

# HONOUR KILLING AND WOMEN: HUMAN RIGHT'S VIEW

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## ABSTRACT

Honour killing is the “unlawful killing of a woman for her actual or perceived morally or mentally unclean and impure behavior.” Honour killings are murders by families on family members who are said to have brought shame on the honour and name of family. These are acts in which “a male member of the family kills a female relative for tarnishing the family image.” The term is also defined as the purposeful pre-planned murder, generally of a woman, by or at the command of members of her family stimulated by a perception that she has brought shame on the family.

Even after so many years of independence in the newly liberalized India, which is proud of her democracy, most marriages tend to be arranged by families, either through a marriage broker, a newspaper classified advertisement, a web-based marriage portal or the long-established oral tradition: word-of-mouth. But where it does not work, marriage can be forced to save the honour and women can be murdered for rejecting a forced marriage and marrying a partner of their own choice, who is not acceptable for the family of the girl. Honour killings, the illegal decrees by caste/clan/community Panchayats or Khap Panchayats to annul or prohibit marriages, social boycotts and even murder of couples.

Honour crimes are acts of violence, usually murder, committed by male family members against female family members either or, who are held to have brought dishonor upon the family. The use of word honour for such a dishonourable act and there is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons. The loose term honour killing applies to killing of both males and females in cultures that practice it. In broader sense, an honour killing is the murder of a family (woman) or clan member by one or more fellow family members, where the murders believe that the victim has brought dishonor upon the family, clan or community. Thus honour killing is the murder of women folk by family members, generally male, who are compelled to remove stains on their family's honour.

This paper is based on doctrinal work and the data collected from books, journals, news paper articles and Government notifications. This paper provides a strong platform to discuss about concept of honour killing, reasons for honour killing, legal provision for protection of women from honour killing under the International and National provisions in the human rights perspective.

**Keywords:** Honour Killing, Khap Panchayats, Human Rights, Tradition, Family.

In the words of Dr. B.R Ambedkar “Political tyranny is nothing compared to social tyranny and a reformer, who defies society, is a much more courageous man than a politician who defies Government”. Most of these ‘social tyrants’ lose their life in the name of honour, tradition and culture. The concept of honour is powerful because it exists beyond reason and beyond analysis. It is used as a pretext to the most atrocious crimes. In a patriarchal society<sup>1</sup>, it is a woman who is said to be the bearer of honour for her father, husband, brother or any other man who claims her to be his responsibility. 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. Therefore, it is the women who become victims to such customary killings. A man can also be a victim of honour killings by members of the family of a woman with whom he is perceived to have an inappropriate relationship. Honour killing includes any kind of abusive behavior, torture, mutilation, rape, and forced marriage, keeping confined within the house and even committing murder with intention to preserve and protect the family honour.

Human Rights watch stated that, “Honour crimes are acts of violence, usually murder, committed by male family members against female members, who are held to have brought dishonour upon the family. Mostly women can be targeted by her family for various reasons, including, refusal to enter into an arranged marriage, being a victim of a sexual assault, seeking a divorce even from an abusive husband or committing adultery. The mere perception that a woman has behaved in a way that “dishonours” her family is sufficient to trigger an attack on her life”. “Honour killings can also be described as extra-judicial punishment of a female relative for assumed sexual and marriage offences”.

The report “Working towards the elimination of crimes against women committed in the name of honour” which is about violent cultural practices in the family towards women indicates that honour killings have been reported in Jordan, Lebanon, Morocco, Pakistan, United Arab Republic, Turkey, Yemen and other Persian Gulf countries along with western countries such as France, Germany and U.K. where it takes place mostly within migrant communities. Apart from these countries honour killings are prevalent in Bangladesh, Brazil, Ecuador, India, Israel, Italy, Morocco, Sweden, Turkey and Uganda. Every year approximately 5000 women are abused and even killed by their own family due to the only reason that they defamed their family’s dignity.

There is no official figure on “honour” killings in India because they often go unreported or are passed off as suicide or natural deaths by the family members involved. A reason of not being reported could be that these crimes are still not separately recognized by Indian law. As per All India Democratic Women’s Association<sup>2</sup> (AIDWA) the number of honour killings is approximately nine hundred in Punjab, Haryana, Uttar Pradesh and Karnataka, whereas rest of the country adds to the number by another three hundred. There

<sup>1</sup> A patriarchal social system can be defined as a system where men are in authority over women in all aspects of society

<sup>2</sup> The All India Democratic Women’s Association (AIDWA) is an independent left oriented women’s organisation with stated aims of achieving democracy, equality and women’s emancipation. It has an organizational presence in 22 states in India, with a current membership of more than 9 million. About two-thirds of the organisation’s strength is derived from poor rural and urban women. AIDWA was founded in 1981 as a national level mass organisation of women.

are no estimates of other injuries, unlawful confinement, or forced marriages suffered by women and girls, or by couples, in the name of “honour.” Many cases go unreported, with police and local politicians as they see it as an acceptable form of traditional justice by families seeking to protect what they see as their honour. It’s problem of both rural and urban areas.

### **Concept of honor killing:**

Honour killing is the homicide of a member of a family or social group by other members, due to the belief of the perpetrators that the victim has brought dishonour upon the family or community. The perceived dishonour is normally the result of one of the following behaviors, or the suspicion of such behaviors: dressing in a manner unacceptable to the family or community, wanting to terminate or prevent an arranged marriage or desiring to marry by own choice, especially if to a member of a social group deemed inappropriate, engaging in heterosexual acts outside marriage and engaging in homosexual acts.

### **Definition of honour killing:**

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. A woman can be targeted by her family for a variety of reasons, including: refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce-even from an abusive husband or committing adultery. The mere perception that a woman has behaved in a way that “dishonours” her family is sufficient to trigger an attack on her life. Thus an honour killing (also called a customary killing), can be said as the murder of a member of a family or social group by other members, due to the belief of the perpetrators that the victim has brought dishonour upon the family or community. Hence a murder committed in order to save what is considered in a specific culture the “honour” of one’s family against the shame caused by another member of the family could be termed as the honour killing.

An honor killing or shame killing is the homicide of a member of a family by other members, due to the perpetrators belief that the victim has brought shame or dishonor upon the family, or has violated the principles of a community or a religion, usually for reasons such as refusing to enter an arranged marriage, being in a relationship that is disapproved by their family, having sex outside marriage, becoming the victim of rape, dressing in ways which are deemed inappropriate, engaging in non-heterosexual relations or renouncing a faith.

### **Reasons for Honour Killing:**

The main reason for commitment of an ‘honour killing’ is belief that any member of family had brought dishonour to the family. The dishonour can be of different types for different families. The perceived dishonour is normally the result of the following behaviours, or the suspicion of such behaviours, 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.

Also the most obvious reason for this practice to continue in India is because of the fact that the caste system continues to be at its rigid best and also because people from the rural areas refuse to change their attitude to marriage. Also in our country the society is mainly the patriarchal. Men are expected to enforce such norms and traditions and protect family and male honour from shame. Women are expected 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.

### **Khap panchayat:**

Most of the honour killings are decided and ordered by the so-called "caste Panchayats" or "Khap Panchayats" or "Katta Panchayats" comprising members of a particular caste. Very often, these Panchayats encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married or interfere with the personal lives of people. These Panchayats are organized through clans and "gotras" by which they uphold social norms in the community. Such assemblies gathered on caste lines assume to themselves the power and authority to declare on and deal with objectionable matrimonies and exhibit least regard for life and liberty and are not deferred by the processes of administration of justice. The Pernicious practice of Khap Panchayat and the like taking law into their own hands and pronouncing on the invalidity and impropriety of "Sagotra" and inter-caste marriages and handing over punishment to the couple and pressurizing the family members to execute their verdict by any means amounts to flagrant violation of rule of law and invasion of personal liberty of the persons affected. There are reports that drastic action including wrongful confinement, persistent harassment, mental torture, infliction of severe bodily harm, even like death is resorted to either by close relations or some third parties against the so-called erring couple. Social boycotts and other illegal sanctions affecting the young couple, the families and even a section, of local inhabitants are quite often faced with such depicted practices of Khap Panchayats. Khap elements zealously guard age old marital restrictions. They are fostered a culture of intolerance, making a family pariah in village society, if its member happens to violate Khap marital norms. The family is subjected to repeated taunts, making its existence unbearable. This drives some of its members to commit murder to restore family honour. It is this social milieu spawned by Khap elements which leads to honour crimes.

## Human Rights Issues on Honour Killing

Killing in the name of honour amounts to utter rejection of “egalitarianism<sup>3</sup>” - a corner stone of Indian Constitution and testifies how the values of “feudalism<sup>4</sup>” and “patriarchy<sup>5</sup>” are rooted in our social systems and structures. Honour killings are rooted in anachronistic, antiquated attitudes and false promises. Articles 3 and 16 of Universal Declaration of Human Rights 1948 suggest that “Everyone has the right to life, liberty and security<sup>6</sup>. Men and women” of full age without any limitation due to race, nationality or religion should have a choice to marry or to have family. They are entitled to equal rights as to marriage and dissolution. Marriage shall be entered into only with the free and full consent of the attending spouses. The family is the natural and fundamental group, unit of society and is entitled to protection by society and State<sup>7</sup>. In the same vein, right to love and live with a person of one’s choice is enshrined as a fundamental right in the Constitution. Honour killings, thus, constitute gravest disregard of universal human rights and massive violation of fundamental rights guaranteed in the Constitution. A report United Nations Population Fund (2000)<sup>8</sup> estimated as many as five thousand women and girls being killed each year by relatives for dishonouring their family. Many of the cases involve the “dishonor” of having been raped.

### International Provisions:

India is a signatory to the United Nations Convention on the Elimination of all forms of Discrimination against Women (CEDAW) 1979 and has also ratified the convention. The provisions of CEDAW can be used to argue that the tradition and practice of punishing individuals for ill informed ideas of dishonouring the family, is essentially institutionalized discrimination against individuals and creates a legally binding obligation for India, as a State party to the convention, to take all measures to end all forms of the practice of honour killing and ensure that all discrimination against women in matters relating to marriage and family relations are eliminated, providing them with the equal right to enter into marriage and to freely choose a spouse and to enter into marriage with their free and full consent<sup>9</sup>. This means ensuring that informal decision making bodies functioning on customary laws, such as khap panchayats, are refrained from enforcing their dictates, and intrusive with the right of individuals to choose their spouse. Noting that the Universal Declaration of Human Rights, (UDHR) 1948 affirms the principle of the inadmissibility of

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<sup>3</sup> Egalitarianism is a trend of thought in political philosophy, An egalitarian society is a society that believes in treating people equally through giving people equal rights and opportunities. This belief is referred to as egalitarianism, which advocates human equality, with respect to economic, political and social rights. It also pushes for elimination of any form of inequality in the society and discrimination based on gender, race, religion, sex.

<sup>4</sup> Feudalism was a combination of legal and military customs in medieval Europe that flourished between the 9th and 15th centuries. Broadly defined, it was a way of structuring society around relationships derived from the holding of land in exchange for service or labour.

<sup>5</sup> Patriarchy is a social system in which males hold primary power and predominate in roles of political leadership, moral authority, social privilege and control of property. In the domain of the family, fathers or father-figures hold authority over women and children. Some patriarchal societies are also patrilineal, meaning that property and title are inherited by the male lineage.

<sup>6</sup> See. Article 3 of the Universal Declaration of Human Rights. 1948.

<sup>7</sup> Ibid. Article 16.

<sup>8</sup> The UN Population Fund (UNFPA) is a United Nations development agency that promotes the right of every woman, man and child to enjoy a life of health and equal opportunity. UNFPA supports countries in using population data for policies and programmes to reduce poverty and to ensure that every pregnancy is wanted, every birth is safe, every young person is free of HIV, and every girl and woman is treated with dignity and respect.

<sup>9</sup> Article 16 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979

discrimination and inequity and proclaims that all individuals are born free and equal in dignity and rights and freedom set forth therein, devoid of distinction of any kind including distinction based on sex. Recalling that prejudice and discrimination against women violates the principle of equality of rights and respect of human dignity, is an obstacle to the participation of women in the political, social economic and cultural life and hampers the growth and prosperity of society and the family. All crimes of honour, including honour killing, are gross violations of the rights enumerated in the declaration. Article 1<sup>10</sup> and 2<sup>11</sup> of the UDHR declaration state that “all human beings are born free and equal in dignity and rights,” and that “everyone is entitled to all the rights and freedoms set forth in” the declaration irrespective of “sex”. Therefore as enumerated in the declaration’s Articles 3<sup>12</sup> and 5<sup>13</sup>, women are entitled to enjoy the “right to life, liberty and security of person” and also the “right to be free from torture or cruel, inhuman and or degrading treatment”. Crimes of honour violate Article 3 and 5 when the purpose of the perpetrator is to inflict severe mental and physical pain on the women. Under Article 12<sup>14</sup> of the International Convention on Economic, Social and Cultural Rights (ICESCR) 1976 State parties have to take all steps to ensure the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, is ensured. Crimes of honour that involve sexual violence and mental violence or physical or mental torture obstruct the right of women to enjoy the highest attainable standard of health. India, as a State party, is therefore legally obligated to ensure that individuals and victims of crimes of honour are able to avail this right. The Beijing Platform for Action (BPFA)<sup>15</sup> 1995 recognizes that the “human rights of women include their right to have control over and decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence”. The Beijing Platform for Action on Women’s Human Rights calls upon States to “take urgent action to combat and eliminate violence against women, which is a human rights violation resulting from harmful traditional or customary practices, cultural prejudices and extremism”. 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;

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<sup>10</sup> Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

<sup>11</sup> Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

<sup>12</sup> Article 3. Everyone has the right to life, liberty and security of person.

<sup>13</sup> Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

<sup>14</sup> Article 12, 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

<sup>15</sup> The Fourth World Conference on Women: Action for Equality, Development and Peace was the name given for a conference convened by the United Nations during 4–15 September 1995 in Beijing, China.

the obligation to amend customs that discriminate against women; and the right to an effective remedy. All these mentioned above violate the Human Rights Act (1998). Honour Killings are a clear violation of human rights and States necessarily need to protect individuals from such violations. Two major UN documents call for the elimination of honour killing. The concept of elimination appears in the Declaration on the Elimination of Violence against Women<sup>16</sup> (1993) and in Working towards the Elimination of Crimes against Women Committed in the Name of Honour<sup>17</sup> 2003. But the eradication of any such phenomenon like honour killing requires a serious intervention in the status quo. Equal gender relations have not yet been achieved and violence still exists in the name of honour. The whole system in itself is patriarchal and insensitive. In the words of the UN Declaration on the Elimination of Violence against Women: “Violence against women is a manifestation of historically unequal power relations between men and women, which have led to discrimination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.” However constitutional law and international provisions fail to tackle with this menace. It also fails to give justification as to why such a crime is rampant even in the contemporary times when there are abundant provisions for the protection of individuals. It is strange that even after the provisions of CEDAW and various human rights provisions to eliminate violence against women; individuals continue to be the victims of murders in the name of honour.

#### **National provisions:**

The Constitution of India has ample provisions allowing an individual to exercise his/her choice independent of caste, religion or gender and protection from honour related crimes including honour killings. Following are those Constitutional provisions that substantiate this: Honour Killings are cases of homicide and murder which are grave crimes under Section 299<sup>18</sup> and 301<sup>19</sup> of the Indian Penal Code, deals with culpable homicide not amounting to murder while Section 300<sup>20</sup>, deals with murder. Honour killing amounts

<sup>16</sup> The UN Declaration on the Elimination of Violence against Women was adopted by the United Nations General Assembly in 1993. It covers physical, sexual and psychological violence at home and elsewhere in society.

<sup>17</sup> Working towards the elimination of crimes against women committed in the name of honour: Resolution adopted by the General Assembly, Fifty-seventh session Agenda item 102, dated , 30 January 2003

<sup>18</sup> Section 299: Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

<sup>19</sup> Section 300: Culpable homicide by causing death of person other than person whose death was intended.—If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

<sup>20</sup> Section 300: Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

to homicide and murder because the acts are done with the intention of murdering the victims as they have purportedly brought dishonour upon the family. The perpetrators can be punished as per Section 302<sup>21</sup> of the IPC. The khap panchayats or family members can also be booked under Section 302 of IPC for instigating suicide those who transgress the so called norms of the community. Such killings also violates Articles 14<sup>22</sup>, 15 (1)<sup>23</sup> & (3)<sup>24</sup>, 17<sup>25</sup>, 19<sup>26</sup> and 21<sup>27</sup> of the Constitution of India. Article 14 of the Indian Constitution guarantees to every person the right to equality before the law or the equal protection of the laws. Every person, whatever is his or her status or situation is subject to the jurisdiction of the ordinary courts. This right to equality is thus documented as one of the fundamental features of the Indian Constitution. Honour Killings are thus hideously against this very Constitutional Right provided for the protection of Indian citizens. Honour killings are mainly directed towards women and thus give rise to gender violence. Honour killings involve the murder of a particular person especially a woman and thus come under the ambit of Section 299 and Section 300 of the Indian Penal Code. It is also violation of Article 19 and Article 21 of the Constitution. Such brutal murders, under the garb of saving the honour of the family, are clearly against the Constitutional provisions enshrined in Article 21. Khap panchayats violate a person's fundamental right to life as they kill or instigate murder, in the name of honour. Every person has a right to live. The capital punishment is possible only when granted by law. In cases where the khap panchayats have compellingly separated married couples who are of eligible age to get married, these have violated the provisions under the Indian Constitution.

The Act is relevant in cases where the khap panchayats have forcefully separated married couples who are of eligible age to get married. It is a violation of the provisions under this Act. The main reason behind the enactment of the Special Marriage Act, 1954 was to provide a special form of marriage for the people of India and all Indians residing in foreign countries, irrespective of the religion or faith followed by either party, to perform the intended marriage<sup>28</sup>. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted by the Parliament of India, in order to avert atrocities against Scheduled Castes and Scheduled Tribes. The intention of the Act was to help the social inclusion of Dalits into Indian society. It defines acts such as forcing an SC/ST to eat or drink any inedible or obnoxious substance, removing clothes, parading naked or with painted face or body, assaulting, dishonouring and outraging the modesty of an SC/ST woman, sexual exploitation of an SC/ST woman, forcing an SC/ST to leave his or her

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<sup>21</sup>Section 302: Punishment for murder.—whoever commits murder shall be punished with death, or 1[imprisonment for life], and shall also be liable to fine.

<sup>22</sup> Article 14: Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

<sup>23</sup> Article 15(1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

<sup>24</sup> Article 15(3): Nothing in this article shall prevent the State from making any special provision for women and children.

<sup>25</sup> Article 17: Abolition of Untouchability.—“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law

<sup>26</sup> Article 19: Protection of certain rights regarding freedom of speech, etc.

<sup>27</sup> Article 21: Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law

<sup>28</sup> Puneet Kaur Grewal, Honour Killings and Law in India, IOSR Journal Of Humanities And Social Science (JHSS), olume 5, Issue 6 (Nov. - Dec. 2012), PP 28-31, Wwww.Iosrjournals.Org, visited on 01/02/2017 at 9:30pm



house or village as punishable<sup>29</sup>. The Act is linked to honour killings because numerous incidents of honour killing are in relation to caste and religion.

The Protection of Human Rights (Amendment) Act, 2006 makes the provision for protection of individual rights of human beings and the constitution of a National Human Rights Commission, State Human Rights Commission and Human Rights Courts for better protection of human rights of individuals. The Protection of Women from Domestic Violence Act, 2005 provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it – (a) Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person<sup>30</sup>. The Indian Evidence Act, 1872 makes provision to punish those who conceal facts, either before or at the time of, or after the alleged crime. Section 13<sup>31</sup> of the Act: Facts relevant when right or custom is in question - Where the question is as to existence of any right or custom, the following facts are relevant: (a) Any transaction by which the right or custom in question was created, claimed modified, recognized, asserted or denied, or which was inconsistent with its existence; (b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from. The Act is relevant to bring to justice those who become victim because of the verdicts issued by the khap panchayats.

### **Law Commission's Proposed Legislative Sanction:**

Terming the practice of khap panchayats of handing down punishment to couples who go for “sagotra” or inter-caste marriage as “flagrant violation” of the law, in 2012 the Law Commission came up with its 242<sup>nd</sup> report along with draft legislation. The draft Prohibition of Unlawful Assembly (interference with the freedom of matrimonial alliances) Bill, 2011 says that offences under the Act will be cognizable, non-bailable and non-compoundable: The Bill also proposes no person or “any group of persons shall gather with an intention to deliberate on, or condemn any marriage, not prohibited by law, on the basis that such

<sup>29</sup> Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

<sup>30</sup> Section 2 of the The Protection of Women from Domestic Violence Act, 2005

<sup>31</sup> Section 13 of Indian evidence Act 1872: Facts relevant when right or custom is in question.—Where the question is as to the existence of any right or custom, the following facts are relevant:—(a). Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence; (b). particular instances in which the right or custom was claimed, recognized, or exercised or in which its exercise was disputed, asserted or departed from. Illustration The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned. Marriage, according to the draft law, includes a proposed or intended marriage. The Collector or the District Magistrate has been entrusted with the responsibility of ensuring the safety of the persons targeted in case any illegal decision is taken by the khap panchayat and he/she shall take necessary steps to prohibit the convening of such illegal gatherings.

Any violation of the Bill will attract imprisonment up to three years and a fine of up to Rs. 30,000.00. All offences under the proposed bill will be cognizable, non-bailable and non-compoundable. The cases will be tried in Special Courts presided over by a sessions judge or additional sessions judge. The Special Court can take *suo motu* cognizance of the cases. There has been a spurt in illegal intimidation by self-appointed bodies for bringing pressure against *sagotra* (same gotra) marriages and inter-caste, inter-community and inter-religious marriages between two consenting adults in the name of vindicating the honour of family, caste or community. In a number of cases, such bodies have resorted to incitement of violence and such newly married or couples desirous of getting married have been subjected to intimidation and violence which has also resulted into their being hounded out of their homes and sometimes even murdered.

“Although such intimidation or acts of violence constitute offences under the IPC, yet, it is necessary to prevent assemblies which take place to condemn such alliances”, the proposed Bill says, adding it seeks to nip the evil in the bud and prevent spreading of hatred or incitement to violence through such gatherings. Criminal intimidation will have the same meaning as is given in Section 503<sup>32</sup> of the IPC. The Bill further says that any member of an unlawful assembly who alone or in association with other such members counsels, exhorts or brings pressure upon any person or persons so as to prevent, or disapprove of the marriage which is objected to by the said members of the unlawful assembly, or creates an environment of hostility towards such couple shall be deemed to have acted in endangerment of their liberty. It has suggested that an entire assembly can be deemed to be unlawful and guilty if it sits to deliberate<sup>33</sup>.

### **Judicial response to protection of women from honour killing:**

The judiciary does have a crucial role to play prohibition of honour killing in the name of the local custom but has its limitations too. On June 23, 2006 Justice *K.S. Ahluwalia* of the Punjab and Haryana High Court made a revealing observation while simultaneously hearing 10 cases pertaining to marriages between young couples aged 18-21. “The High Court is flooded with petitions where ... judges of this Court have to answer for the right of life and liberty to married couples. The State is a mute spectator. When shall the State awake from its slumber for how long can Courts provide solace and balm by disposing of such cases.”

<sup>32</sup> Section 503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

<sup>33</sup> Dr. Pranab Kumar Rana, and Bhabani Prasad Mishra Honour Killings-A gross violation of Human rights & Its Challenges, International Journal of Humanities and Social Science Invention, Volume 2 Issue 6 | June. 2013, www.ijhssi.org, visited on 1/2/2017 at 9:40pm

A landmark judgment was given in the Manoj-Babli honour killing case by the Additional Sessions Court in Karnal district. The accused were given a death penalty while the leader of the khap who ordered the killings of the victims was given a life imprisonment, by the lady judge of the Court, despite facing several life threats. The court took a note of the fact that the policemen stationed to the security of the victims helped the perpetrators to commit the crime.

*In Lata v. State of UP*<sup>34</sup> the bench said, “Once a person 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.” Justice Markandey Katju observed, “There is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder.....Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.”

*In Arumugam Servai v. State of Tamil Nadu*<sup>35</sup> the Supreme Court condemned the practice of Khap Panchayats committing atrocities against people who want to get married by their choice. In this case the Court also issued special directions to the police and the administrative authority to prevent the given crime. If the crime still take place there would be an action taken against the SPs and District Magistrate along with the general court proceedings against the perpetrators.

*In Ashok Kumar v. State*<sup>36</sup> the High Court of Punjab and Haryana stated that, these couples are chased by police and relatives and often cases of rape and abduction are registered against the boy. The judiciary has directed the state to evolve a sympathetic mechanism for speedy redressal of grievance and to provide protection to the victims.

*In Smt. Laxmi Kachawaha v. State of Rajasthan*<sup>37</sup> the Court observed that Khap Panchayats did not have any jurisdiction to pass social boycott order or to impose fine on the victims.

*In Madhavarao v. Raghavendraro*<sup>38</sup> it was held that the marriage between people belonging to the same gotra was valid.

### **Conclusion:**

In modern days more crimes arising in the name of the honour killing for the protection of the family respect and honour, in this reason violations of the human rights women rights so in this reason need to be separate Act/ legislation for the Honour Killings as per the recommendations of the Law Commissions as it is a Socio Legal Issue and therefore there is a need to draft a separate and stringent law along with thorough quantum of sentencing for ‘Honour Killings so as to combat this evil in this society before it takes an ugly turn. And there should be

<sup>34</sup> Lata Singh v. State of Uttar Pradesh, A.I.R. 2006 S.C. 2522.

<sup>35</sup> Arumugam Servai v. State of Tamil Nadu, (2011) 6 S.C.C. 405.

<sup>36</sup> Ashok Kumar v. State of Punjab and Haryana, (2009) D.M.C. 120.

<sup>37</sup> Laxmi Kachawaha v. State of Rajasthan, A.I.R. 1999 Raj. 254.

<sup>38</sup> Madhavarao v. Raghavendraro, A.I.R. 1946 Bombay H.C. 377.

1. Deterrent modes of punishments should be invited and scales of punishments should be invited.
2. Set up of special cells in each district has to be established so that couples can approach those cells for safety.
3. Procedural Law Provisions and Linency to grant Bails should be eschewed.

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