

BETWEEN LAW & HONOUR: EXPLORING THE SOCIO-LEGAL DYNAMICS OF HONOUR KILLINGS

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Abstract: Honour killings in India of late have assumed enormous proportions baffling all, including the law enforcement agencies, courts, legal fraternity and civil society, regarding its true character, extent and implications as a socio-legal construct. What are the causes of honour killings? What are the relevant provisions related to honour killings, whether these are sufficient to combat honour killings, and if not then what legislative amendments should be brought in, to eradicate the evil of honour killings from the society? The article also highlights the role of the Indian judiciary while dealing with cases related to honour killings. Since the crime of Honour killings is not specifically defined in the penal laws of India. A humble attempt is made in this paper to define the crime of Honour Killing and to distinguish it from murder, to have separate laws and specified punishment for the offence of honour killings.

Key Words: Honour killings, Blood Feuds, Behaviour, caste. Violence, murder, Provocation, Khap Panchayat.

1. Introduction

The practice of killing in the name of honour has been in the picture for a very long time. Honour killing, as the name suggests, is the practice of engaging in the wilful killing of someone to save one's honour and that of the family. The word Honour Killing was first coined by a Dutch scholar Ana Nauten in 1978. Nauten sought this term to distinguish honour killings from blood feuds. Honour Killing also called customary killings, means the killing of a member of a family by other members/community or the clan due to their belief that the

Victim has brought dishonour/disgrace upon the family or the community. Honour Killing may be defined as the killing of a person or persons for actual or perceived immoral behaviour.

"Honor" crimes are acts of violence committed against female family members who are perceived to have brought shame to the family by engaging in dishonourable acts (Abu-Odeh, 20002; Faqir, 2001³; Kogacioglu, 20044; Oberwittler&Kasselt, 2012)⁵. They are usually committed by men, but women are also known to have been tacitly or actively involved. Also, while female family members are the main targets, men believed to have a relationship with them often become victims as well. Acts considered to be dishonourable include premarital sex, adultery, pregnancy out of wedlock, and even mere contact with a man who is not a relative (Abu-Odeh, 2000). Honour crimes include an array of acts such as physical assaults, acid attacks, marring and disfigurement of organs, rape, and murder (Nesheiwat, 20056).

A defining element of honour crimes is that they receive normative support in the respective culture. They are often deliberate, committed collectively by members of a family, condoned by the community, and treated leniently by the criminal justice system (Sen, 2005; Wikan, 2008). However, there is currently a very limited understanding of the extent of such normative support and the factors that influence attitudes supportive of honour killings. The perceived dishonour/behaviour is normally the result of the following behaviours:-

- Dressing in a manner unacceptable to the family or the community.
- Wanting to terminate or prevent an arranged marriage or desiring to marry by own choice.
- Having pre-marital sex or pregnancy.
- Engaging in homosexual acts.
- Inter-caste, Inter-religious, Inter-community marriage.
- Fornication.
- Adultery.
- Falling victim of rape.
- Demanding a divorce etc

While illuminating the various causes of honour killings, the Law Commission in its 242nd Report pointed out¹⁰:

Changing the cultural and economic status of women, and going against the male-dominated cultures have often been one of the causes of honour killings. In some Western cultures honour killings often arise from women seeking greater independence and choosing their way of life. In some cultures, honour killings often arise from women seeking greater independence and choosing their way of life. In some cultures, honour killings are considered less serious than other murders because they arise from long-standing cultural values and traditions and are appropriate and justifiable. An adulterous behaviour of women or premarital sex or assertion of the right to marry according to their own choice, without their family's acceptance or marry outside their caste or religion. Marriages between couples belonging to the same Gotra have also often led to violent reactions from family members. The caste system is also one of the causes of honour killings.

The approach of the society towards these killings is soft based on the nature of crime and the circumstances associated with the honour killing¹¹. They claim that these murders are the outcome of social issues like marriage by a person belonging to the upper caste with that of a person belonging to the lower caste (the caste system is the basis of honour killings in most cases). Such killings as per their perception cannot be treated on equal footing with that of murder. The family of the girl and boy has to face a lot of taunts and humiliation in society for the acts of the girl/boy¹².

2. Honour killings: Historical Roots: A Brief Insight

Historically, codes of honour that legitimize the killing of women accused of sexual transgressions can be found in many societies (Goldstein, 2002). Roman law, for example, penalized men who abstained from killing their adulterous sisters or wives; in 19th-century Latin America the killing of an adulterous woman was widely regarded as an acceptable and honourable act; and the Italian Penal Code provided for reduced sentences for men who killed their adulterous wives, daughters

or sisters until 1981. Historically, codes of honour that legitimize the killing of women accused of sexual transgressions can be found in many societies¹³

Honour Killings are recognized forms of violence against persons in international law because they violate the right to life and security of the person¹⁴. In September 2000, 191 world leaders gathered at the United Nations at the dawn of the New Millennium Declaration. The world leaders recognized their collective responsibility to uphold the universal principles of human dignity, equality and freedom from the fear of violence, oppression and injustice. Honour Killings are the most shameful human rights violation¹⁵. A large number of international Declarations. Conventions which condemn honour killings already exist¹⁶. However, it is also well known that these global declarations, and covenants usually cannot enforce the laws but can only propose state Parties to incorporate the provisions within their domestic laws. The state parties need to realize those commitments through legislative reforms and by ensuring reforms of the penal codes which condone honour killings. Honour killings are extreme and brutal abuse of human rights, violating the most basic human right to life as well as every other right associated with the right to life. The presence of laws within those domestic spheres that treat Honour Killings leniently is a brazen disregard for international law. In most of the countries where honour killings are prevalent, these acts fall under the provisions dealing with the murder¹⁷. But at the same time rules of defences relating to provocation and extenuating circumstances can be found in the penal codes. Such provisions usually originate from the old colonial penal codes¹⁸, where the offender of Honour Killing is successful in invoking the defences available and gets a mitigated punishment, or is exempted from punishment. For instance article 340 and article 98 of the Penal Code of Jordan etc.

3. Legal Frame Work of Honour Killing in India

There is no specific law in India to deal with honour killings. These killings come under the general category of homicide or culpable homicide not amounting to murder. The crime of honour killing is Unlawful homicide. It may fall either under the purview of culpable homicide not amounting to murder under Section 299 of the Indian Penal Code or Section 300 of the Indian Penal Code deals with murder. Section 299 of the Indian penal code provides:

causing the death of the human being to cause death or to cause such bodily injury as is likely to cause death, or with the knowledge that act is likely to cause death.

Section 300 of the Indian Penal Code deals with murder and provides for various situations and circumstances in which a culpable homicide becomes a murder along with the exceptions leading to the reverse consequences. If a killing based on honour is analyzed, one will conclude that all the ingredients of murder are present in an Honour Killing case. There is intention, knowledge etc to cause the death. Honour Killings are mostly planned, premeditated, and well executed with the connivance of family members, society and sometimes with the assistance of police officers. Thus the act of Honour Killing squarely falls under section 300 of the Indian penal code²¹.

Every Honour Killing is primarily and essentially a murder but vice versa is not correct. Only murder wherein the objective of killing is to protect family honour or protect the sanctity of wrong traditions prevailing in the societies or the communities, falls within the sphere of honour killings. Since the crime of honour killings falls within the broad provisions of murder deserving harsher penalties. But there are certain exceptions to the offence of murder. One of the exceptions which is usually invoked for getting mitigated punishment in Honour Killing cases is the defence of grave and sudden provocation²².

The legislators of the Indian Penal Code have summarized the object and purpose of exception in the code and justification for a lenient punishment in case of murder committed on the grave and sudden provocation in the following words: -

"We agree with the great mass of mankind and with the majority of jurists, ancient and modern, in thinking that homicide, committed in the sudden heat of passion, on great provocation ought to be punished; but that in general, it ought not to be punished so severely as murder. It ought to be punished to teach men to entertain a particular respect for human life. It ought to be punished to give men motive for accustoming themselves to govern their passion and in some cases few cases to act with the utmost rigour. In general, however, we would not visit homicide committed with a violent passion, which had suddenly provoked the highest penalties of law. We think that to treat a person guilty of such homicide as we should treat a murderer would be a highly inexpedient course which would shock the universal feeling of mankind and would engage the public sympathy on the side of delinquent against the law"²³

The code has listed under exception-1 to section 300 of I.P.C, the circumstances/essentials under which the offence of murder will be reduced to culpable homicide not amounting to murder punishable under section 304(1) of I.P.C if the murder is committed on the provocation adduced by the deceased²⁴.

The Supreme Court in the case *KM Nanavati v State of Maharashtra*²⁵ has extensively discussed the law relating to provocation in India and observed that:-

The test of 'grave and sudden provocation' is whether a reasonable man belonging to the same class of society and placed in the situation in which the accused was placed, would be so provoked as to lose his self-control. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, and traditional values²⁶.

Analysis of cultural differences reveals that in the case of an honour killing, the cultural, social and emotional background of the society to which an accused belongs is to be taken into consideration while deciding a case related to Honour Killing. In a country with varied social groups ranging from the lowest to the highest state of civilization, it is neither possible nor desirable to lay down any standard with precision, it is for the court to decide in each case, having regard to the relevant circumstances²⁷.

Thus, it becomes very difficult to award deterrent punishments in Honour Killing cases since every culprit would ordinarily invoke the ground of grave and sudden provocation for a murder committed on the flimsy ground of saving the honour. In the majority of the jurisdictions, wherein

grave and sudden provocation is a defence, the courts usually followed and are still following the above interpretation of law in the cases of honour killings²⁸.

4. Homicide and Honour Killings: Comparison

Homicides are no doubt very heinous crimes, but the society at large may or may not be affected, whereas Honour Killings necessarily invite severe social evil consequences and the public at large gets affected. In other words, homicides may affect public interest, whereas the offence of honour killings shakes public conscience". In homicides, several defences available in the penal code are justified whereas, honour killings are planned, and brutally executed more often than not within blood relations and that too in connivance with the law enforcing agencies, therefore the defences should not be ordinarily made available and are not ordinarily justified in the eyes of law³⁰

Honour killings in India occur because of certain age-old practices like casteism, religions, traditions, cultures etc. whereas there is no such criterion for homicides. Motives for killing here may be varied and sometimes justified. In honour killings, the offender is usually also the victim because of the fact the deceased/primary victim on whom violence is usually committed is usually related by blood and in this sense, the offender is the victim as well, whereas it is not usually so in homicide³¹.

The above differences make the crime of honour killings different from general homicides and thus deserve special treatment for prohibiting, punishing and preventing such crimes.

5. Defining Honour killings: Need For

The above discussion explicitly necessitates the accurate, unambiguous and pervading definition of honour killing, the concept has become too complex to define³². The author suggests the following definition:

Honour killing is the murder, of the person who, by way of an act, omission or behaviour, is believed to have brought dishonour to his/her family or community or the clan, committed by the members of such family, community or the clan.

The law on Honour Killing unlike ordinary offences should be made very stringent. Identifying the crime and defining it separately will help every wing of the government and the judiciary to tackle the problem and effectively decide the cases. The provision of joint liability should be introduced in the honour killings cases. Equal punishment should be awarded to the culprits whether they are principal offenders or accessories before or after the fact. The principle which was laid down in *Brinder Kumar Gosh v Emperor*³³ should be followed in Honour Killing cases that are:

"Those also serve and are party to the crime who just stand, wait and watch". Every person involved in the crime of Honour Killing should be made accountable and punished per the law. The burden of proof in Honour Killing cases needs to be shifted from the prosecution to the accused so that the crime the Honour Killing can be effectively tackled. If the rule of law and democracy are to prevail then the acts of honour killings have to dab through the law and mobilising public opinion by changing the mindset of the people through training programmes,

counselling, and awareness by taking the assistance of those persons who are instrumental in carrying out the offence of honour killings³⁴.

6. Judicial Approach in Honour Killing Cases

The judiciary of India plays a marvellous role in punishing the culprits involved in honour killings cases. The judiciary in India is playing a lead role in prohibiting honour killings and in punishing the murderers and the perpetrators of honour killings. Some of the decided cases of honour killings are as:

Shiv Kumar Gupta vs. States In this case Rani Gupta (appellant) pleaded before the court claiming that her father was forcing her to marry a boy she disliked. Of her own free will she entered into marriage with a person of her choice. The Court accepted that she was a major and Rani was given the opportunity of making her statement to the court on her choice. The court stayed the arrest of her husband stating that the personal liberty of Rani Gupta should not be interfered with.

The apex court in **Bhagwan Dass vs. State** examined the concept of honour killings based on motive. The court declared that honour killings fall within the sphere of the rarest of rare cases deserving death punishment. In this case the father,

Shri Bhagwan Dass had been annoyed at his daughter's decision to leave her husband Raju and live in an incestuous relationship with her uncle, Srinivas, a cousin of Bhagwan Dass. This infuriated Bhagwan Dass, the appellant in the case before the Supreme Court, as he thought that the conduct of his daughter, had dishonoured his family, and hence he strangled her with an electric wire. The trial court convicted the appellant and the judgement of the trial court was upheld by the High Court while delivering its judgement on 9th May 2011, the Supreme Court stated that both the trial court and the High Court had given very cogent reasons for convicting the appellant, and hence it saw no reason to disagree with their verdicts. It further stated that there was overwhelming circumstantial evidence to show that the accused committed the crime as he felt that he was dishonoured by his daughter for the above-stated reason the court found no force in the appeal and dismissed it accordingly.

Arvinder Singh Bagga v State of U.P., The Hon'ble court highlighted the abuse of law and abuse of powers by the persons in uniform and passed the remarks as: "We are pained to note brutal atrocities committed by the persons who are having a legal obligation to prevent such illegal acts. Such things should not happen in a country which is still governed by the rule of law. We cannot but express our strong displeasure and disapproval of the conduct of the police officers concerned. In **Sujit Kumar v State**³⁸ the Supreme Court, while delivering its judgement, stated that since the petitioner Sri Sujit Kumar, who was a Jat by caste and his partner who was Tyagi by caste were majors and they loved each other and married, living together of their own free will, the parents had no right to put pressure on them to divorce each other and to issue threats to kill them if the couple refused to abide by their orders. The Supreme Court declared that India is a free secular and democratic country, and the court would not permit practices like Honour Killing or harassment of such couples to prevail in the country. The Supreme Court directed the police of

Meerut and Muzaffarnagar to ensure that the petitioner and his wife were not harassed in any manner by anyone.

*Lata Singh vs. State of U.P.*³⁹ the Supreme Court while delivering its judgement clearly stated that Honour Killing was wholly illegal. It restated the law as under: This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes. There is no bar to an inter-caste marriage under the legal provisions of existing law. Hence it cannot be seen what offence was committed by the petitioner, her husband or her husband's relatives. No offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the court as well as the administrative machinery at the instance of the petitioner brothers who were only furious because the petitioners married outside her caste. It is distressing to note that instead of taking action against the petitioner's brothers for their unlawful and highhanded acts, the police have instead proceeded against the petitioner's husband and his relatives. The court further held that:

The Nation is passing through a crucial transitional period in our history, and the Supreme Court cannot remain silent in matters of great public concern, such as the present one. The caste system is a curse on the nation and the sooner it is destroyed the better it is. It is dividing the nation at a time when we have to be united to face the challenges before the nation. Hence inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However disturbing news is coming from several parts of the country that the young men and women who undergo inter-caste marriage are threatened with violence, or violence is committed against them. Such acts of violence threats or harassment are wholly illegal and those who commit them must be seriously punished. This is a free and democratic country, and once a person becomes a major he or she can marry whoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is to cut off the social relations with the son or the daughter but they cannot give threats or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage...There is nothing honourable in such killings and they are nothing but the barbaric and shameful acts of murder committed by brutal feudal-minded persons who deserve harsh punishment. Only this way we can stamp out such acts of Barbarism...

The court directed that the administration, and police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or a major man, the couple is not harassed by anyone subjected to threats or acts of violence either himself or at his instigation, is taken to task by instituting criminal proceeding, by the police against such persons and further stern action is taken against such persons as provided by the law. In *Arumugam Servai v State*⁴⁰ the Supreme Court strongly depreciated the practice of khap panchayats⁴¹. The bench stated that in recent years panchayats known as katta panchayats in Tamil Nadu often decree or encourage honour killings or other atrocities in an institutionalised manner on boys and girls of different castes and religions who wish to marry, interfere with the personal lives of the people which is wholly illegal. The Court strongly depreciated the practice of khap panchayats taking the law into their own hands and indulging in offensive activities which

endanger the lives of the persons marrying according to their own choice. The court reiterated that in India unfortunately honour killings had become commonplace. That many people felt they were dishonoured by the behaviour of a young man or woman related to them or belonging to their caste because he/she married or had an affair against their wishes or the age-old traditions, and hence they develop a tendency to take the law into their own hands and kill or physically assault such persons or commit some other atrocities on them. The Supreme Court prescribed the death penalty for honour killings describing them as 'rarest of rare cases, and deserve the death penalty⁴². The bench observed that honour killings have become commonplace in many parts of the country particularly in Haryana, Western UP and Rajasthan often young couples who fall in love have to seek shelter in the police lines or protection homes to avoid the wrath of kangaroo courts.

The order of the court was a special one as it took a strong position against honour killings, not only categorizing them as barbaric but also prescribing the severest punishment for such killings. While the death penalty as such might be a debatable issue, what was important was the significance accorded by the Supreme Court to the problem of killings that were done in the name of honour ⁴³.

The court also directed the administration and the police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the state government is directed to immediately suspend the district magistrate collector and SSP/SP of police of the district as well as other officers concerned and charge sheet them and proceed against the department if they do not prevent the incident if they know of it in advance. If they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them as in our opinion they would be deemed to be directly or indirectly accountable in this connection.

In March 2010, the Karnal district court ordered the execution of the five perpetrators in an Honour Killing case of Manoj and Babli. While awarding a life sentence to the khap (local caste-based council) head who ordered the killing of Manoj aged 23 and Babli aged 19. Babli and Manoj were two members of the same clan who eloped and married in June 2007. Their mutilated bodies were found a week later in an irrigation canal. Manoj and Babli belonged to 'Banwalagotra' a jat community and were therefore considered to be siblings even though they were not directly related. The couple went ahead with the marriage, following which their killings were ordered by a khap, a religious caste-based council among jats, in their karora village in the Kaithal district of Haryana. In furtherance of the informal khap panchayats order, newlyweds were abducted and killed by Babli's relatives. In March 2010, the Karnal District Court sentenced the five perpetrators to be executed. The khap head who had given the order but did not take part in the killings received a life sentence, and the driver involved in the abduction got a 7-year prison term⁴⁴ In her verdict Justice W.G. Sharma stated;

This court has gone through sleepless nights and tried to put itself in the shoes of the offender and found that offenders including khap panchayat have functioned in a way contrary to the constitution, ridiculed it and have become a law unto themselves.

Arushi- Hemraj murder case: On 25th of November, 2013 Sessions Court in Ghaziabad announced its verdict in the Arushi- Murder case declaring Rajesh Talwar and Nupur Talwar guilty of killing their daughter Arushi and the servant Hemraj in May 2008. On 16th May 2008, 13- year old Arushi was found with her throat slit open in her bedroom at Talwars Noida Apartment. After declaring domestic helper Hemraj, who was missing, a prime suspect, the servant's corpse was found on the terrace. The Ghaziabad sessions court held both Talwars guilty of double murders. Nupur and Rajesh Talwars were convicted under sections 302, 201/34 and 203. Investigators claimed that Arushi's murder was an honour killing where her father killed her in a fit of rage after finding her with Hemraj in an objectionable position.⁴⁵

Courts have reiterated that killing anyone even in the name of honour is a violation of the basic and inherent right that is right to life and liberty of persons. Courts in India especially the Hon'ble Supreme Court of India have shown serious concern over the menace of honour killings and in this direction issued notices to the centre and nine states, on a public interest litigation, seeking direction to the union government to make the law to protect young couples from honour killings⁴⁶.

In another case Supreme Court awarded a life sentence to three people who caused the death of six persons of a family in a case of Honour Killing at a village in UP in 1991. A bench of Justice H.S. Bedi and Justice J.M. Panchali reversed the order of acquittal passed by Allahabad High Court after the trial Court handed them the death sentence. The bench said that there is not a bit of doubt that killing six people and wiping almost the whole family on the flimsy ground of saving the honour of the family would fall within the "rarest of rare cases" and therefore the trial court was perfectly justified in imposing the capital punishment on respondents⁴⁷.

The first case of Honour Killings where the Supreme Court treated it as a rarest of rare cases. The Indian media and the legal experts hailed it as a landmark judgment. The above judgement delivered by the trial court was appealed against at. The Punjab and Haryana High Court", which admitted the appeal on 13th May 2010⁴⁹.

7. Prevention and Control of Honour Killing: A Way Forward

Recently, the Hon'ble Supreme Court strictly spoke against honour killings as falling within the rarest of rare cases and deserving harsher penalties. In India, the issue of Honour Killing arises mostly because of inter-caste and inter-religious marriage or inter-community marriages as are mostly rampant in the Indian sub-continent and the killing of female relatives and sometimes their partners as well, for commission of such acts by them as are considered to be humiliating to the family honour⁵⁰.

The problem associated with the effective eradication of Honour Killing in India firstly is the difficulty in identifying and classifying an act of Honour Killing in any given community. Since the reason often remains a guarded matter. Also, the fact is that honour killings are also done by mobs and when a mob carries out such act it becomes difficult to identify a culprit. The collection of evidence becomes tricky and very difficult and eyewitnesses never come forth to give evidence

to assist the law enforcement agencies to bring culprit within the clutches of laws. Also, the crime of Honour Killing is not defined in the penal provision⁵¹.

Thus, the lack of proper identification and definition of the crime is also one of the reasons and a great hurdle in eradicating the menace of Honour Killing from society. The indifferent/harsh attitude of the police towards the victims of honour killings is a further discouragement in the eradication of the crime. The Hon'ble Supreme Court of India has expressed strong displeasure and disapproval of the conduct of the police officers concerned. The attitude of the police towards these crimes/victims highlights the sorrowful state of affairs. An example is the outrageous comments made by DIG, Saharanpur, Satish Kumar Mathur. The actual words which he uttered before the media were⁵²:-

"I do not have the magical power to recover your daughter. But if your daughter had eloped then you should be ashamed of it and end your life. I would have killed my sister if she had eloped or else I would have committed suicide."

8. Conclusion

The rule of honour is merciless, persons on whom suspicion of destroying the honour has fallen are not given a prospect to defend themselves and family members have no other socially acceptable substitute but to remove the stain on their honour by attacking the women/men who are perceived to have brought that dishonour. Despite numerous legal provisions and international commitments the governmental efforts to eradicate the long-established practice in India, have persisted to date, especially in the Northern states of Punjab, Haryana and Uttar Pradesh and can be observed in the majority of the jurisdictions throughout the globe. Crime of honour killings is a global problem and every nation has to join hands in its eradication. It is clear from the decision of various courts in Honour Killing cases that the role of the judiciary is the perseverance of the "rule of law". Law and the construal of the law do not salvage any person to kill anyone in the name of honour. If democracy and the rule of law are to prevail in this country then it is mandatory to stop such atrocities like honour killings legislature, executive and judiciary have to be united to eradicate honour killings. Khap panchayat which is running a parallel legal system should be strictly banned.

The need of the hour is to define the crime of honour killings within the Indian context so that it can be effectively handled. Honour killings should also be treated separately from that of other homicides. An attempt has been made to distinguish homicides from honour killings to draw a line between the two for the application of separate treatment while dealing with convicts of honour killings. With the following message, I conclude this research paper:

"The human solution to a human problem like the present one is to address it properly and effectively whether one is analysing the problem through the eyes of the victim or that of the accused since in honour killings victims are on both the sides only the level of victimization varies."

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