



HONOUR KILLING - FLAGRANT BREACH OF HUMAN RIGHTS

Shreya Research Scholar, Amity Law School, Amity University, Noida

Dr. Rekha Verma Assistant Professor, Amity University, Noida

ABSTRACT:

Despite so many years of independence in the newly liberalised India, which is grateful of her democracy, the majority of marriages tend to be arranged by families, either through a marriage broker, a newspaper classified advertisement, a web-based marriage portal, or the time-honored oral tradition of word-of-mouth communication. But in places where it does not work, marriage can be forced to save the honour of the family, and women can be murdered for refusing a forced marriage and marrying a partner of their own choice, that partner is not acceptable to the family. In some cultures, forced marriages are common. Killing in the name of honour amounts to an utter rejection of 'egalitarianism,' which is a corner stone of India's Constitution, and it testifies how the values of 'feudalism and 'patriarchy' are rooted in our social systems. Honor killings have finally drawn the attention of the State. Honor killings are the illegal decrees by caste/clan/community Panchayats to annul or prohibit marriages, social boycotts, and even It would appear that the Kangaroo Courts used by maoists and feudal lords in Afghanistan, each of which have their own methods for meting out justice, are not dissimilar to those used by Khaps. In spite of the fact that we have knowledge of supercomputers, the message is broadcast all over the world that we are still living in the dark ages.

I. INTRODUCTION

It was believed that once India gained its independence, it would usher in a Modern National State. Within this state, there would be no place for any kind of exploitation and suppression in the name of caste, religion, sex, or language. Instead, values of egalitarianism would take the place of feudal practises and values of the past. As a result, India's Founding Fathers were able to provide the nation with a Constitution that guarantees human dignity by adhering to the principles of equality, responsibility, and fraternity.¹ Everyone possesses the right to their own life, liberty, and safety within their own bodies. Everyone of legal marriageable age, regardless of their ethnicity, country, or religious affiliation, has the right to marry and start a family. There are no exceptions. They are entitled to equal rights about the marriage and the termination of the marriage. Only parties to the wedding who freely and completely consent to the union are allowed to take part in the ceremony. The family is the most natural and fundamental social unit, and as such, it has the right to be preserved by society as a whole as well as by individual states.² However, upsetting reports are emerging from several regions of the country indicating that young people of both sexes who marry across religious or caste lines are being subjected to physical and verbal abuse. If the parents of the boy or girl do not agree with their child's decision to marry someone of a different caste or religion, the most that they are legally allowed to do is severe all social ties with either their son or daughter. However, they are not permitted to make threats or incite acts of physical violence. Moreover, women who marry the man of their choice go to the legal system, which places them outside of the traditional scheme; due to the public nature of their conduct, they embarrass their guardians, which lead them to turn to violence in order to recover their honour. Any disruption of this delicate balance, such as a lady opposing a father's choice of spouse, is seen to have the potential to undermine the father's standing in society. Marriage arrangements are perceived as involving important balancing acts.

II. MEANING AND INCREASING THE MAGNITUDE OF HONOUR KILLING

¹ Sharma, Divya : (2019) "Honour Killings : A Slaur on Humanity". Lawyers update, Sept., at 46.

² Lawz Bureau : „Analysis on Honour Killing; Lawz Media (P) Ltd., New Delhi, Vol. 10, No. 8, Issue 108, pp 10-13.



The term "honour crimes" refers to acts of physical violence, most often homicide, that are performed by male family members against female family members who are either held to have brought disgrace upon the family or who are perceived to have done so. The use of the word honour for such a dishonourable deed, and the fact that there is nothing honourable about such killings, which are in fact nothing but barbaric and shameful acts of murder done by people with a feudal mindset notwithstanding the use of the word honour. In societies that uphold the concept of "honour killing," the phrase "honour killing" can refer to the execution of both males and females. In a broader sense, an honour killing is the act of murdering a member of a family (typically a woman) or clan by one or more other members of the same family, in which the murderers (potentially the wider community, who are more or less related with victims) believe that the victim has brought dishonour upon the family, clan, or community. This belief stems from the fact that the murderers believe that the victim has brought dishonour upon the family, clan, or community. The term "honour killing" refers to the practise of murdering female family members, most commonly men, when they feel forced to do so in order to restore their family's good name.

"Concerning cultural practises in the families that are violent towards women, indicated that honour killings had been reported in Egypt, Jordan, Labnon, Morocco, Pakistan, the Syrian Arab Republic, Turkey, Yemen, and other Mediterranean and Persian Gulf countries, and that they had also taken place in western countries such as France, Germany, and the United Kingdom within migrant communities," was published by the United Nations in 2002. There are approximately a dozen women who are murdered for the honour of their families in the United Kingdom each year. These murders take place almost exclusively within Asian and Middle Eastern families, and many of the cases go unsolved because the families, relatives, and communities involved are unwilling to testify. According to a report published in June 2008 by the Human Rights Directorate of the Turkish Prime Ministry, there is at least one murder committed in the name of honour committed each week in Istanbul alone. During the Partition of another country, which took place between 1947 and 1950, many women were murdered by their male relatives in order to protect their families' honour. This was the first time that the heinous practise of honour killing was brought to light in its most abhorrent form. During the time of the Partition, there was a significant amount of coercion in the form of marriage, which resulted in women from India marrying men from Pakistan and vice versa. The most recent incident of a person being killed to protect their honour occurred in Noida, where a cousin shot and killed two teenage females for having the audacity to sneak out with their boyfriends. In Punjab, Haryana, and western Uttar Pradesh, there are many killings like these that go place on a regular basis. These are acts that are condoned by caste Panchayats on a social level and are carried out by mobs with the complicity of members of the family.

III. HUMAN RIGHTS AND HONOUR KILLING

The practise of murdering someone in the name of honour is tantamount to an outright rejection of egalitarianism, which is a central tenet of India's Constitution. It also demonstrates how the principles of feudalism and patriarchy are deeply ingrained in our social institutions and structures. Honour killings have their origins in mindsets that are archaic and outdated as well as in broken promises. According to the Universal Declaration of Human Rights, which was created in 1948, Article 3 and Article 16 state that "Everyone has the right to life, liberty, and security."³ Everyone of "full age," regardless of their colour, ethnicity, or religion, should be able to marry and start a family if they so want. This choice should not be restricted. They are both entitled to the same rights with regard to the marriage and the dissolution of the marriage. Only parties to the wedding who freely and completely consent to the union are allowed to take part in the ceremony. The family is the most natural and essential social unit, and as such, it has the right to be protected by society as well as by

³ See. Article 3 of the Universal Declaration of Human Rights. 1948.



the state.⁴ In the same line, the right to love and reside with whoever one chooses is recognised as a basic right in the Constitution of the United States. As a result, honour killings indicate a flagrant disregard for universal human rights as well as a significant breach of the fundamental rights that are provided by the Constitution. According to a report published in 2000 by the United Nations Population Fund, the number of women and girls killed by family members on an annual basis for the crime of dishonouring their family could go as high as five thousand. The "dishonour" of having been raped is at the centre of many of these lawsuits.

IV. CONTRIBUTORY FACTORS ON HONOUR KILLINGS

It is possible for a woman to bring shame upon her family for a number of reasons, some of which are listed below:

- (a) refusing to enter an arranged marriage or choosing to marry by own choice;
- (b) engaging in certain sexual acts;
- (c) marrying within the same "gotra;"
- (d) seeking divorce from an abusive husband; etc.

When women agree that only the men in the family have the right to the property and assets of the family, they may sometimes be willing to condone the honour killing of one of their own family members. An honour killing may even have the approval of the mother of the person who was killed (women). Because many men in these societies will refuse to marry the sister of a "shamed" female for whom the family has not chosen to punish, the family name must be "purified" by the murder of the suspected female in order to preserve the honour of other female family members. This can be accomplished by killing the suspected female.⁵

Women's co-modification and concepts of honour are the two primary causes that contribute to discrimination against women in the name of honour. Women are regarded as "property of the males in their family," regardless of the social position, ethnic group, or religion affiliation of the family members. The right to decide what will happen with the property belongs to the person who owns it. Even in this day and age, such ideas about women continue to profoundly shape the beliefs and practises of a great number of societies and cultures; for instance, "honour killings" are extremely common in nations such as Syria and Pakistan. Second, the perception of what constitutes honour seems to be deeply rooted in patriarchal values, which have been so broadly interpreted as including male control over a woman's entire behaviour, including her movements, language, and actions. This male control extends not only to a woman's physical body, but also to every aspect of her personality. In any of these contexts, disobedience on the part of women is an attack on the honour of males, which, in turn, undermines the honour of the family and the community.

Thirdly, the opinion of sociologists is that the reason for the rise in honour killings is that people are afraid of losing their caste status, which provides them with many benefits and leads them to commit this heinous crime. This fear motivates them to kill people in order to protect their reputation.

The second reason is that people's mentalities have not evolved to the point where they can believe that marriages can take place within the same gotra or between members of different castes. These individuals just cannot accept that such unions are possible. The failure of official governance to penetrate rural areas is at the heart of the problem that has led to an increase in the number of honour killings. As a direct consequence of this failure, the practise of honour killings has persisted, despite the fact that it ought to have been eradicated by now. The official legal system also has flaws, which is another one of the reasons for this.

⁴ Ibid Article 16.

⁵ Sharma, Dr. Sobharam (2011) "Honour Killings in India: Need for Deterrent Action", LawZ, LawZ Media (P) Ltd., New Delhi, Vol.II, No.2, Issue 114, Pp.15-18.



The general populace has an increasingly widespread and widespread perception that the resource that is tribal justice, as well as the tacit admission that rural residents perform best under this system, is inefficient, expensive, and inaccessible.

An further factor contributing to this phenomenon is the growing awareness among women. There are currently more women than ever before who are aware of their rights. This credit belongs in great part not only to the effort that has been done to raise awareness by organisations advocating for women's rights, but also to the media and the mobility of women. A response from men who fear losing authority has resulted from women's refusal to comply with decisions or practises that violate their newly discovered rights. This backlash has taken the form of acts of violence, killings, and other such atrocities.

V. ROLE OF KHAP PANCHAYAT

The vast majority of honour killings are voted upon and carried out at the behest of so-called "caste Panchayats," also known as "Khap Panchayats" or "Katta Panchayats," which are assemblies of individuals belonging to a specific caste. Quite frequently, these Panchayats encourage honour killings or other atrocities in an institutionalised way on girls and boys of different castes and religions, who desire to get married or have already been married, or who interfere with the private lives of people. The victims of these killings or even other atrocities can be anyone who wishes to get married or who has been married. These Panchayats are structured in the form of clans and "gotras," and its primary function is to enforce social norms within the society. These kinds of assemblies, when gathered along caste lines, take it upon themselves to assume the power and authority to declare on and deal with objectionable matrimonies. At the same time, they show the least regard for life and liberty and are not deferred by the processes of administering justice. The pernicious practise of Khap Panchayat and other similar organisations taking the law into their own hands and pronouncing on the invalidity and impropriety of "Sagotra" and inter-caste marriages, as well as handing over punishment to the couple and pressuring the family members to execute their verdict by any means, constitutes a flagrant violation of the rule of law and an invasion of the personal liberty of the individuals who are affected by the situation. There have been reports that extreme measures, such as unlawful confinement, persistent harassment, mental torture, infliction of severe bodily harm, and even death, have been taken either by close relatives or by some third parties against the so-called erring couple. These measures include inflicting severe bodily harm. Such depicted actions of Khap Panchayats quite frequently result in social boycotts and other illegal sanctions impacting the young couple, the relatives, and even a segment of the local inhabitants. Elements of the Khap religion vigilantly defend age-old marital bans. They have established a culture of intolerance, which can make a family a pariah in the society of the village if a member of the family is found to have violated Khap marital rules. The ridicule that the family has to endure on a regular basis has made life for them intolerable. Because of this, some of its members are driven to commit murder in order to redeem the family name. Honor crimes are a direct result of the social environment that was created by members of the Khap.⁶

VI. LAW COMMISSION'S PROPOSED LEGISLATIVE SANCTION

The practise of khap panchayats meting out punishment to couples who go for "sagotra" or inter-caste marriage has been labelled by the Law Commission as a "flagrant breach" of the law, and as a result, a draught piece of legislation has been drafted in response to this practise. According to the Prohibition of Unlawful Assembly (interference with the freedom of matrimonial alliances) Bill, 2011, infractions of the Act will be considered cognizable, and they will not be eligible for bail or compounding: In addition, the Bill includes a provision that states no individual or "any group of

⁶ Choudhury, D.R.: (2011) "Khaps Shouldn't be allowed, to have their Way" The Tribune. December 20, 2011 posted by NNLRJ India.



individuals shall assemble with a specific intent to contemplate on, or condemn any marriage that is not prohibited by the law, on the basis that such marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned. This provision is intended to ensure that no person or group of persons convenes with the intention to deliberate on, or condemn any marriage that is not.⁷ According to the proposed amendment to the legislation, a marriage includes a marriage that is either planned or proposed.⁸ The Collector or the District Magistrate has been given the responsibility of ensuring the safety of the people who are targeted in the event that the khap panchayat makes a decision that is contrary to the law. In addition, he or she is obligated to take the necessary steps to prohibit the convening of illegal gatherings of this kind.⁹ Any individual who violates the terms of the Bill would be subject to a fine of up to Rs. 30,000.00 and a possible prison sentence of up to three years.¹⁰ Under the new law, any and all offences will be considered cognizable and will not be eligible for bail or compounding.¹¹ The legal proceedings will take place in Special Courts, each of which will be presided over by either a sessions judge or an additional sessions judge.¹² The Special Court has the authority to investigate cases on its own initiative.

There has been an increase in the use of illegal intimidation by self-appointed bodies in an effort to exert pressure against marriages between members of the same gotra (family) as well as marriages between members of different castes, communities, and religions that involve two adults who are in a committed relationship. This is done in the name of defending the honour of families, castes, and communities. Such organisations have, in a number of instances, resorted to inciting violence, which has resulted in newlywed couples or couples who are interested in getting married being subjected to intimidation and violence, which has also resulted in their being hounded out of their homes and sometimes even murdered.

The proposed legislation states that "even though such intimidation or acts of violence constitute offences under the IPC, yet, it is necessary to prevent assemblies which take place to condemn such alliances," adding that it seeks to "nip the evil in the bud and prevent spreading of hatred or incitement to violence' through such gatherings." The definition of criminal intimidation will be the same as that provided in Section 503 of the Indian Penal Code.¹³ A further provision of the bill states that any member of an unlawful assembly who, either alone or in conjunction with other members of the unlawful assembly, advises, exhorts, or brings pressure upon any person or persons in order to prevent, or disapprove of the marriage which is objected to by the said members of the unlawful assembly, or who creates an environment of hostility towards such couple, shall be deemed to have acted in a manner that endangers their liberty. This provision is intended to apply to situations in which¹⁴ it has been suggested that a full assembly can be considered to be unlawful and guilty if it sits to deliberate on any marriage that is not forbidden by law. If this is the case, then the assembly would be in violation of both federal and state law. To put it another way, guilt will not be limited to the individual level but will also involve the community.

Because of what is known as the "reverse onus" reason, it is also going to be considered that the individuals who participated in such assemblies are guilty unless it can be demonstrated that they are innocent. Similar aspects, such as placing the weight of proof on the accused to establish their innocence, are also present in the new draught; however, the latter expands to include homicides in

⁷ Section 2(1), The Prohibition of Unlawful Assembly (Interference with the Freedom of matrimonial Alliances) Bill, 2011.

⁸ Ibid., Explanation appended to Sec. 2(1).

⁹ Ibid., Sec. 8.

¹⁰ Ibid., Sec. 4.

¹¹ Ibid., Sec. 12.

¹² Ibid., Sec. 9.

¹³ Ibid., Sec. 10.

¹⁴ Ibid., Sec. 3.



its scope. Although the Law Commission is aware that it would be against the most fundamental principle of jurisprudence to place the burden of proving one's innocence on the person who is accused of committing a murder or aiding in the commission of a murder, it maintains that a presumption of guilt should be applied to individuals who participate in unlawful assemblies because it is difficult to obtain eyewitnesses who can attest to an individual's presence at such gatherings. However, why is it that such an assumption cannot hold true in the instance of an honour killing itself, despite the fact that it is difficult to demonstrate culpability due to the social sway that caste/clan panchayats possess over people who are implicated in such crimes?

VII. DISPENSING JUSTICE ON HONOUR KILLING

The judicial system does have a significant part to play, but it is not without its flaws and restrictions. Justice K.S. Ahluwalia of the Punjab and Haryana High Court made a startling statement on June 23, 2006, while simultaneously hearing 10 cases pertaining to marriages between young couples aged 18-21. The cases involved young couples getting married. "The High Court is swamped with petitions where... judges of this Court have to answer for the right of life and liberty to married couples," she said. "The petitions range from the most trivial to the most serious." The State is merely a spectator who remains silent. When will the state finally emerge from its slumber, and for how much longer will the courts be able to offer comfort and relief by resolving such cases?

Caste panchayat leaders were reminded that they aren't above the Constitution by a recent landmark ruling that was handed down by the Additional Sessions Court at Kamal in the "honour" killing case of Manoj and Babli. In this instance, five of the accused were sentenced to death. The court took careful note of the fact that the police officers who had been assigned to provide protection for Manoj and Babli were, in reality, aiding the accused in their commission of the crime. However, after the verdict was handed down in the Manoj-Babli case, on April 13, a congregation of caste panchayats representing Jat neighbourhoods from the states of Haryana, Uttar Pradesh, and Rajasthan was convened to take place in Kurukshetra. In order to legitimately uphold the "social order," it was agreed that panchayats should henceforth struggle for legal legitimacy. It was one of the primary goals of this sarv-khap panchayat to lobby for changes to the Hindu Marriage Act of 1955 that would prohibit marriages between members of the same gotra. A gotra is a clan in which members of the same gotra are considered siblings and are therefore not allowed to marry one another. According to this Act, it is already illegal to marry someone if you come from a particular ancestry on either your father's or mother's side.

During the case of *Lata Singh v. Condition of UP*¹⁵, the Supreme Court made the following observation while "speaking via Justice Markandey Katju: This case reflects a deplorable state of affairs." There is no room for debate regarding the fact that the petitioner currently has and has always had the status of major during the relevant time periods. As a result, she is free to marry whoever she chooses and to cohabit with whomever she chooses. Under the Hindu Marriage Act or any other law, there is no prohibition on a couple marrying outside of their caste. As a result, we are unable to determine what kind of offence was committed by the petitioner, her husband, or the relatives of the petitioner's spouse.

The Supreme Court, in a very recent case called *Arumugam Servai v. State of Tamilnadu*¹⁶, harshly criticised the practise of Khap/Katta Panchayats taking the law into their own hands and engaging in offensive activities that put the personal lives of people marrying according to their choice in danger. During his delivery of the judgement, Justice Markandey Katju made the following observation: We have in recent years heard of "Khap Panchayats," which are known as "Katta Panchayats" in Tamil Nadu. These "Khap Panchayats" frequently decree "Or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married

¹⁵ AIR 2006 S.C. 2522.

¹⁶ (2011)6 SCC 405.



or have been married, or interfere with the personal lives of people." We are of the opinion that this is completely illegal and has to be eradicated in the most merciless way possible. As was already mentioned in the case of Lata Singh, there is nothing honourable about honour killing or any other form of atrocity; in reality, it is nothing but savage and despicable murder. Other atrocities in respect to the personal lives of people that were committed by vicious individuals with a feudal mindset warrant severe punishment. This is the only way that we will be able to put an end to barbaric behaviour and a feudal attitude. In addition, their actions constitute kangaroo courts, which are completely against the law because they circumvent established legal procedures and substitute their own.

VIII. CONCLUSION AND SUGGESTION

It is the responsibility of both the state and society to preserve the human rights of its young citizens, namely their rights to protection, support, and assistance. Therefore, it is to be suggested that honour killing, as a social evil, cannot be just eliminated through the law alone; rather, almost every alternative social, economic, political, and cultural will have to be sensitised against this crime; there is no doubt that the law could only be one of the important tools that are used to fight this heinous practise. The conventional treatments for combating such a social assault consist of requiring immediate sensitization; police officials and law enforcement agencies; the establishment of women's police stations in the Khap belt; counselling for women who have been victims of sexual assault; and civil administrations. It is impossible to eradicate such a savage and deeply rooted social evil by relying solely on increased awareness campaigns; rather, there is an immediate need for aggressive enforcement and penal sanctions, as they are the only things that can effectively combat such a dishonourable conduct. In light of this, the following is proposed:

- 1) It conveys the incorrect impression that khap Panchayats have their own law and that they decide cases not in accordance with any predetermined procedure but rather in a way that they judge to be appropriate. They pay only a sliver of attention to the various judicial institutions and courts. The measures will be taken to ensure that anyone is involved in the crime, regardless of how significant he may be, is swiftly brought under the jurisdiction of the law.
- 2) The Penal Code's section 300 should have a special provision inserted to it to address situations like killings committed out of respect for a person's honour.
- 3) The burden of proof should be placed on the accused individuals, who are members of such groups, organisations, or panchayats. This would hold them accountable for demonstrating their innocence.
- 4) The Special Marriage Act, which was passed in 1954, has to be revised so that the 30-day waiting period for registering a marriage can be eliminated, as long as both parties have consented to the union and are older than the minimum age required by law.

Even if we have knowledge of supercomputers and are basking in the glory of Chandrayan's revelation that there is water on the moon, it is abundantly evident that we are still living in the dark ages. This conclusion can be drawn from the analysis presented above. Every day, we condemn the Taliban for the misrule they exercise, yet Indian society continues to be plagued by caste hierarchy, sexism, and barbarism that is justified under the guise of honour murders.