
HONUR KILLING IN INDIA – A SOCIO, LEGAL PERSPECTIVE

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Abstract: “Where women are honoured there the God dwells”. -- *Manu*

Every human life is precious and beautiful; therefore it must be protected and preserved with dignity. Women in all societies are the transmitters of history, custom and traditions of their community. Honour crime is baneful by product of an evolving patriarchal social construct. Honour Killing is a murder committed against women for actual or perceived immoral behaviour that is deemed to have breached the honour code of a household or community. These so called Honour code are product of deeply rooted in patriarchal social and cultural prejudices, where by women are perceived and forced to bear all responsibility to maintain communal honour. Honour killing has grown as a deep-rooted social evil. It has become bane for our society. It is the cause of atrocity on human beings unfortunately many death of young couples, young boys and young girls. It is a heinous, brutal and barbaric. In patriarchal societies, mostly women fall victim of honour crimes by the members of family. The basic reason for violence is their inferior status in male dominated society. Honour killing, we normally understand that killing or murder for the sake of honour. The Indian Constitution has many provisions to protect each and every citizen. There are certain provisions which have been violated due to this crime - Article 14, 15(1), 15(3), 19 and 21 of the Constitution of India. Sections 299 and 301 of the Indian Penal Code, 1860 which deal with culpable homicide amounting to murder meaning the act of killing the victim is made with the intention to kill them because of dishonour to the family. Research paper highlights the various reasons for honour killing, its consequences, the role of law and makes suggestions to prevent it.

Keywords: The Constitution of India, Family Honour, Human Life, Honour Killing, The IPC, 1860, Patriarchal Society.

I. Introduction: A life without honour is not worth living. Family honour is the concept of how much they are respected within the community and how much they view the quality of themselves through conducts of every family member. So, honor killings can be defined “as acts of murder in which a woman is killed for her actual or perceived immoral behaviour”. Calling a killing an “honour crime”, itself is contradictory.

Sharif Kanaana, Professor of Anthropology at Birzeit University, states that honour killing is “a complicated issue that cuts deep into the history of Arab society.” The notion of honour killing and there justification for violence and killing is not limited to any particular society or region. Indeed,

honour and honour based violence are reflected in historical events of many countries, and in many works of literature.

In India, honour crime tradition was first noted during the partition of the country between the years 1947 and 1950 in its most horrible form. To preserve the honour of the families, many women were forcefully killed at that time. Honour killings are sometimes linked with religious belief. But in reality, they are not necessarily the outcomes of religious belief.

History tells us that child marriage and denial of love marriage with an outsider, especially with a boy of low caste or community has been the result of retaining the family's wealth within their family. Fathers played an active role in most of the killings. All the female victims were tortured by the male members of their family to the extreme which can't be expected; and the men whom they loved were killed. Though the motivation differs based on codes of morality and behaviour, such practices are reinforced by fundamentalist religious dictates.

India has a very strong belief in the purity of the family lineage and honour killing is an accepted crime amongst few caste groups of Northern and Eastern India. When women disregard and contaminate that protected lineage, they are sentenced to death by their own family members. This killing culture seems to be on rise in Haryana, Punjab, Andhra Pradesh, Telangana, Uttar Pradesh and Tamilnadu,. In the name of caste, religion and sex, lovers are killed or forced to commit suicide.

II. The Main Causes For Honour Killings in India: The following are the different reasons for honour crimes such as being the victim of a sexual assault, seeking a divorce even from an abusive husband and allegedly committing adultery, wanting to terminate or prevent an arranged marriage; desiring to marry by own choice; engaging in heterosexual acts outside marriage and engaging in homosexual acts. Losing the benefits that the families got through their caste system make them commit this heinous crime. Although rarely, men can also be the victim of honour killings by the family of women with whom they perceived to have inappropriate relationship. The Term "Honour Killing" applies to both women and men in the culture that practice it.

Honour killings are often a result of patriarchal views on women and the position of women in society. According to Shahid Khan, a Professor, the Aga Khan University in Pakistan, "Women are considered the property of males in their family irrespective of their class, ethnic or religious group. The owner of the property has the right to decide its fate. Concept of ownership has turned women into commodity which can be exchanged, bought and sold. In such societies women are not allowed to have control over their bodies and sexuality; these are the properties of the males of the family who must ensure virginity until marriage; and then the husband to whom his wife's sexuality is subordinated; a woman must not undermine the ownership of her guardian by engaging in premarital sex or adultery."

The concept of family honour is very important in many communities. The family is viewed as the main source of honour and the community highly values the relationship between honour and the family. Acts by family members which are inappropriate are seen as bringing shame to the family in

the eyes of the community. The family loses face in the community and shunned by the relatives as well. The only way through the shame can be erased is honour killing.

The sociologists believed that the reason is the continued rigidity of the caste system. They view honour killings as a frightened reaction to rapid social change in India. The inability of the formal governance to reach the rural areas also forms the root cause of this evil.

The Distinctive nature of honour killing is the collective nature of the crime – many members of an extended family plan the act together, sometimes through a formal family council. Another significant feature is the connection of honour killings to the control of women's behaviour in particular in regard to sexuality or male interaction or marriage by the family as collective. Another aspect is the importance of the reputation of the family within the community and the stigma associated with the losing of status, particularly in the tight-knit communities. Another significant aspect of honour killing is that perpetrators often don't face negative stigma within the communities because their behaviour is seen as justified. Often minor girls and boys are selected by family to act as killer, so that the killer may get benefit of the most favourable legal outcome.

Wherever honour killing is committed it is generally a crime against young people. Just over half of these victims are daughters and sisters; about a quarter are wives and girlfriends of the perpetrators; the remainder includes mothers, aunts, nieces, cousins, uncle and non-relatives.

The "Khap" is an ancient concept which has written references found back from the Rig Vedic times. There are basically socio-political groups, which usually comprise of the upper caste and elderly men who are united by geography and caste. The word Khap is probably derived from Latin word "corpus" which means an organization of individual. Hence khap is a term for a social political grouping and used in geographical sense.

Khaps panchayats are active in various states of the country especially Haryana. Khaps of these states are notorious for their outlandish edicts like declaring married couples siblings, ostracising families and such other atrocious acts. The reason behind all these atrocious verdicts is to save the so called honour and culture of the society. They follow the rule of endogamy which means the rule restricting marriage to members of the same tribe, village, caste, sub caste or other social group. Most people think that caste system is a static rigid feature of Hindu society and it cannot change. This kind of thinking gives strength to the system of khap panchayats in our society.

III. Defects in Law: Dr. B. R Ambedkar has said in the context of a discussion on inter-caste marriage: "political tyranny is nothing compared to social tyranny and a reformer, who defies society, is a much more courageous person than a politician who defies government."

Legal framework is also encouraging honour killings. Such laws include on one side leniency towards such killings, and on the other side criminalisation of certain behaviours, such as extramarital affairs, homosexual acts etc. with these laws reassuring the perpetrators of honour killings that people engaging in these behaviours deserve punishment.

In spite of increase in the number of crime in the name of honour, in spite of Judgments and expression of outrage in courts across India, successive governments have displayed criminal negligence in their approach to these crimes. There is no definition of this crime; no legal recognition of the various aspects of the crime, no legal protection has been afforded to the couple in self-choice partnership, no measures to prevent this crime, no accountability and no punishment.

National Commission for Women (NCW), a statutory body for women was established in 1992 by the Government of India to protect the rights for women under the provisions of the Indian Constitution. It is supported by the Indian constitution and it focuses its attention on seeking equal position to women in politics, jobs and fair penalties for crimes committed against women.

Indian Penal Code charges honour killing as a distinct offence in 2009. In 2010, National Commission for Women strongly argued that murder is not the solution for preserving the honour of the family. As per Supreme Court directive 2011, 'it is the rarest of the rare crime and those perpetrating it should be sent to the gallows'. "Caste panchayats (khaps) aid and abet honour killings. Principal actors in such panchayats need to be arrayed as accused and prosecuted for murder," then home minister had already said the same idea in the Rajya Sabha in July 2009.

To combat the epidemics of honour killings requires understanding of what makes these crimes unique. They differ from plain and psychopathic homicides, serial killings, crime of passion, revenge killings and domestic violence. Their motivation is different and based on code of morality and behaviour that represents some cultures, often reinforced by the fundamentalist religious debates.

To tackle the menace of 'honour killings' in some parts of the country and deal with illegal orders from/by 'khap panchayats,' the Law Commission has proposed legislation to prosecute persons or a group involved in such endangering conduct and activities. The Endangerment of Life and Liberty Act, 2011 to put enhanced penal sanctions against outraging the modesty of women is a welcome step in India as honour crimes are increasing. Under the proposed law, "the act of endangerment of life and liberty shall mean and include any manner of acts of threat, encouragement, commending, exhorting and creating an environment whereby loss of life and liberty is imminent or threatened and shall include (a) enforcement of measures such as social boycott, deprivation of the means of livelihood, denial of facilities and services which are otherwise generally available to the people of the locality concerned and (b) directly or indirectly compelling the persons concerned to leave or abandon their homestead in the locality."

"Further, it shall be unlawful for any group of persons to gather, assemble or congregate with the intention to deliberate, declare on, or condemn any marriage or relationship such as marriage between two persons of majority age in the locality concerned on the basis that such conduct or relationship has dishonoured the caste or community or religion of all or some of the persons forming part of the assembly or the family or the people of the locality concerned."

Rigorous actions against the violation of women's rights are a big task in democratic India. So, honour killings can be reduced by bringing out substantial change in the thinking.

IV. Honour Killing and Judicial Perspective: In the case of *Jagmohan Singh v. State of Uttar Pradesh*, the Supreme Court held that the Indian constitution guarantees to the citizens of India certain fundamental freedoms which are exercisable by them throughout the territory of India, one of these includes the freedom to like.

In *Lata Singh v. State of U.P. and Anr* (2006 (5) SCC 475), the Supreme Court observed that “a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence, even though it may be perceived as immoral. A major girl is free to marry anyone she likes or live with anyone she likes”. In this case, the petitioner was a woman who had married a man belonging to another caste and had begun cohabitation with him. The petitioner's brother had filed a criminal complaint accusing her husband of offences under Sections 366 and 368 IPC, thereby leading to the commencement of trial proceedings. This Court had entertained a writ petition and granted relief by quashing the criminal trial. Furthermore, the Court had noted that 'no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court'.

In case of *Bhagwan Dass v. State (NCT) of Delhi*, (2011 (6) SCC 396), the Supreme Court stated that “in our opinion honour killings, for whatever reason, come within the category of ‘rarest of rare’ cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilised behaviour. All persons who are planning to perpetrate ‘honour’ killings should know that the gallows await them.

In *Ashish Sharma and Another v. State of UP and others* (2011) 9 S.C.R. 860, the Apex Court observed that, “in our Country, even in 21st century so many factors are involved in connection with the life and security of the married couples. Casteism, religionism, 'honour' killings, forcible departure of the boy and girl from each other even by the parents or family members, threat, pressure and many other nature of transgress, infringes their life and personal liberty as guaranteed under Article 21 of the Constitution of India. As a result whereof, we have started believing that such actions are not in the garb of but in the wake of violation of Article 21.

V. Conclusion and Suggestions: The balance between individual freedom and traditional obligation under patriarchal social system seems impossible to attain. But this analysis insists that this is the right time to bring out solutions effectively as such incidents destroy the whole families previous efforts, happiness, wealth and future.

To prevent such dreadful happenings, the attitude of the people towards marriage has to change first. Parents should accept their children's genuine wishes in the choice of life partner which enhances their family's happiness and bond of true marital relationship as life is for living. It had been better if counselling is given to both the parents and the wards. Politics should never be allowed to enter families because it is for the children's and family's happiness that the parents are striving at. The government, the NGOs and the local community need to integrate and function as a unit. In India, thirty percent of sarpanches or village chiefs are mandated by law to be women. State and Indian Government should adopt a comprehensive law against honor killings,

Denial of Fundamental Women's Rights to her life partner; adopt a comprehensive law against the caste propaganda against inter caste marriages; and arrest people who have already spoken against inter caste marriages and also ban the concerned caste groups and parties.

And also, children should receive education that clarifies the fact that any violent actions and discriminations that are practiced against their free wills and their future should be strictly punished; no matter it was part of their custom or religion. Moral values should be taught at the young age itself which inculcates respect on female gender at adulthood. The value of human life and interpersonal relationship should also be taught. Being born as human being is more precious than the status and money that we get after our birth. Through trainings in educational institutions, the youngsters can be awakened about the issues related to honour crimes. Mass media also can play a vital role in elimination of this crime by producing films which instigates healthy attitude towards family, education, job, marriage etc.

The transformation is predictable when the community itself engages constructively in empowering woman by giving her education; by giving authority to able woman; and by acknowledging her for who she is. If there is no moral support from her community, any law and general awareness will become futile. The reason is - marriage is a social bond between two families and not individuals in India. As the saying, change is inevitable; the ignorance in the minds of the people should be replaced with wisdom regarding the impact of honour killing on the future generation of the victim's family.

Some Other Recommendations:

1. The of violence and murder will only end when the notion of honour is transformed and upheld by respecting lives, not taking them.
2. The need for the massive transformation of attitudes towards women in society. We must continue to raise voice and challenge injustices and cultural elements that deny the dignity and respect for all women and men.
3. Making the crime of honour killing a separate offence would help bring more clarity for law enforcement agencies.
4. The khap panchayat or the family members would be responsible for proving their innocence. There would be joint liability under the proposed new law. The khap panchayat or any group ordering honour killings and the person who carries out the killing would be jointly liable for punishment
5. There is no definition of honour Killing/ crime or clarity in the law at present. Honour crimes should include all the crimes against women which are perpetrated by the community. There are many cases of women being branded witches, paraded naked, tortured in public which are very heinous offences of honour and hence need to be strengthened by a special law and to have stringent punishments. Having a special law can be deterrent.

References:

1. Goonesekere, S. "Human Rights as a foundation for family law reform" *The international Journal of Criminal Justice Sciences*, 1 (1) 2000 1-12.
2. "Honour Killing". Wikipedia. Wikimedia Foundation, 15th Dec. 2012. Web.16 Dec.2012.

3. Kim, SuHyeon. Diminishing the Rate of Honour Killing and Securing Women Rights. Cheongshim International Academy Model United Nations.
4. General Assembly Jr 2012
5. Kirti, Anand. Kumar, Prateek. Yadav, Rachana. "The Face of Honour Based Crimes" 2011
6. "Global Concerns and Solutions" International Journal of Criminal Justice Sciences: Vol 6 Issue 1& 2 January-June / July-December 2011.
7. "National Commission for Women". Wikipedia. Wikimedia Foundation, 12th Nov. 2012. Web. 16 Dec. 2012. Upliftthem.blogspot.com/2013/.../honorkilling-and-caste-violence-in-h...
8. Violence Against Women and "Honor" Crimes". Human Rights Watch. Retrieved 12th April 2019
9. http://www.humanrights.ch/upload/pdf/o7o419_Kvinnoforum_HRV.pdf.
10. <http://www.meforum.org/2646/worldwide-trends-in-honor-killings>.
11. <http://www.thehindu.com/opinion/lead/honour-killings-are-a-separate-horror/article8381779.ece>.
12. http://www.legalservicesindia.com/article/print.php?art_id=1610.
13. <https://indialawyers.wordpress.com/tag/honour-killings/>.
14. [http://www.unwomen.org/en/what-we-do/ending-violence-against-women/take action/commit/governmentcommitments](http://www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/commit/governmentcommitments).
15. <http://www.legalservicesindia.com/article/article/honour-killing-a-bane-or-a-boon-627-1.html>.
