



HONOUR CRIMES IN INDIA: LEGISLATIVE ANALYSIS

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ABSTRACT

The preceding years have seen a consistent rise in the number of crimes against young couples in the name of retrieval of the lost honour. In particular when a woman exercises a right to choose her partner, against the accepted social norms, she is victimized by her own family members or community leaders. The trend is witnessed in both rural as well as urban parts of India. The victims come from different social strata. The incidents of such crimes are tried to be hushed up with the support of the community. The Khap Panchayats of Haryana are the self declared community courts which are held responsible for instigating such crimes. Certain cases of honour crimes involve violation of human rights as regards freedom of marriage. The Courts have expressed their serious disapproval about the manner of handling such crimes. The Law Commission has produced a report on 'Prevention of interference in freedom of marriage'. The legislature is thinking about introducing stringent laws to prevent and punish such crimes. The article speaks about the incidences of such crimes from a socio legal viewpoint along with some observations and conclusions. The words 'honour killings' and 'honour crimes' are used more as catch phrases and not as apt and accurate expressions.



KEYWORDS: Human rights, honour killing, law, personal liberty, women.

INTRODUCTION

The father of an eighteen year old girl, who allegedly strangled her to death in February for eloping with a man, was taken into custody and eight others, including her mother and sister-in-law, were sent to judicial custody for kidnapping, Dausa circle officer Deepak Kumar said on Friday (as reported in Indian Express, on March 6th 2021). This incidence brings the questions about 'honour killing' to the forefront again. Having limited access to the public arena dominated by men, women are at a disadvantaged position in the economic, political and social spheres. Behind closed doors of homes all across our country, women are being tortured, beaten and killed. The right of a man to slap, hit or beat his wife or by extension his children is widely recognized across many cultures. Violence against women is not a new phenomenon. The threat of violence is a tool for social control of women as it impedes women's options. As such the threat also constitutes violence. The statistics of increasing crimes against women is shocking. Women are subjected to violent attacks such as foeticide, infanticide, medical neglect, child marriages, bride burning, sexual abuse of girl child, forced marriages, rapes, prostitution, sexual harassment at home as well as workplaces etc. According to a latest report prepared by India's National Crime Records Bureau (NCRB), a crime has been recorded against women every three minutes in India. Every 60 minutes, two women are raped in this country. Every six hours, a

young married woman is found beaten to death, burnt or driven to suicide. It is becoming a legacy being passed on from one generation to another. Some crimes have taken place in far flung villages while others have rocked the city life.

Amongst these gender based atrocities, the trend of honour linked crimes is particularly disturbing. The support such crimes receive from the society and family makes it difficult to detect and impossible to erode. This article highlights how crimes in the name of honour have been addressed by the state, law & judiciary. It points out the limitations of law in addressing the structural & fundamental causes of such crimes.

The phenomenon of honour and Honour Killing

Honour is a tangible symbol signifying approval or distinction. Honour gives a sense of right or wrong. To some it comes before family or even before life. It is associated with men who can lose, defend or gain honour. Its sanction by the community makes it a powerful means of social control. For a woman it is construed to mean only her virtue or chastity. Women are often the vessels that contain honour. The deep rooted concept of woman as a commodity is the reason for all kinds of honour crimes against women. Further women's transgression of social norms is met with more severe consequences than in case of men. Honour is a theme which is culturally accepted. The honour crimes occur within the socio-cultural sphere and are rarely recognized as crimes. Being accepted as natural and part of tradition, they receive passive sanctity and sometimes active support. Such cultural crimes are often glorified. They are committed by ordinary respected persons.

Honour crimes are not new, but their motivations, forms and extent have changed with time. While killings are the most extreme manifestation of retrieving honour, there are other equally heinous manifestations such as acid throwing, gang rape, rape or parading naked of the women of the enemy etc. Loopholes in the legal system coupled with the gender biased attitude of the judges often result in a lenient sentence of these criminals.

An honour killing (also called a customary killing) is the murder of a member of a family or social group by other members, due to the belief of the perpetrators (and potentially the wider community) that the victim has brought dishonour upon the family or community. Honour killings are directed mostly against women and girls. The perceived dishonour is normally the result of one of the following behaviours, or the suspicion of such behaviours:

1. dressing in a manner unacceptable to the family or community,
2. wanting to terminate or prevent an arranged marriage or desiring to marry by own choice,
3. engaging in heterosexual sexual acts outside marriage, or even a non-sexual relationship perceived as inappropriate or
4. engaging in homosexual acts.

The phenomenon of honour killing is a global one. Such killings have been reported in Afghanistan, Bangladesh, Britain, Brazil, Egypt, Iran, Iraq, Israel, Italy, Norway, Pakistan, Turkey and Uganda. Incidences of honour related crimes and violence against women is high in south Asia.

There are no official figures for the number of honour murders in India, but social activists say hundreds are killed every year. In India, a recent study on honour killings the National Commission on Women found that out of total 560 cases examined, nearly 83% were those of inter caste marriages. The Commission has recommended removal of the word 'honour' from honour killing while describing crimes when a person is killed to save a family's 'honour'. The NCW's recommendation came after an inquiry into the hurried cremation of a girl by her family in a Greater Noida village mid-June 2012. Violence and threatening of couples have been reported from rural and urban areas and from almost all sections of society. Various forms of pressures are brought on them or they are married off against their wishes. There is acquiescence from the kin and the community.

Some Landmark Judgments

The following cases indicate the violence and threats that emerge when a woman exercises her choice of marriage and the diverse responses from the judiciary.

S. Varadarajan V/s State of Maras

A college student of 17 years eloped with the accused. The accused along with his friends who helped him, was charged for kidnapping a minor girl from the lawful custody of her parents and sentenced to jail. The sentence was confirmed by the High Court. But upon appeal, the Supreme Court acquitted all the accused from charges of kidnapping. It was found that the girl rang up her lover, met him at the appointed time and went to the office of the marriage registrar. The court took note of the fact that she was studying in college and had the capacity to know the full import of what she was doing. The fact that she voluntarily joined the accused, nullified the charges of kidnapping. This is the most progressive judgment on the subject matter considering the fact that it was passed in the 1960s. It actually addressed the girl's right to make a choice about marriage. While dealing with the issue of woman's consent even the provision of age was set aside.

Lata Singh V/s State of UP

Lata Singh from a 'high caste' married one Brahma Nand Gupta in Nov 2000. Lata's brother lodged a complaint of kidnapping and Gupta's sisters, brother-in-law and cousin were arrested by police. Lata's brothers beat Gupta's mother, destroyed household articles and locked one of his brothers in a room for five days without food and water. Fearing for her life and safety of her husband and his relatives, Lata approached the State Women's Commission. The Commission approached the government for intervention. After five months in jail the Guptas were released as police found that no offence was committed by them. Lata was produced before the magistrate. She told the judge that she had married out of her free will. Despite this the magistrate ordered a fresh probe against the Guptas. The Mental Health Act of 1987 was evoked by Lata's family to claim that she was not of sound mind and hence married Gupta. Finally, Lata approached the Supreme Court in 2010.

The Court expressed distress at the shocking state of affairs and directed the state police to offer the Gupta family protection. It observed that inter caste marriages are in the interest of the nation and action should be taken against such violence in the name of honour. The court observed that 'if the parents do not approve of such marriage, they may cut off social relations with their son or daughter, but they cannot harass them or inflict violence.' This indicated the court's approach as to the right to choose in marriages. Tacitly it appears to approve violation of the right to choose against persons who are seen as transgressing social norms.

This case shows how the agencies of the criminal justice system (viz. the police and the magistrate) permit a state sanction to the notion of honour.

Manoj Babli Murder Case(The Khap Panchayat case)

In states of Haryana, Punjab, Rajasthan and western UP there is an opposition to *sagotra* marriages in some communities. In a landmark judgment in March 2010, Karnal district court ordered the execution of five perpetrators of an honour killing in Kaithal, and imprisoning for life the *khap*(local caste-based council) chief who ordered the killings of Manoj Banwala (23) and Babli (19), a man and woman of the same *gotra* who eloped and married in June 2007. Despite having been given police protection on court orders, they were kidnapped, and their mutilated bodies were found a week later in an irrigation canal.

Pradeep Kumar Singh V/s State of Haryana(Run away couples Case)

The case consisted of petitions regarding a large number of cases of run- away couples. In this case the High Court laid down the law, to decide complaints against the boy, by the girl's parents, in the case of the runaway couple. The Court gave some important directions. If the girl is major, she should not be forcibly taken away by the police to be handed over to her parents against her consent. Criminal force against the boy should also be avoided. When any complaint of kidnapping or abduction is received from any of the family members of the girl, generally the boy (husband) will not be arrested unless and until the prejudicial statement is given by the girl (wife). Arrest should generally be deferred or avoided on the immediate receipt of a complaint by the parents or family members of the girl.

In some other cases, it is observed that the remedy of *Habeas Corpus* is also being misused to punish young couples who are viewed as breaking the social norms of honour. The families of the women often raise a plea that she is being detained against her wishes or is below the age of consent or is mentally ill. Even the adult women in some cases are sent by the courts to government homes for their safety.

From the point of law under the IPC, honour is not defined as a defence for mitigating the case of murder. But in cases of honour killing, it has been used as a defence for grave and sudden provocation to lessen the offence to culpable homicide not amounting to murder. On the other hand in some cases the court has opined that crimes in the name of honour deserve the severest of all punishments. All these crimes are prima facie, the outward expressions of the inherent non recognition of the right to choose in marriages.

Right to choice in marriage as a Human right

The right to choice for marriage exists for adult women and men. The concerned provisions are found in the Hindu Marriage Act 1955 and Hindu Marriage Disabilities Removal Act 1946. Even the Human Rights include not only basic rights such as right to freedom of speech and expression, right to liberty, right against torture, slavery etc. but also Right to Marriage. In this connection Article 23 of the International Covenant on Civil and Political Rights (which is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966) states that the right of men and women of marriageable age to marry and to form a family shall be recognized by the state. The Supreme Court and the High Courts, through various judgments, have upheld a woman's right to sexual autonomy and decision making. "All persons who are planning to perpetrate 'honour killing' should know that the gallows await them". The court said in *Bhagwan Das Vs. State (NCT of Delhi)* [(2011) 6 SCC 396. In *Lata Singh's case* SC observed, "This is a free and democratic country, and once a person becomes a major, he or she can marry whomever he/she likes".

In India, the Fundamental Rights under the Constitution guarantee freedom of choice in various areas of life. Out of these, right to life and personal liberty is available to all persons and not only citizens. It includes an individual's right to choose the life partner. Further the violation of this right by private party also gives rise to a cause of action. Under Article 13, laws that are inconsistent with or in derogation of the fundamental rights are void. Laws for this purpose include custom or usage of a community. Thus, the customary practices that interfere with these rights should be annulled.

The Constitution also lays down 'Directive Principles of State Policy'. They supplement the Fundamental rights. State is required to strive to promote a social order in which social, economic and political justice shall inform all the institutions of national life. Statutory bodies such as the various State Human Rights Commissions, National Human Rights Commission, Women's Commission, and The Child Right Commission are constituted by the state for this purpose. Even the Law Commission's work in this regard is noteworthy.

The Law Commission's Report on 'Prevention of interference in freedom of marriage'

In view of the increasing menace of *khap panchayats* strong opinion has been voiced by various segments of community. The Law Commission of India in its 242nd Report recognized that penal laws lack direct application to the illegal acts of such caste assemblies. It further stated that *Sagotra* marriages are not prohibited by law, whatever may be the view in olden times. The Hindu Marriage Disabilities Removal Act, 1946 was enacted with a view to dispel any doubts in this regard. In fact, the Act expressly declared the validity of marriages between the Hindus belonging to the same '*gotra*' or different subdivisions of same caste. Even the Hindu Marriage Act does not prohibit *sagotra* or inter-caste marriages. Considering the brutality of the crimes that are committed in the name of saving *honour* of the community and the family, a draft bill is proposed to fight this social evil. The main focus of the Bill is the congregation/assembly by the village elders, which propagates the views against such marriages and acts as agents of *panchayats*, to manipulate the people. The Bill proposes to consider all members of the group guilty of the offence. In this proposed Bill the definition of honour is welcome

but the implication of all members of the group as criminals may result in problems as to evidence and investigation. Despite the debates and discussions over the Bill, as of now we do not have any specific law on the subject. In August 2019, the Rajasthan Assembly passed the Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances in the Name of Honour and Tradition Bill 2019, making it the first state to have a special law for honour killings. Now crimes – including but not limited to killing — motivated by honour are non-bailable offenses in the state, punishable by death or a life sentence, in addition to a fine of up to 5 lakh rupees, setting a hopeful precedent to introduce dedicated legislation at the Centre. Such a dedicated law at the centre would provide not only more reliable data, and an urgency and effectiveness to protect couples at-risk of honour crimes

Road ahead: Proposed amendment to IPC

The government has mooted proposals to amend the law to classify such incidents separately under Indian Penal Code which will also arrange a caste *panchayat* which orders such acts. As per the amendment, bodies like caste *panchayats* can be brought under the ambit of the crime as they are accused in many instances of ordering killings in the name of protecting honour of a community. The Law Ministry has also given a go-ahead to a proposal of the Home Ministry to insert a separate section in the IPC to define the crime.

OBSERVATIONS AND CONCLUSIONS

The article is a modest attempt to exhibit the menace of honour linked violence against women, jeopardizing their right of choice in marriages. Despite the de jure laws recognizing such marriages, at de facto level, such marriages are opposed resulting in such crimes.

It is expected to be thought provoking to the readers as regards necessary legal reforms or community level interventions. It may refresh the ongoing debates around patriarchal honour and women's rights. The observations and conclusions may be summarized as under:

- Such crimes increase when customary practices condone them, and the community provides protection to the perpetrator in the full view of the state.
- The custodial right over adult women needs to be challenged as it undermines women's citizenship rights.
- Autonomy of choices and liberty is a value to be protected.
- Violence in the name of honour is a sign of the state failing to protect individual's rights and freedoms.
- While there are no legal powers vested in community organizations such as *khap*, there is no state regulation to control their assumption of powers.
- A specific law is needed to deal with honour crimes. It should define the roles of the accomplices as the law on sati defines the glorification of sati.
- With the changing economic and social context, the women have started questioning inequalities based on gender, which is a good sign for change.

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