 'religion' or 'culture' can be invoked to validate the evil practice of honour killing. Though many crimes are punished by our judiciary, few perpetrators escape due to certain loopholes present in the law. One such loophole in case of honour killing is that there is no separate law or provision relating to it in our Indian Law. But laws can only punish the criminal but the crime itself can become extinct only if the mindset or mentality of the people be changed.[30]

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