



Honour Killing: Challenges Indian Judicial System

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Abstract

Life is unpredictable. Nobody knows the next minute of life. In this case, everyone has the right and desire to live the life they want. No one should be forced to live a life that values and respects others. Murder is the murder of a person who does not accept the arranged marriage of the family or changes it voluntarily, by a woman or a man, because it will damage the honour of the family. Family law values the family, but forgets about love and affection towards family members. In this research paper, I report on honour killings in India.

KEYWORDS: Keywords: life, will, man, woman, marriage, love, family, respect, aggression.

INTRODUCTION

Honour crime has been regarded as a complex issue which has been widely misunderstood for many centuries. The concept of honour crimes is elastic which changes according to time, place and forms of articulation and expression in society. Honour crimes have been defined as patterns of conduct cutting across communities, cultures, religions and nations and manifested in a range of forms of violence directed, in the majority of cases, It can neither be forfeited for the individual interest nor for the collective interest. It is always immoral and illegal to kill someone and a gross violation of human right. It is illegitimate to take the life of someone without rhyme or a reason. It is also unconstitutional and against the law. Constitution has guaranteed to its every citizen the right to life and dignity. Honour is intact with life. This right is assured in the constitution of India as fundamental right. It is the right of every person to be protected from any type of danger to his/her life. Every individual has the right to choose. Right to opinion is also an integral part of its guarantee. Thus, right to marry, choosing a partner by free will also come within the purview of right to life. The societal and cultural pressures can not infringe the right to reside with dignity in society. But for the sake of killing under the name of honour of the family is unlawful, the legislation has provided provisions to deal with these unwarranted practices.

Causes Of Honour Killing in India

1. Mentality of people –The main cause of this heinous or brutal crime of honour killing is the mentality or mindset of people, that they are not ready to accept the truth or reality that their children can marry with their own choices either in outside the caste or religion or within same gotra or sapinda relationship.

2. Rigidity of caste system- The rigid caste system divides the whole society into segments or sections and that is hierarchal. Indian society has been classified into four groups or segments that is -the brahmins, kshatriyas, Vaishyas and **shudra**(शूद्र). Indian people had an orthodox mind set so they had a conception or mindset that marriages are possible only in same community or caste therefore when inter caste marriage has been practiced, they consider it as shame upon the family name or reputation. Even Indian families are not ready to accept the inter- caste marriage and it is okay to kill and spend their life in prison but would not tolerate their kids marrying outside their caste or community. In 2014, a college student named Bhawna Yadav was brutally murdered by her own parents and maternal uncle for marrying her boyfriend, who belongs to different caste. According to the sources the girl was beaten up, strangled and hurriedly cremated. In Kanyakumari a Dalit boy was murdered by upper caste Hindus for being in love relationship with a woman from their community.

Gudur Sandeep Reddy Vs. State of Telengana⁷ -Here in this case a boy was killed by girl's father and her relatives because of inter-caste marriage between the girl and boy. The girl family is not ready to accept such inter –caste marriage so they decided to kill the boy to restore their family prestige or reputation.

3. Inter religion Marriage- is marriage between two persons professing different religions. Indian families are not ready to accept the inter- religion marriage and it is okay to kill and spend their life in jail but would not tolerate their kids marrying outside their religion.

In Meerut a Hindu –Muslim couple got married were killed by the girl's family in the village named- Hapur and the reason behind their murder is that the boy belonged to Hindu family, and the girl belonged to Muslim family.⁸

4. Illiteracy and unawareness about their rights- large sections of the society are not aware about their rights and remedies which is the reason behind prevalence of honour killings. The incident of honour killing violates the fundamental rights of a person which is provided under Article 14 ,15(1) and (3), 21 and 39(b) of Indian Constitution 1950.

5. Lack of adequate laws –There is no legal definition of honour crime in India but there are various penalties for honour killing is provided under section 299 to 304 of Indian penal code 1860. In today's era we need to have strict laws to deal with cases of honour killings as this is a crime which cannot be treated as lenient crime because human being does not have the right to write down death penalty for innocent persons.

6. pre-Martial sexual intercourse – Honour killings occur when people get married within the same gotra or sapinda relationship and are later killed by their families or relatives for preserving the honour. Homosexuality is not accepted in Indian society, leading to honour killings due to lack of formal governance.

7. Extra martial affairs – In Indian society when a married person has a sexual relationship with someone other than their spouse, it is considered as an immoral or unethical activity that brought shame on the name of family's name or reputation and their upbringing are being questioned by every member of their community or society. this situation leads to male members of the family to commit honour crime against the victim to restore their honour.

8. Marrying within the same gotra– According to Hindu customs or traditions it is not allowed that a boy and a girl of the same gotra (ancestral lineage) can marry because the people having same gotra are considered brothers and sisters. Even Hindu Marriage Act 1955 does not legalizes marriage between members of the same gotra and considered that marriage as null or void-ab-initio. When people got married within the same gotra or sapinda relationship and were later killed by their families or relatives for preserving the honour.

In *Manoj-Babli case* –Manoj and Babli were brutally murdered by Babli's relatives for marrying within the same gotra. According to sources, firstly the couple was asked to accept each other as brother and sister but they denied accepting it and on the orders of **Khap** Panchayat they were murdered by Babli's relatives.

9. Homosexuality –is the sexual intercourse or sexual attraction between two persons of the same sex as man and man or women and women but the Indian society is not ready to accept homosexuality and that leads to honour killings.

10. Lack of formal governance –The main reason for the increment in cases of honour killing is the formal governance has not been able to reach the rural section of the society. Large number of populations is living in villages in India, but they are not entitled to get justice through fair mode.

Indian Legal Framework of Honour Killing

The Indian Constitution:

The fundamental document for governance is the Indian Constitution which is a guiding light for administrative networking and protecting rights to its citizens. The provisions from the constitution which provides protection against Honour killing are:

1. Article 14 (the Right to Equality),
2. Article 15 (1) and (3) (Prohibition of Discrimination on grounds of religion, race, caste, sex or place of birth),
3. Article 17 (Abolition of Untouchability),
4. Article 19 (1) (the Freedom to Speech and Expression)
5. Article 21 (the Right to Life and Personal Liberty).

The India Penal Code, 1860 and Code of Criminal Procedure, 1973:

Honour killing offenders are considered murderers, as previously stated. Although it might be difficult to identify lawbreakers since acts of homicide are frequently guarded by the community, it is conceivable. The perpetrator may also use Section 300 of the Indian Penal Code, 1860, as a defence, claiming that he acted in response to a grave and sudden provocation and that nothing was planned or premeditated. The act of the victim was so soul stirring that he lost the self-control and acted purely on what he witnessed, which was an act of dishonouring the family. Apart from this Sections 300, 302 murder and its punishment, Section 304, 307 attempt to commit murder Section 120A & 120 Criminal conspiracy, Common Intention section 34 & 35 are also explored to assess the act of murder from killing. Murder (section 302 of the Indian Penal Code) and Culpable Homicide are the sole categories under which these killings are registered (Section 304 of IPC).

Indian evidence Act, 1872

Whenever a case is to be proved, it must be built on the foundation of the Indian Evidence Act, 1872, which punishes individuals who are complicit in the concealing of facts before, during, or after the alleged crime. Section 13 of the Act can specially be mentioned and helpful in understanding the aspect of honour killing, it states - Facts relevant when right or custom is in question

The Indian majority Act, 1857

This Act deals with the question of a person's major age for legal reasons; according to section 3, every person domiciled in India reaches the age of majority when he or she reaches the age of 18 years, unless his or her personal law stipulates otherwise. In the case of a guardian assigned to such a child; however, the age of majority will be 21 rather than 18. When it comes to honour killings, this Act becomes relevant in cases where khap panchayats have forcibly separated married couples who are otherwise eligible for such marriage due to age or other factors. As a result, it aids in establishing khap panchayat members' attitudes and their disregard for the law of the land. Such cases are clear case of violation of the provisions under this Act.

Hindu Marriage Act, 1955:

The fundamental criteria for a legal marriage are laid out in Section 5 of the Hindu Marriage Act, 1955. The clause specifies that for a legal marriage, certain forbidden degrees of connection must be maintained. Both civil and criminal laws safeguard marital relationships by penalizing their transgressions by providing appropriate remedies in civil law and prescribing harsh punishments in criminal law. The Act nowhere put fitters on the choice of marriage partner, indicating inter-caste marriages amongst Hindus are permitted.

Special Marriage Act, 1956:

This Act takes care of special form of marriages without bothering for their caste, class, religion of the Indian Citizens. The inter-caste marriages can be facilitated with recognition and registration by this Act. As the social system of India is based upon rigid threads of caste system inter-cast marriages are registered more in urban India than rural. The Act states that the parties must not be in banned relationships, but that if a tradition governing at least one of the parties authorizes a marriage between them, such marriage may be solemnized even if they are in prohibited relationships.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:

The Indian Parliament passed this Act in order to avoid incidents of atrocities Castes and Scheduled Tribes. The Act's primary goal was to make it easier for Dalits to integrate into mainstream Indian culture. Assaulting, dishonouring, and outraging the modesty of a SC/ST woman, sexual exploitation of a SC/ST woman, and forcing a SC/ST to leave his or her family or village are all examples of atrocities covered by this Act. This Act was enacted with the understanding that it has a connection to honour murders, since there have been several cases of honour killings when caste and religion are at the root of the crime. The Protection of Women from Domestic Violence Act, 2005¹³The endowments of the Protection of Women from Domestic Violence Act, 2005 provide for more effective protection of women's rights guaranteed under the Indian Constitution. These women all seem to be victims of violence of any kind that occurs within the family, and for matters connected with or incidental to it.

Protection of Human Rights (Amendment) Act, 2006:

This Act ensures that everyone's human rights are protected, as well as the establishment of commissions and courts to achieve such goals. Despite such regulations, honour killings continue to be common, resulting in grave violations of human rights.

Initiatives Taken Against Honour Killing:

According to the United Nations Population Fund, around five thousand women and girls were slain for the sake of honour by members of their family and relatives throughout the world. If we try to trace the beginning of the discussion of honour killing cases, we will discover that the topic of honour killing was first brought up in Parliament in 2009.

1. The Rajya Sabha was the body that debated this subject. Members of both parties debated the topic in July 2009, and presented a proposal for a separate law to deal with crimes of honour murders.
2. In March 2010, the Karnal District Court handed down a historic decision in the Manoj and Babli honour killing cases, giving the Khap Panchayat chairman a life term for ordering the killings. According to the judge, the khap panchayat has operated in violation of the constitution and has taken the law into its own hands.¹⁵
3. The decision resulted in the subject being sent to the Law Ministry, which issued specific recommendations in 2010. The "Indian Penal Code and Certain Other Amendment Bill 2010" was the name given to these suggestions. The basic line established in the recommendation focused more on crimes, particularly murders committed for reasons of honour, leaving the entire subject of tortures suffered by young couples out.
4. In August 2010, the legal cell of the All-India Democratic Women's Association (AIDWA) developed a complete bill called "The Prevention of Crimes in the Name of Honour and Tradition Bill" in conjunction with other women's organisations and submitted it to the government. This bill fills in the gaps left by the previous law, including the infringement of young couples' rights, and specifies a variety of crimes in addition to murder, as well as proposed preventative measures and penalty levels.¹⁶

5. In its 242nd report, the Law Commission of India presented its own version of the Bill in 2012. This bill was seen as taking a more cautious and limited approach to honour murders. The bill was named the "Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011," and its main focus was on "Unlawful Assemblies" known as Khap panchayats. The Law Commission's proposal is still waiting.

6. In March 2018, India's Supreme Court issued preventative measures to fight honour crimes. With the intention of following these principles until a formal law is enacted. While the Supreme Court has issued recommendations, it appears that appropriate and rigorous legislation is still required without delay, since delays in justice might lead to denial of justice. Till then proper implementation of the preventive measures is to be ensured.

Disagreements Against the Need for New Law:

In majority of the situations, it is generally observed that we as Indians have really provided with structural dimensions of law protection, it is a marvellous fact that law crafted on paper by means of Act or Codes are sufficient for providing the protection, the loopholes can be traced in proper implementation & executions. By displaying the above network of laws, it can be shown that, even today, we are well equipped to cope with the threat of honour killing, despite the fact that there is no specific legislation for recognizing and prosecuting honour killing. This is feasible if the terms of the current murder legislation are effectively applied, and the perpetrators are punished. The elegance of the words honour clubbed with killing should in no way distract us from drawing the conclusion that perpetrators here are far more dangerous if they have not taken mercy on their own daughters or sons, then third party as strangers are reeling under additional threat of facing the brutalities by these criminals. To punish criminals charged with murder under Section 300 of the Indian Penal Code, first and foremost, police officers as investigative authorities must not soften and must become more aggressive. They should focus on gathering adequate evidence, proofs against the crime, or death orders from relatives in general, and khap panchayats in particular. Wrongdoers can also be charged and punished under Section 120-B of the Indian Penal Code, as well as Sections 34 and 36 of the Indian Penal Code, 1860, for criminal conspiracy and common purpose to murder. The offered laws may not be at present in the satisfactory state but if implemented properly along with the guidelines laid down by the highest court of this land it has the capacity to deal in its present form of laws. The necessity for new legislation is being debated, and proposals are being considered in certain areas, but no law or punishment can prevent those who commit honour killings. The mind-set which is deeply rooted in dominance and treating women as object or property, or figure of honour gets a twist along with need for change in the societal perspective in bits and pieces. In addition, under the shed of cultural demand we don't stop this exploitation no new law will be effective. The legislation must be adequately implemented, and state law enforcement officers must be empowered and trained. The most effective method to eradicate this evil is to raise public knowledge and sensitize the problem in every conceivable venue. Secondly even when laws specifically are present and concentrating on a specialized issue still the legislation is not effective to curb such acts, as the defect is in the mindset of society,

for example rape laws, the laws dealing with offence of rape are time and again modified and more stringent after some gruesome rape cases in India, but they still are falling short to place any deterrence over the sexual offences and offenders of law in the very face of it are mocking it with continuous barbaric and heinous rape crimes irrespective of laws and judgments every now and then. That means laying a different legislation may not ascertain to be effective by its presence, what is required is to give it a serious thought and sincerity in implementing the pre-set of laws.

Indian Supreme Court's Views on Honour Killings:

The Judiciary is one such institution in India which has earned a lot of respect through its magnanimous contribution. People of India have very high expectations and hopes from the temple of Justice. The more than 70-year journey has resulted in a long-lasting contribution to the governing system. The judiciary worked as a promoter of peace, fostering harmony, balance, and cooperation among the government's many departments. The initial phase may be rigid, providing judgments only from legal point of view, by interpreting the laws and regulations but with the passage of time the judiciary expanded its horizon and delivered path breaking Judgments. The judges as the architect of justice crafted the pronouncements by adopting scientific, procedural, technical, methodological approach and expanded the ambit of fundamental rights and protected and provided platform for all the laws. It gave numerous instructions for safeguarding the people of India's human dignity and human rights through a number of rulings, specially focusing on the issues of women, children, bonded labours, plight of prisoners, socially and educationally backward people, environmental jurisprudence etc. So this sensitive issue of honour killing also got its representation through apex court recommendations. Honour killing has remained a societal reality in India, despite the country's moderate and secular pledges. According to a study released by the National Crime Records Bureau, there were at least 281 incidents of such violence between 2014 and 2016. This startling figure served as the foundation for a landmark decision that declared honour-based violence to be not only a criminal offence, but also a violation of adults' fundamental right to exercise choice, as guaranteed by Articles 21 and 19(1)(a) of the Constitution, which protect the right to a dignified life and freedom of expression, respectively. As a result, the freedom to pick a spouse of one's choice for a significant individual has become a basic right. In the case of *Shafin Jahan v Asokan K. M.* which is popularly known as "Hadiya Case" proved to be a significant judgement for women's right to marry the person of her choice, on 8 March 2018 Justice D Y Chandrachud upholding Hadiyas marriage to Shafin Jahan delivered its verdict in favour of Hadiya. The larger bench of Apex Court dealt with the matter Justice Deepak Mishra; Justice Ajay Khanwilkar & Justice Dhanjay Chandrachud were the sitting judges. Hadiya, a Hindu woman married to a Muslim guy, converted her faith and changed her name to Islam in this instance. Hadiya's parents successfully opposed her marriage in court. Even though she was 25 years old, the High Court maintained her father's claim to custody and delivered her to him. The term love jihad was popularised by media by this case. The Apex Court by exercising the freedom

to choose religion and life partner of her choice as her basic right granted set her marriage as valid and thus the parental pressure was removed under the name of honour of the family.

SUGGESTIONS:

1. The Separate legislation is not the need of the hour but with a new triggered debate on love jihad if an independent legislation comes at least strict and stringent punishments will help in bringing down the rate of honour killing but it is not going to stop the offence. Hence with the help of present set of laws executives should implement the law of letters into action to bring the needed dynamism of law protection.
2. Awareness, discussions, education are the best remedies for the Honour crime.
3. Handy legal setup should be made available to the victims of Honour crime so that they can express their grievances and also get the idea regarding which of legal provisions they can resort to so that they will be safe and sound.
4. Society should openly embrace and support women's decisions in all aspects of their lives.
5. As judgments of the Apex Court no legal backing should be provided to assemblies or institutions dealing with life of the people against the law.
6. If the relationship is not acceptable to the families, then let them be not part of your family, you can shun the future relations but don't play with life of anyone as a toy or respect their decisions as adults and let them go ahead and let them learn from their own mistakes, if you think that they are committing mistake.
7. As families will show inclination to honour decisions of their loved ones automatically the honour killing will start showing the downward graph, thus by counselling the families must be made aware about their limitations and prevalent laws and how breaching the law and cutting the threads of relation adds only in making the lives of all miserable than Honorable.

Conclusion:

Honour killing is carried out in order to preserve the family's grace and honour. But there is no honour in murdering someone, especially someone close to one's heart; it is unquestionably not worth it. Because religion and laws are always subjective and susceptible to interpretations, the domains of 'religion' and 'culture' cannot and must not be utilised as a pretext for the slaughter of women or any individual. Everyone has the right to a dignified and equitable existence. As a result, aggressive legislation is the only way to combat such dishonest actions. There is no faith or culture that can justify the heinous act of honour killing. The freedom to believe does not imply the right to murder. Many crimes and criminals have been declared punished by the judiciary, yet a few offenders have escaped owing to legal loopholes. One such flaw frequently stated is that there is no distinct statute or provision in Indian law dealing with honour killing. If the current set of laws and legal standards are successfully followed, we can still go a long way toward preserving some valuable lives. Multiple laws are insufficient to eliminate the threat of honour killings. Let us use the plethora of laws to apply them with utmost care. As laws can only assist in the punishment of criminals, the crime itself can only be eradicated if people's mindsets or mentalities are reformed.