

Available online at <http://www.ijms.com>

ISSN - (Print): 2519 – 7908 ; ISSN - (Electronic): 2348 – 0343

IF:4.335; Index Copernicus (IC) Value: 60.59; UGC Recognized -UGC Journal No.: 47192. 1<sup>st</sup> July

## Honour Killings in India: Need For a Composite and Strict Legal Framework

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### Abstract

Sometimes when a particular society bases itself upon an ideology no understanding can be expected when few individuals stand in its way. It is when under certain circumstances, ranging right from utilizing unacceptable dress codes to inter-caste marriages, dishonour is perceived to have been incident upon the family, clan or community. Tension arises basically because certain values are inhibited within the very being of the culture being followed by the family and community concerned and any clash with the same leads to ballistic consequences. This leads to an incidence of '**Honour Killing**' (or Customary Killing) by the perpetrators who believe the victim to have brought dishonour merely on the basis of beliefs and assumptions. By this paper, the author aims to observe as to what is the history of this issue and is there any rationale behind providing it the name of 'moral vigilantism'. The author would try and reflect as to how and for what reasons this heinous crime found its roots in India and lastly but most importantly by discussing various case-studies author would reflect upon the dire need to provide a strict and concrete legal framework.

**Keywords:** Honour Killings, Crimes Against Women, Crimes in the name of Honour, Khap Panchayats, Legal Framework, Matrimonial Alliances, Prevention of Interference.

### 1. Introduction: History and Definition

*'Jaipur honour killing: My father was progressive, never thought my parents could change'*<sup>[1]</sup>

Waking up to such gruesome news is bound to jar one's consciousness. A loving husband gunned down by a henchman on instructions of his pregnant wife's parents in his own home, and why, because his wife married out of her caste against the wishes of her parents, which apparently brought dishonour to her family. The dreams and claims of progress and development come crashing down in view of such incidents, which are innumerable but are not brought to the forefront due to a huge motivation for the family and community to cover up such murders.

Though honour killings are commonly misconceived as an exclusively Islamic practice, laws that promote violence against women for the expression of sexual autonomy are notable in Assyrian law codes dating back to 6000 BCE and in the codes of Hammurabi.<sup>[2]</sup> Thus, the incidence of Honour Killings is nothing new and the practice has existed for a long time. For example, in the ancient Roman era, the *pater familias*, or senior male within a household, retained the right to kill an unmarried but sexually active daughter or an adulterous wife and husband was also permitted to murder the adulterous wife's lover (*Lex Julia de adulteriis coercendis*).<sup>[3]</sup> Honour related deaths were also reported during medieval Europe where early Jewish law mandated death by stoning for an adulterous wife and her partner.<sup>[4]</sup> Article 324<sup>[5]</sup> of the Napoleonic Code that was passed in 1810 also permitted the murders of an unfaithful wife and her lover at the hand of her husband, while not allowing women to murder unfaithful husbands, and this became the basis of many similar laws in Arab countries. What is most shameful is that only handful of these laws have been repealed.

Today this practice has gained its roots in various cultures, most prominently in North African, Middle-Eastern and South Asian countries. But this does not mean that other parts of the world have not reported such crimes. The report of the Special Rapporteur to U.N. of the year 2002<sup>[6]</sup> concerning cultural practices in the family that are violent towards women indicated that honour killings had been reported in Jordan, Lebanon, Morocco, Pakistan, United Arab Republic, Turkey, Yemen and other Persian Gulf countries and that they had also taken place in western countries such as France, Germany and U.K.

mostly within migrant communities. The report “Working towards the elimination of crimes against women committed in the name of honour” submitted by the Secretary-General<sup>[7]</sup> is quite revealing. In addition to the countries named above, as per the report of the UN Commission on Human Rights, there are honour killings in the nations of Bangladesh, Brazil, Ecuador, India, Israel, Italy, Morocco, Sweden, Turkey and Uganda.

Honour Killings or ‘*shame killing(s)*’, which were so called by UN Secretary-General, Kofi Annan, in his address to the General Assembly special session Women 2000: Gender Equality, Development and Peace for the Twenty-first Century on 5 June, 2000<sup>[8]</sup>, are perpetrated due to various reasons. They range from supposed “illicit” relationships, to killing women for marrying men of their choice or for expressing a desire to choose a spouse. These are seen as serious acts of defiance in a society where the family arranges most marriages. Therefore a concrete definition cannot be assigned to this term. However, taking in view the common intentions of the perpetrators, Honour Killings may be defined as ‘homicide of a member of a family, 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.’<sup>[9]</sup>

The origin of killings for this specific purpose of preserving one’s honour originated in ancient desert tribes where a woman was considered the repository for her family’s honour. In these communities, honour, or *Ghairat*, was closely linked with one’s standing in society, or their *izzat*, which is determined by a man’s wealth and property.<sup>[10]</sup>

As, long as there is the history of this practice, it has been abhorred equally. Guru Gobind Singh, a central figure in the Sikh religion called for the rejection of ‘honour’ killers from the community, stating that ‘whosoever takes food from the slayers of daughters, shall die un-absolved’; despite his prohibition, ‘honour’ killings continue to be a serious issue within contemporary India.

## **2. Research Methodology**

This paper is based on secondary data collected from various sources. Related key words such as honour crimes, history of honour killings, khaps, etc., have been used to locate the relevant studies for analysis. News articles from various online news portals and reports and statistics published by various national, international, government and private organizations have been used in this study.

## **3. Situation in India**

Even today, in the patriarchal society, female sexuality is regulated by physical violence and force and honour killings are the most evident examples of this fact. Women who fall in love, commit adultery, request a divorce, or choose their own husbands are seen as transgressors of the boundaries of appropriate sexual behaviour. As a result, they are subjected to the direct violence of the most horrific kind. Thus, such violent crimes are directed especially against women. Men also become targets of attack by members of the family of a woman whom they are perceived to have an ‘inappropriate relationship’ with.

As has been observed through the discussion above that there are various reasons behind such honour killings. Most common and concerning reason in India is honour crimes occur as a result of people marrying without their family’s acceptance and for marrying outside their caste, community or religion. Marriages between the couple belonging to same Gotra (family name) have also often led to a violent reaction from the family members or the community members, and the reason that is being assigned is that they have vindicated the honour of family caste or religion. The Caste councils or Panchayats popularly known as ‘Khap Panchayats’ or ‘Katta Panchayats’ declare themselves to be the saviours of honour

and in this self proclaimed capacity adopt the desired course of 'moral vigilantism' and enforce their diktats by assuming to themselves the role of social or community guardians.

The phenomenon is occurring all over India but the states of Punjab, Haryana, Rajasthan and Western Uttar Pradesh are the regions where these incidents are more frequently reported. Bhagalpur in Bihar is also one of the known places for "honour killings". Even some incidents are reported from Delhi and Tamil Nadu In India, the traditional studies have reported it to be a rural phenomenon but it has percolated to the urban middle-class communities as well.<sup>[11]</sup>

Here the discussion will be incomplete without gleaning over some of these heinous crimes committed across India which shook our conscience and jarred us into the reality.

Manoj and Babli Banwala, who had run away to be married against the rules of their religious caste, were kidnapped and murdered by members of the bride's family in the year 2007. After first attempting to interfere by alleging that Manoj had kidnapped his wife Babli, her family interrupted their flight by hauling them off a bus, forcing Babli to consume pesticide, and hanging Manoj, whose body was then mutilated. Their bodies were thrown into a canal, and the crime had the approval of the khap of their village Karora in the Kaithal district of Haryana. After facing many hardships like shoddy Police Investigation and ostracization from community<sup>[12]</sup>, finally Manoj's mother and sister were able to get justice when in March 2010 a Karnal district court sentenced the five perpetrators to be executed, the first time an Indian court had done so in an honour killing case. The khap panchayat's head who had ordered killings had not participated in their perpetration, thus he received a life sentence, and the driver involved in the abduction a seven-year prison term. Thus, this case was also the first resulting in the conviction of khap panchayats. Though on the appeal of the accused, on 11 March, 2011, the Punjab and Haryana High Court commuted the death sentence awarded to four convicts of Babli's family to life imprisonment and the Khap leader, Ganga Raj, said to be the prime conspirator, and another convict Satish were acquitted.<sup>[13]</sup>

In February 2002, Nitish Katara was abducted and murdered by politician DP Yadav's son Vikas Yadav and his cousin Vishal Yadav for having intimate relations with Vikas Yadav's sister Bharti. The Yadavs never approved of the relationship between the two, and Katara received threats several times. On February 17, Nitish and Bharti attended a common friend's wedding, where Vikas and Vishal were present. From there, Katara was taken for a drive by Bharti Yadav's brothers and did not return. Three days later, Katara's body was found near a highway. He had been battered to death with a hammer, and then set aflame. Only due to the high profile nature of this incidence brought it to light which made arrests possible and finally Supreme Court convicted and awarded a 25-year jail term to both the culprits. The SC also awarded a 20-year jail term to co-convict Sukhdev Pehalwan in the case.<sup>[14]</sup>

In March 2016, a young Dalit man was hacked to death in broad daylight for marrying an upper caste girl, who herself narrowly survived the brutal assault in a Tamil Nadu town. Sankar had married Kausalya, 19, who is from the politically influential Thevar community and her family had objected to the marriage. CCTV visuals and videos recorded on 'by-standers' mobiles showed about six men attack Sankar, a third year engineering student, with sickles and machetes when he and Kausalya were walking on a busy market street. The killers apparently came on two motorcycles and appeared to have been shadowing the couple. Before escaping, the killers also thrashed the young woman, who apparently had filed a police complaint, just a few weeks before the attack, against her own father for allegedly threatening her and her husband, leaving her badly wounded. But she miraculously survived.<sup>[15]</sup>

In June, 2017, in a case of suspected honour killing, a family was arrested for allegedly setting ablaze a 20-year-old woman in North Karnataka's Gundakanale village. The woman was said to be pregnant and died of severe burns. The woman's family was reportedly against her getting married to a Dalit boy from the same village. The dead body was recovered by the police. They have arrested four members of the family, including the mother of the victim.<sup>[16]</sup>

Before this in April, 2017 police arrested three persons in connection with the killing of Mohammad Shalik (19), who was beaten to death after being spotted with his girlfriend belonging to another community in Jharkhand. According to the information provided by the girl during interrogation, her family members were opposed to the affair and had warned the youth to stay away from the girl and on the fateful night the locals allegedly tied him to a pole in front of the girl and thrashed him badly causing serious injuries to which he later succumbed.<sup>[17]</sup>

For India, which has still not drafted any legislation to declare the “honour killings” as a separate offence, it lacks statistical records at national and state levels. The National Crime Records Bureau (NCRB) doesn't regard “honour killings” as a separate category of offence. However, after continuous persual of the issue by various social groups, such cases are being separately registered under violent crimes against body classified with respect to their motives. According to Kirti Singh, a Supreme Court advocate, “Only because of sustained campaign by women's groups, a separate category was created for compiling cases of honour killing to get a real picture of the heinous crime.” In the 2014 Statistics report of NCRB, when these crimes began to be counted as a separate motive, 28 cases of murders due to honour killing were reported, out of which 7 cases (25%) were reported from Madhya Pradesh alone. Separately apart from these statistics an additional of 1,307 murders were reported under the reason of ‘love affairs’ and a further 1,196 due to ‘illicit relationships’.<sup>[18]</sup> In the 2015 statistics report released by NCRB reported that honour killings in India have grown by more than 796% from 2014 to 2015 as 251 cases were reported out of which about 67% (138 cases) were reported from Uttar Pradesh alone.<sup>[19]</sup> Now, this increase in the number of cases of honour killings maybe attributed to increase in number of reporting of these cases rather than just incidence of these crimes. Reality is even these statistics are just the tip of the iceberg and the real picture might be scarier as due to the motivation to hide these occurings by the very families who are there to protect and safeguard the very individuals who are the victims, majority of the cases go unreported. So, someone taking the courage to report these crimes maybe the first step towards curbing them as unless someone speaks up against something negative that negativity cannot be warded off.

#### **4. Need For Legal Framework: Proposed Bill and Analysis**

According to statistics from the United Nations, one in five cases of honour killing internationally every year comes from India. Of the 5000 cases reported internationally, 1000 are from India.<sup>[20]</sup> Non-governmental organisations put the number at four times this figure. They claim it is around 20,000 cases globally every year.<sup>[21]</sup> These figures and cases discussed above clearly warrants for adoption of a comprehensive law against ‘honour killings’ and ‘honour crimes’.

In August 2010, the legal cell of the All India Democratic Women's Association (AIDWA) headed by Kirti Singh, in consultation with many women's organisations and individuals, drafted a comprehensive law entitled “The Prevention of Crimes in the Name of Honour and Tradition Bill” and gave it to the government. The Bill defines honour crimes in relation to a violation of the rights of the couple and goes on to list the various types of crime, in addition to murder, it also suggests preventive measures, provides for punishment of varying degrees, includes khap panchayats and other bodies acting in the name of caste or community, and also ensures accountability of the police and administration.<sup>[22]</sup> The Bill was supported by the National Commission of Women, then headed by Girija Vyas, which gave a similarly named Bill to the government. But in spite of the united efforts of the Commission and women's organisations, this Bill got no reference in the Parliament.<sup>[23]</sup>

However, in the subsequent year, after a heated discussion in Parliament it was felt that there is a need for a concrete legal framework to curb such heinous practices of Honour Crimes and thus proposed to amend Section 300 of Indian Penal Code and pursuant to the assurance given by the Union Home Minister that various aspects relating to “honour killings” will be examined, a reference was made to the Law Commission of India.

And this not only the view of Parliamentarians or people in the general quarters but even the Apex Court has opined that ‘Khap Panchayats must be stamped out’. A Bench of Justices Markandey Katju and Gyan Sudha Misra stated that, “This

(activities of Khap Panchayats) is wholly illegal and has to be ruthlessly stamped out. There is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of the personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only this way can we stamp out such acts of barbarism and feudal mentality? Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.”<sup>[24]</sup>

On behest of the reference made to the Law Commission of India by Department of Legal Affairs, the Commission set out on a task to propose a legal solution to the problem of ‘honour killings’. After prolonged discussion Law Commission in its report came to a conclusion that it was not proper to introduce a new provision under Section 300 of IPC for the reason that the existing provisions in the IPC are adequate enough to deal with overt acts of killing or causing bodily harm and difference of motive can not be a justification to introduce a separate provision in section 300, as it would lead to unnecessary confusion among the masses and interpreters. Thus, a Bill namely ‘The Prohibition of Unlawful Assembly (Interference with the Freedom Of Matrimonial Alliances) Bill, 2011’ was proposed and in the Statement of Objects and Reasons it stated that, “...Although such intimidation or acts of violence constitute offences under the Indian Penal Code, yet, it is necessary to prevent assemblies which take place to condemn such alliances. This Bill is therefore, proposed to nip the evil in the bud and to prevent spreading of hatred or incitement to violence through such gatherings. The Bill is designed to constitute special offences against such assemblies, in addition to other offences under the Indian Penal Code.”<sup>[25]</sup>

#### *4.1 Analysis of the proposed Legal Framework*

Under the proposed bill three offences have been created and they are punishable with mandatory minimum punishment. The proportionality of punishment has however been kept in view. The three offences that have been created are unlawful assembly with respect to matters of marriage, endangerment of liberty and criminal intimidation. Such provisions that have been proposed by the bill are without prejudice to and not in derogation of the provisions Indian Penal Code. That is to say that such provisions are over and above the provisions of Indian Penal Code but are also in coherence with the same. Thus, in respect of the offences not specifically covered under the provisions of this act, the general provisions of Indian Penal Code can be taken resort to. What is commendable is that special power to take protective and preventive measures have been provided to the District Magistrate/SDM. The law commission has also recommended the concept of Presumption, which is emphasised by section 6. However, the burden of proof has not been shifted upon the accused as according to the law commission this would have been against the rules of natural justice. All offences under the proposed Act will be cognizable, non-bailable and non-compoundable. Special Courts presided over by a sessions judge or additional sessions judge will try the cases. The Special Court can take suo motu cognizance of the cases. Steps to be taken for counselling and creating legal awareness have also been suggested by the commission in its report. The report accompanying the Bill also clarifies that law does not prohibit the same gotra marriages, as the Hindu Marriage Disabilities Removal Act enacted in the year 1946 clarified any doubt in this regard.

If the Bill is analysed there are certain pros and cons to the same. The strong suits of the Bill are treating the crimes of unlawful assembly, criminal intimidation, etc. as separate specie of crimes with respect to the problem in question. The provision of Presumption, i.e. if it is found that any accused person participated or continued to participate in an unlawful assembly, the Court shall presume that he intended and decided to take all necessary steps to put into effect the decision of unlawful assembly, will play a deterrent role in disabling such characters at the very beginning who think themselves to be the so-called ‘torch bearers of the honour of community’. Special protective and preventive power to the Collector or the District Magistrate and trial by Special Courts is also a welcome step.

However, where the Bill lacks is not providing a concrete procedure to approach the issues where dictate of such assemblies leads to murders of individuals. The Commission comments in its report that Honour Killings or Crimes is a loose term and that it can not be made a basis to construct law. But the reality is that it is the confusion about the definition of what

constitutes an 'honour killing', which often results in the victims not getting justice. Many families report these killings as 'suicide' and escape punishment under the law. Then, another issue is that Honour Killings though in many cases are ordered by such Khaps but in high percentage, as has been seen above, families of the victims are planners and perpetrators in their own capacity. This Bill does not cover such incidents. Merely stating that Section 300 of IPC deals with such Homicidal issues does not provide for the resolution of the issue, as here rather than raising voices to bring forth the crimes, the underlying motivation is to cover-up such murders for saving 'honour'. Thus, the scope of the law needs to be widened to include other cases and perpetrators of honour crimes.

But analysing this Bill is of no use in the light of the fact that it is going to be 5 years since it has been proposed and is pending for comments of State Governments and no further step has been taken by our law makers to bring it into force. Even in its limited scope, this law would have made a great difference if it would have been implemented properly. Can we say that governments have been strong armed by so-called 'moral vigilantes'? And that is where we stand. One step forward, two steps back. India needs a law, a strong law that will afford protection to self-choice partnerships and punish those who in the name of honour and tradition seek to obliterate that right.

## 5. Conclusion

While the history of Honour Based Killings shows that this is a deep-rooted phenomenon, as old as civilization itself, but there are examples of social changes that have led to the eradication of violence in the name of preserving honour in certain parts of the world, and this is a ray of hope that honour crimes can be eradicated globally.

Now establishing a new legal framework is not enough, we need to do away with archaic laws that make women the chattels of males, for example, laws on Adultery and their absence for matters of Marital Rape. Until and unless the perspective of the society changes, the police and judiciary alone cannot curb such crimes. We can understand the mentality motivating 'honour crimes' in words of Diana Vitoshka. She states that 'Women, who were the property of their father, husband or male relative, were valued for their reproductive capabilities and commodified for men to purchase through a dowry. Thus, within this culture women became an investment a male made towards his honor and standing in the community, which in turn legitimized his right to compensate for the damage and restore his honor—an act that could only be achieved with blood.'<sup>[26]</sup> This society sounds eerily similar to that of India.

The major hinderance in achieving justice for victims is that families are often themselves the perpetrators of crime or are ashamed or unwilling to report such crimes. Thus, in absence of witnesses and concrete evidence, the criminals go scot free or there is no stringent punishment for the criminals. As a result, they walk freely with head high on the streets with the title of so called 'Defenders of the Honour'.

The most important step towards redressal and achieving any sort of solution for this problem is that government must pass a separate and comprehensive legislation to recognise the crime as unique in order to target perpetrators for prosecution. As without a separate law which may define such crimes, they are clubbed by police officers in the larger murder category or they stay hidden as suicides. These human right violations are a threat to our progressive country which will lower our standard at the global level. Truth is that without proper statistics, this issue can not be seriously dealt with. Only on availability of actual data, we will understand the magnitude of the issue and will be able to deal with it.

Moreover, the Khap Panchayats assume to themselves the authority to deal with "objectionable" matrimonies must be stopped and this again is possible through a strict piece of legislation which deters such caste assemblies from committing immoral and illegal acts.

Now laws and police action can not alone deal with this predicament of the society. For this masses need to be galvanised to create an uprising against mentalities of forcing will upon the willing couple, of quantifying the sexuality of women with the honour of family, of thinking that honour can be preserved by committing the heinous offence of murder. The real change of our society begins in our homes. Thus, finally the ball is in the court of the society who has to shun these practices and stand united against them.

Observations made by the Apex Court while sentencing the accused in Nitish Katara case are of great importance here.

*“Freedom, independence, constitutional identity, individual choice and thought of a woman be a wife or sister or daughter or mother cannot be allowed to be curtailed definitely not by application of physical force or threat or mental cruelty in the name of his self-assumed honour..... One may feel 'My honour is my life' but that does not mean sustaining one's honour at the cost of another. That apart, neither the family members nor the members of the collective has any right to assault the boy chosen by the girl. Her individual choice is her self-respect and creating dent in it is destroying her honour. And to impose so called brotherly or fatherly honour or class honour by eliminating her choice is a crime of extreme brutality, more so, when it is done under a guise. It is a vice, condemnable and deplorable perception of “honour”, comparable to medieval obsessive assertions”.*<sup>[27]</sup>

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