

HONOUR KILLINGS AS SOCIO LEGAL OFFENCE IN INDIA: CAUSES, CONCERNS AND CHALLENGES

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Abstract

Honour is the prime asset of every human being. It can neither be sacrificed for the individual interest nor for the collective interest. Killing for the sake of honour is not only illegal but also gross violation of human right. It is illegal to take the life of someone and especially for no reasons. It is also unconstitutional. Every person has the right to life and dignity. Honour is intact with life. This right is guaranteed 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 person has the right to choice. Right to opinion is also guaranteed. Right to marry is also comes within the purview of right to life. Right to reside with dignity in society is also compatible with this right. But for the sake of honour of the family, one cannot kill the other and at the same time by killing the newly wedded couple against consent of the family does not restore honour rather this acts amounts to murder. Honour, the very word resounds courage, valour and regrettably in our Indian context also its antonym "shame". Murders meted out to couples who have married against the wishes and commands of their parents and community has unfortunately become a repetitive social practice where the acts of the married couple calls upon the honour of the entire family who can only justify and avenge it by killing the couple in question. The aim of the paper is to discuss the concept of honour killing and its legal imperatives in India. The author has made an attempt to discuss the various causes of honour killings. In the present paper, the author has suggested that there is need of a comprehensive legislation on honour killing. The author has also highlighted the role of Khap Panchayat in honour killing and its constitutional validity.

Keywords: Honour, Illegal, Right, Murder, Dignity etc.

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INTRODUCTION

Honour killings are inhuman cruel act which violates the natural right which is inalienable rights of the victims. It is observed that, Honour killing includes any kind of abusive behaviour, torture, mutilation, rape, forced married, by confine within the house and even committing murder with intending to preserve and protect the family honour.¹ Honour killing crime deprives the life of the person. It is extreme form of violation of the fundamental right of the victim person. When the girl is killed for choosing a life partner of her own certainly it takes away this right. Right to life very well includes the right to privacy; the right to bodily integrity and it is also the right to marry and to have a family of her own. Honour killing violates the women's rights, which is provided by birth as natural rights which are inalienable.² Honour killing is the bane to human society and inhuman in nature. It is a barbarous act for which punishment is not sufficient. It is irreparable loss to the parent of the victim. Killing of couple for the sake of honour is not the solution. It can't compensate the death of a person.

MEANING AND CONCEPT

According to Human Rights Watch, honour killing are acts of vengeance, usually death, committed by male family members against female family members, who are held to have brought dishonor upon the family. A woman can be targeted by (individuals within) 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 (allegedly) committing adultery. The mere perception that a woman has behaved in a way that dishonors her family is sufficient to trigger an attack on her life.

As far as the conceptual analysis of honour killing is concerned, it is connected with gender, especially with women sexual behavioural activities that exhibit the family honour. Honour binds closely connected with women's behaviours in their social norms of society.³ Honour is regulated by male and female persons particularly women, and their sexual activities, exhibits the honour of the family, males are considered the safeguard of family honour. A woman's

¹ Available at www.shodhganga.inflibnet.ac.in/bitstream/10603/89946/13/13_chapter%20-v.pdf Accessed on 12/4/2017 at 4.45 p.m.

² Available at www.shodhganga.inflibnet.ac.in/bitstream/10603/89946/15/15_chapter%20vii.pdf Accessed on 15/4/2017 at 12.55 p.m.

³ See www.shodhganga.inflibnet.ac.in/bitstream/10603/89946/11/11_chapter%20-iii.pdf Accessed on 14/5/2017 at 4.55 p.m.

behavioural, activities reflect to entire family members. She will be considered as symbol of the family. Entire family honour depends upon the women's chastity. Honour killings are murders that are carried out to purify tarnished honour, the honour in question being *namus* which means chastity. Both men and women possess *namus*. For women and girls, *namus* means chastity, while for men it means having chaste female family members. A man is therefore dependent for his *namus* on the conduct of the womenfolk in his family. This means in effect that women and girls must not have illicit contact with a member of the opposite sex and must avoid becoming the subject of gossip, since gossip alone can impugn *namus*. Girls must adhere to the *namus* code of behaviour, which differs from region to region and country to country.⁴

Honour killing is a form of gender based violence perpetrated by a male family member, usually a brother or a father, against a female family member believed to have dishonoured the family by engaging in immoral and unacceptable forms of sexual behalf.⁵

It is pertinent to mention here that the crimes of honour are not restricted by gender. Men can also be the victims of honour killing by the family members of the woman with whom they are perceived to have an inappropriate relationship. Honour crimes although are targeting more often towards women, they are in no way restricted to women alone.

Encyclopaedia Britannica defines honour killing as the killing of a relative, especially a girl or woman, who is perceived to have brought dishonour on the family. Honour killing is also called as shame killing or customary killing. It denotes the homicide of a member of a family by other members, due to the perpetrators' belief that the victim has brought shame or dishonour 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.⁶

⁴ Clementine van Eck, *"Purified by Blood, Honour Killings amongst Turks in the Netherland"* Amsterdam University Press, 1st Edition, 2003, p. 15

⁵ Dr. Amani M. Awwad State University of New York, "Gossip, Scandal, Shame and Honor Killing: A Case for Social Constructionism and hegemonic Discourse, Available at HEINONLINE, Accessed on 7/6/2017 at 2:45 pm.

⁶ Available at http://en.wikipedia.org/wiki/honour_killing Accessed on 22/5/2017 at 4.35 pm.

Honour killing is also defined as a death that is awarded to a woman of the family for marrying against the parent's wishes, having extramarital and premarital relationships, marrying within the same gotra or outside one's caste or marrying a cousin from a different caste.

Honour killing is nothing but the murder of a woman or girl by male family members. The killers justify their actions by claiming that the victim has brought dishonour upon the family name or prestige. It also connotes killing of a woman by the male members of the family who has not only brings dishonour but also tarnished the image of the family.

Etymologically speaking, honour killing is the "unlawful killing of a woman for her actual or perceived morally or mentally unclean and impure behaviour". 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.

According to Oxford Dictionary of Law Enforcement 2007, "*Honour killings can also be described as extra-judicial punishment of a female relative for assumed sexual and marriage offences. These offences, which are considered as a misdeed or insult, include sexual faithlessness, marrying without the will of parents or having a relationship that the family considers to be inappropriate and rebelling against the tribal and social matrimonial customs. These acts of killing women are justified on the basis that the offence has brought dishonour and shame to family or tribe*"

As mentioned earlier, Honour Killing is a concept which is based on patriarchal norms. There is a constant tussle in between honour killing and modernity. Tradition and tradition oriented society is not detrimental to anyone but when tradition is based of bias, discrimination and exploitation in the name of honour and leads to loss of lives of helpless and innocent minority segments of populations, it leads to violence. It is a matter of great concern that the couples who are eloped against their caste and causes huge loss to the family which is caste based results to barbaric Honour Killings.

In fact, there is neither any statutory definition of Honour killing nor any precise definition which can be said to be universally recognized. It is a stupendous task to define the honour

killing exactly. However, most prevalent meaning is, “*the murder and forced suicide in the name of imposing certain moral values, the transgression of which are professed as intolerable are honour killings*”.

WHO IS VICTIM IN HONOUR KILLING?

It is noteworthy to mention here that men can also be the victims of honor killings by member of the family of a woman with whom they are perceived to have an inappropriate relationship. The loose term *honor killing* applies to killing of both male and female irrespective of their cultures that they practice. It is not only women who are victims of honour killings, but men too. The one responsible for the loss of *namus* or chastity is killed. If a girl is raped, the rapist is killed, not the girl. If a woman turns to prostitution, then she is the guilty party and hence the victim, not the men who visit her. If both parties are guilty, as in the case of adultery, both deserve to die: first the man, and then the woman. The man is killed by the family of the woman or girl whose honour he has violated, the woman by members of her own family.⁷

In situations where an honour killing is deemed necessary, however, the woman or girl is often shielded by her family, who turn a blind eye to the question of guilt. The family frequently goes to great lengths to point to the man as the guilty party. Claiming that the woman was raped, they kill the man, although he is in fact her lover. The family is not deluding itself here. Honour entails upholding one's reputation to the outside world. Provided others accept the 'rape' story, the family is content to kill the male transgressor.⁸

CAUSES OF HONOUR KILLING

The first and foremost cause for committing an 'honour killing' is nothing but a belief that any member of family has brought dishonor to the family, defamed and the reputation of the family is tarnished. The dishonor can be of different types for different families.⁹ 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 rural areas refuse to change their attitude to marriage. Also in our country the society is mainly patriarchal. Men

⁷ Clementine van Eck, “*Purified by Blood, Honour Killings amongst Turks in the Netherland*”, Amsterdam University Press, 1st Edition, 2003, p. 43

⁸ Ibid.

⁹ Available at: www.manupatra.com/roundup/337/Articles/Honour%20Killing.pdf Accessed on 5/6/2017 at 7:55 am.

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.¹⁰

Thousands of women are murdered by their families each year in the name of family honor. It's difficult to get precise numbers on the phenomenon of honor killing; the murders frequently go unreported, the perpetrators unpunished, and the concept of family honor justifies the act in the eyes of some societies.¹¹ Most honour killings occur in countries where the concept of women as a vessel of the family reputation predominates.¹²

There are so many causes of honour killing. Here question arises as to why people or family members decide to kill the daughter in the name of preserving their family honour. The most obvious reason for this practice 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. According to them, if any daughter dares to disobey her parents on the issue of marriage and decides to marry a man of her wishes but from another gotra or outside her caste, it would bring disrepute to the family honour and hence they decide to give the ultimate sentence i.e. death to the daughter. It has become the norm even the son-in-law is killed as well. Sociologists believe that the reason why honour killings continue to take place is because of the continued rigidity of the caste system. Hence the fear of losing their caste status through which they gain many benefits makes them commit this heinous crime. The other reason why honour killings are taking place is because the mentality of people has not changed and they just cannot accept that marriages can take place in the same gotra or outside one's caste. The root of the cause for the increase in the number of honour killings is because the formal governance has not been able to reach the rural areas and as a result. Thus, this practice continues.

In addition to this, there are various misconceptions regarding the practice of honour killing. Some people says that it is only prevalent in rural areas, some people give opinion that it is

¹⁰ Arun Pal, *"Honour Killing: Culture, Dilemma and Ritual"* 1st Edn, 2012, Arise Publisher & Distributor, New Delhi, p. 225

¹¹ Thousands of Women Killed for Family 'Honor' Hillary Mayell for National Geographic News February 12, 2002

¹² Marsha Freeman, *"Director of International Women's Rights Action Watch"*, Hubert Humphrey Institute of Public Affairs, University of Minnesota

also rampant in urban areas but it is reported that it is prevalent in both rural as well as urban areas. It has spread to vast geographical area. The first misconception about honour killing is that this is a practice that is limited to the rural areas. The truth is that it is spread over such a large geographical area that we cannot isolate honour killings to rural areas only, though one has to admit that majority of the killings take place in the rural areas. But it has also been seen recently that even the metropolitan cities like Delhi, Punjab and Tamil Nadu are not safe from this crime because honor killings are constantly reported in these area. Hence, it is noticed clearly that honor killing is not confined to rural areas; it has also spread to urban areas also. The second misconception regarding honor killing is that it has religious roots. It is not correct to say that the honour killing is having religious backing or religious roots.

In this digital era, people are more conscious. Globalization and immense spread of education have changed the thinking of the people but still the barbarous act like honour killing prevails in India. Even the people are unable to find out their fault of honour killing. As in the present days of globalization and immense spread of education in India still the peoples of India could not find the faultiness of the Honor killing. They still justify honour killing saying that it is customary law in the society. A lot of reasons are responsible for which innocent lives are being brutally killed in the name of honour. Let us discuss some of the reasons for honour killing which are as follows:

1. *Marrying in the same gotra*

The most significant reason of honour killing is nothing but marrying in the same gotra or having illicit elation with the person who belongs to the same gotra. It is not permissible in most of the family to marry in the same gotra. It is not only against one's gotra but also against the sentiment of the family members. Marrying in the same gotra brings dishonour to the family and shake the conscience of the family members and becomes difficult for their peaceful existence in the society. So, they choose no alternative but killing the couple for bringing dishonour to the family.

2. *Attachment to society*

It is pertinent to mention here that every person is having some attachment to a particular society where he resides. He is having some belongingness. He is to obey the norms fixed by that society or community. The belongingness is nothing but a desire to obey moral societal codes. The feeling of loyalty to the society is intrinsic to which every person is liable to obey.

One has social identity where he lives. The disobedience to such code is nothing against the sentiment of the people which causes discontentment and may lead to honour related violence. In addition to this, disobeying social convention brings the risk of losing one's identity

3. *Male dominated society*

In a male dominated society, masculinity is recognized by the concept of honour. The competency of man to protect his honour is judged by his family and neighbours. If it is defiled, the only way men can restore it is to remove the stain that brought shame on him. The changing cultural and economic status of women has also been used to explain the occurrences of honour killings. Women who have gained economic independence go against the patriarchal culture, and undermine the authority of male members in the family. This shift towards greater responsibility for women and less for their fathers may cause the male members in the family to act in oppressive and sometimes violent manners in order to regain this authority.

4. *Intolerance*

As a family member women are seen as the repositories of the man's or family's honour, and they must guard their virginity and chastity. In the case of married women, fidelity and monogamy are the determining forces of both her and her husband's honour. An unchaste woman affects not just one victim, but her entire family and her tribe. Women stands as the symbol of respect and honour of family. So if she does any act which is against the family or family's reputation, then the entire family is disturbed and they feel that they are dishonoured. Hence, the male counterparts are unable to tolerate and take the drastic step.

5. *Status anxiety*

Status of the family in the society is based on reputation and honour. As the family is high status, so is the honour. If this honour is violated, then it is justified to kill and die for honour. To a large extent, honour killings are linked to an extreme form of status anxiety which is the fear of losing status, and involves the desire to protect it. The act of the women which brings dishonour will cause irreparable loss to the family and their social status will be deteriorated which is based on money, property, education or political effluent.

6. Customs

In some cultures, the women of the family are seen as embodiment of its honor, so there is an immense pressure on them to behave properly⁴. These social conventions include, never attracting attention to them, dressing modestly, never talking to men outside the family, and most importantly, avoiding sex before marriage (or outside marriage, once they are wed) and consenting to marry a partner chosen by their family.

7. Love affairs

Most honour killings are a punishment for the completely natural and healthy human instinct of falling in love. Family members in these cases strongly disapprove of any affiliation with a member of a different caste, or with a stranger not hand-picked by their parents.

8. Fear of public shame

Public shame is another reason for honour killing. If an act is committed by women which is shameful to the family such as extra-marital relationships, rape, incest or other sexual abuse. This results to the excessive fear of public shame that many people face¹³ in the day to day life. The honour which can't return back to the family due to the illicit relation of the women with other man and this leads to discontentment of the family member which also compels them to take any step like honour killing.

9. Importance of Culture

In male dominated society, the male member of the family acts as the head of the family and they are assigned the major responsibility to protect their property i.e movable, immovable and reputation also. The male members of the family are vested with abundant power. They always stand for culture and try to maintain it by any means. Using this strength and power they try to impose their will power upon the female and try to keep them in their rightful place.

All crimes of honour, including honour killing, are gross violations of human rights. 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,

¹³ International Journal of Enhanced Research in Educational Development, Vol. 4 Issue 4, July-August, 2016, p. 36

inhuman, or humiliating treatment or punishment; the ban on slavery; the right to freedom from gender-based discrimination; the right to privacy; the right to marry; the right to be free from sexual abuse and exploitation; the obligation to amend customs that discriminate against women; and the right to an effective remedy.

Moreover, it is declared by the Apex Court of India that there is nothing honourable in honour killing.¹⁴ At the same time, it is the direct violation of human rights of a person who by virtue of being a human have the basic birth right to live. And in cases of honor killings violation of the right by the very family member and in most cases by the father or by the real brother only because of they don't allow their daughter or female member to marry according to her will. This is the offence of murder by the members of family and gross violation of fundamental human rights.¹⁵

ROLE OF KHAP PANCHAYAT

Khap (caste) Panchayats in some parts of India define their own laws by running their own parallel judicial institution to the courts. Not only do these Khap (caste) Panchayats declare marriages null and void, but go beyond by awarding death as a punishment in many cases. These killings are used to restore faith in the orthodox approaches of the rural people. They believe that these socially unapproved marriages must be punished by extreme measures, including death.

Legally speaking, under the Hindu Marriage Act, 1955, except for the observation of certain prohibited degrees of relationship, legal restrictions on the choice of marriage partner are almost non-existent. This implies that under the law, both agnate (kin in the patrilineal line of descent whose members claim descent from the same gotra ancestor) and inter-caste marriages are permitted. Khap Panchayats are illegal and unconstitutional. Yet, they still seem to flourish in north India due to the political support that they hold. Culturally translated, the principle of village exogamy means that all men and women of the same clan, the same localized clan and the same village are bound by the morality of brother-sister and, therefore, that both sex and marriage are prohibited between members of any of these units.¹⁶ Difference and hierarchy are the two most widely acknowledged and characteristic features

¹⁴ *Lata Singh v. State of Uttar Pradesh & Another* (2006) 5 SCC

¹⁵ Katie L. Zaunbreche, "When culture hurts: dispelling the myth of cultural justification for gender-based human rights violations" P. 689. Available at: HEINONLINE, Accessed on 4/5/2017 at 9.55 p.m.

¹⁶ HERSHMAN P. *Punjabi kinship and marriage*, Delhi: Hindustan Publishing Corporation, 199, p.178

of the caste system. To maintain these characteristics, the principle of strict caste endogamy has to be maintained. Inter-caste marriages lead to a blurring of the differences between different caste groups and disturb the recognized caste hierarchies.¹⁷ Therefore, anyone venturing to transgress this law is out-casted, expelled or worse killed as a result. For the execution of punishment, the khap Panchayats do not afford the luxury of having a standby executing police force, instead they count on irrational mob thinking. This mob then makes believe to each member that their actions are a justified reaction. They consider such cleansing as mere settling of the disturbed balance. Khap Panchayat is an unconstitutional body. The decision or any instruction of Khap Panchayat has been declared as unconstitutional. The function of Khap Panchayat is against the law. It has no legal sanctity.

CONCLUDING OBSERVATIONS

Here the pertinent question arises as to what steps are to be adopted to combat honour killings? What remedial measures can be taken to prevent such a thing from occurring repeatedly? It is noteworthy to mention here that enactments of so many laws are not sufficient. In addition to this, the mentality of the people has to change. It is inherent thing and can be prevented through thinking of people. Here, when we say that the mentality has to change, we mean to say that parents should accept their children's wishes regarding marriage as it is they who have to lead a life with their life partners and if they are not satisfied with their life partner then they will lead a horrible married life which might even end in suicide.

Last but not the least, comprehensive law to combat honour killing is the crying need of the hour. There is need of a separate law to prevent this crime. There is also need of provisions of law pertaining to quantum of punishment for this type of crime which must be deterrent. It is a socio-legal issue and it is alarming now. Special cells are to be set up in each district which will receive complaints from the couples pertaining to this type of offence and for their safety. Granting of bail should be strict and no leniency should be shown while granting bail to the accused persons as well as the abettors of the crime. Mass awareness is to be created to eradicate this social evil. Role of mass media communication plays prominent role in controlling honour killings in India. Regularly organizing seminars, workshops, legal literacy camps, discussions, deliberations in universities, colleges and schools can be another remedial measures to combat this crime if not mid nightly but gradually.

¹⁷ Prem Chowdhry, "Caste panchayats and the policing of marriage in Haryana: Enforcing kinship and territorial exogamy *Contribution to Indian Sociology*" (January 2004), 38 (1-2), pp. 1-42