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## HONOUR KILLINGS AND INDIAN LEGISLATURE

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### Introduction:

In India, honour based violence and particularly the practice of honour killings is an olden phenomenon. There are reports of cases in almost all parts of India but the states of Punjab, Haryana, Rajasthan and Western Uttar Pradesh are the regions where these incidents occur more frequently. As far as the magnitude of the incidents is concerned, there is no accurate data available with any of the governmental or non-governmental agency. But the studies conducted by various NGOs reveal that India stands into the category of the worst affected nations. It is estimated that approximately 1000 people (both females and males) are killed every year in India owing to alleged honour killings.<sup>i</sup> In India, due to its complex socio-cultural patterns, there are variant causes which result into the killings of their own children. Various experts divulge the intolerance of Indian upper castes to inter-caste matrimonial/pre-marital relationship of females as the prime causes of honour killings. Even marriages into same gore (lineage, clan) have emerged as the causes of honour killings in the northern parts of India particularly the state of Haryana. Besides these Inter-caste or Intra-caste factors, inter-religious marriages have also ascertained as reason behind people killing their daughters for allegedly restoring their lost honour. It is an evident fact that honour based violence including honour killings own socio-cultural acceptance in all those communities where these are frequently practiced. In India, honour killings occur in strongly patriarchal societies often referred to as 'honour-based' societies i.e. jat- sikhs of Punjab, Jaats of Haryana and Rajputs of Rajasthan. In traditional patriarchal societies inheritance is patrilineal. Moreover, the family or kin group, and not the individual, is the basic social, economic and political unit. Therefore, in all such types of societies, the role of community members, community elders and particularly the community councils (such as Khap Panchayats in Haryana) can be observed as patronizing the honour killings and protecting the killers.

These traditional patriarchal societies surprisingly denounce the role of state and the law to prevent honour killings by considering it as an unacceptable interference into their socio-cultural values and familial patterns. Besides the socio-cultural patronage, the practice of honour killings has established largely in India due to legal clemency also.<sup>ii</sup> The incidents of honour killings were acknowledged more as crime of passions resulting from sudden unavoidable provocation under exception I of the section 300 of the Penal Code 1860.

During 1835 -1837, while drafting the penal law for India, the members of the first law commission, constituted by the British Government, had also dwelt upon the issue of honour killings. They considered the issue carefully and favourably under the provision of the grave and sudden provocation. Without going much into the details and definitions of honour, they sympathized with the men whose honour was violated if someone had sex with his wife or sister. Therefore, they suggested that if a man finds someone having sexual intercourse with his wife, daughter or sister and kill the man, or women or both, such killing should not be termed as murder, but should be reduced to manslaughter only.

The framers of the Indian Penal Code did not thoroughly observe the issue of honour killing in India's socio-cultural milieu and they surprisingly ignored the socio-religious implications as well. They were not able to observe the complex attributes of honour killings which differ with the variations of communities and the geographical regions. They rather adopted a baggy approach while defining honour killings as a universally practiced phenomenon wherein men kill the men who commit adultery with their wives or daughters.

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## **State-wise some incidents of Honour – Killings:**

### **Haryana**

In a shocking instance of 'honour killing', the naked bodies of a man and a woman were found inside two big trunks dumped near a park in Haryana's Sonapat district. Nidhi and Dharmendra studied together, were in a relationship for three years and wanted to get married. They were both assaulted by her relatives. Nidhi's family also beheaded Dharmendra Barak, 23 and dumped his body in front of his house. A powerful presence in the state, khap panchayats often issue orders prohibiting marriage within the same 'gotra' or the same village. Those found going against the order are ostracized, lynched and in extreme cases, killed. <sup>iii</sup>

The Manoj-Babli honour killing case was the honour killing of Indian newlyweds Manoj Banwala and Babli in June 2007 and the successive court case which historically convicted defendants for an honour killing. The individuals involved in the murder included relatives of Babli (Grandfather Gangaraj who is said to have been a Khap leader, Brother, Maternal and Paternal uncle and two cousins). Relatives of Manoj, specially his mother defended the relationship. The Khap panchayat's ruling was based on the assumption that Manoj and Babli belonged to the Banwala gotra, a Jat community and were therefore, considered to be siblings despite not being directly related and any union between them would be invalid and incestuous. Nevertheless, the couple went ahead with their marriage, following which they were abducted and killed by Babli's relatives.<sup>iv</sup>

### **Punjab**

Historically, there is an established socio-cultural division of the territory of Punjab into three regions, i.e. Majha, Malwa and Doaba. In studies, it is found that 56 per cent of the total number of cases happens in the Malwa region, while 31 per cent cases occur in the Majha region. However, only 13 per cent cases take place in the Doaba region of the state. The studies on the subject expose that more than half of the cases occur in the Malwa region. There are a number of reasons behind this worrying number of incidents. The Malwa region occupies the largest territory and population of the State as 11 districts (out of total 20) of the State come under the region. Moreover, the largest districts of the State i.e. Ferozepur, Sangrur and Ludhiana fall under the Malwa region<sup>v</sup>.

A Dalit man was allegedly kidnapped and murdered by his girlfriend's family members in Punjab's Ludhiana district. Gagandeep Singh, 21, of Lamma Jattpur village was trying to elope with a minor girl from a Jat family of the same village when a bus driver tipped off the family<sup>vi</sup>.

In another case of honour killing, a couple was shot dead in Punjab on the orders of the girl's father for marrying against his wishes. Prabhjot Kaur and Pradeep Singh from Ferozepur, both students of Class 12 were shot dead by five unidentified gunmen, when they arrived at a local school in Amritsar for their board examinations. There are reports that as many as 15 bullets were fired at the couple, who died on the spot<sup>vii</sup>.

### **Uttar Pradesh**

Honour Killings is very prevalent in the state of Uttar Pradesh for many decades. Uttar Pradesh comprises a more patriarchal society where people are engaged in agriculture in the more rural parts. In spite of rapid economic growth, the norms of this society have still not changed. In this state, honour based violence, and in particular, honour killing is not a new

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phenomenon. Certain communities consider 'honour' a very significant and important part of their culture, due to which anyone who hurts this honour is punished.

There are also circumstances in which the married woman indulges in extra-marital relations with other man which is considered disrespect to the Husband's honour. Another form of honour related violence is the willingness of the girl to marry the boy of her own choice. She is considered as hurting the honour of the family. The situation is aggravated when the boy belongs to an inferior caste, or another religion, or if they decide to elope. This may result in the killing of the boy as well as the girl who has harmed the family's honour.

It has been observed while studying the cases thoroughly that cases comprise majority of those circumstances in which the romantic relationship of the girl (particularly inter-caste, inter-religious, same gotra) comes into the knowledge of family members and there is no happening of any elopement or covert and unaccepted marriage. The girls' family members inculcate, warn and threaten the girl not to further pursue the relationships with the boys in such cases. In case of the boys and the girls decide to continue the relationship, the unacceptable relationship is ended by the girls' family by killing the boy involved and marrying the girl to the boy of their choice against her own will.

In some cases, the family members of the girl are aware of her relationship with the boy. If she continues the relationship with the boy regardless of their threats and warnings, the family members take the matter into their own hands and close the matter by executing the coldblooded murder of girl and end the matter for once and for all. In these cases, the family members assume that by murdering the girl, they would be able to conceal the relationship of the girl and the boy from the community and hence protect the honour of the family in the community. In some cases, these coldblooded murders are not performed secretly.

The family members tell the entire communities about it and even in some cases parade the dead body or parts of the deceased to prove their point that if anybody goes against the rules of the community, the consequences will be disastrous. It is believed that by doing so they try to restore their honour in the community. They try to prove that they stick to their grounds and anyone going against the rule will meet with disastrous consequences. Further, the cases involving the killing of both the girl as well as the boy are those in which the couple gets eloped or get married to each other ignoring the objections and warnings of the girl's family members. Both the girl and the boy are murdered in those cases.

A 19-year-old girl was axed to death by her grandfather over her relationship with a boy from another caste. The incident took place in Sarojini Naidu Nagar. Babulal killed his grand-daughter Malti with an axe for being in relationship with a boy of another caste and surrendered before the police. A case of murder under section 302 of the Indian Penal Code has been registered against him.<sup>viii</sup>

In another incident, a girl was shot dead allegedly by her brother Meena had gone to Allahabad three days back with a young man and returned, after which her brothers Satish and Sanju quizzed her. She was shot at by her brother Sanju after she failed to give satisfactory reply about her disappearance for three days. She was rushed to the district hospital where doctors declared her brought dead.<sup>ix</sup>

## **Bihar**

Bhagalpur in the eastern Indian state of Bihar has also been notorious for honor killings. Recent cases include a 16-year-old girl, Imrana, from Bhojpur who was set on fire inside her house in a case of what the police called 'moral vigilantism'. The victim had screamed for

help for about 20 minutes before neighbours arrived, only to find her smouldering body. She was admitted to a local hospital, where she later died from her injuries.<sup>x</sup>

## **Delhi**

The Capital of India is no exception. In May 2008, Jayvirsingh Bhadodiya shot his daughter Vandana Bhadodiya and struck her on the head with an axe.<sup>xi</sup>

## **Rajasthan**

Honor killings take place in Rajasthan, too. In June 2012, a man chopped off his 20-year-old daughter's head with a sword in Rajasthan after learning that she was dating men. According to police officer, "Omkar Singh told the police that his daughter Manju had relations with several men. He had asked her to mend her ways several times in the past. However, she did not pay heed. Out of pure rage, he chopped off her head with the sword".<sup>xii</sup>

## **Tamil Nadu**

Honour killing has become a menace in southern states as well more particularly Tamil Nadu. Various cases against honour killing have been registered in the state of Tamil Nadu. The media reports cases such as- Elango was murdered by a gang of men who opposed his falling in love with Selvalakshmi 18, a dominant caste girl in Erode<sup>xiii</sup>. Megala 20, who loved with different caste youth Sivakumar 24, attacked and hated by her family and community in Manamadurai at Madurai (District)<sup>xiv</sup>. Kannagi (22) from the backward Vanniyar caste and her Dalit husband, Murugesan (25), harassed and killed by the girl's parents and relatives in Puthukooraipettai village near Vriddachalam in Cuddalore district<sup>xv</sup>.

## **Reasons behind Honour Killings in India**

The most obvious reason for this practice to continue in India is because of the fact that the caste system continues to be at its rigid best and also because people from the rural areas refuse to change their attitude to marriage. Also in our country, the society is the patriarchal. Men are expected to enforce such norms and traditions and protect family and male honour from shame. "Sita" myth is prevalent. This understanding of the notion gives legitimacy to all forms of social regulation of women's behaviour and to violence committed against them.

A woman can cause that stain on the family due to several reasons, including:

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

Sometimes women in the family not only support but also help in the murder of one of their own, when they agree that family is the property and asset are for male members..

Three main factors contribute against women in the name of honour. The first is the commodification of the fair sex. Women are considered as the 'property of the males in their family, irrespective of their class, ethnic or religious groups. The owner of the property has the right to decide its fate. Such conceptions of women deeply inform many societies and cultures even in today's era. For example, honour killings, in countries like Syria, Pakistan and other Asiatic countries are very much prevalent.

Secondly, the perception of what defines honour appears to be deeply immersed in patriarchic values and have been so widely interpreted to include male control which extends not only to the body of a woman, but all her behavior including her movements, language and actions. In any of these areas, defiance by women translates into undermining male honour and ultimately damaging the family and community honour.

Thirdly, the sociologists have opined that the reason for increasing in honour killing is the fear of losing their caste status through which they gain many benefits which makes them commit this heinous crime. The other reason is because the mentality of people has not changed and they just cannot accept that marriages can take place' in the same "gotra" or outside one's caste. The root of the cause for the increase in the number of honour killings is because formal governance has not been able to reach the rural areas and as a result, this practice continues though it should have been removed by now. .

### **Indian Legislative Framework**

Honour killings are also violation of Articles 14, 15 (1) & (3), 17, 18, 19 and 21 of the Constitution of India. The Article 21 under the chapter of Fundamental Rights of the Indian Constitution guarantees the Right to Life and Liberty to all persons irrespective of their citizenship. Through various relevant judgments of the Supreme Court of India, the existing provisions in constitution are sufficient to protect various human rights including the right to life. The landmark judgments interpreting the rights to life conclude that the right to life means the right to live with dignity and it also includes the right to livelihood, right to education and right to health and so on. However, the interpretations through judgments do not particularly comprise the right to marry the girl or boy of one's own choice but it is implied that the right to live with dignity corroborates the same.

Honour Killings are cases of homicide which are brutal crimes under the IPC (Indian Penal Code). Section 299 and 301 of the IPC, deals with culpable homicide not amounting to murder while Section 300, deals with murder. Honour killing amounts to homicide and murder because the acts are done with the intention of murdering the victims as they have purportedly brought dishonour upon the family. The perpetrators can be punished as per Section 302 of the IPC. The members of the family as well as members of the community can also be prosecuted under Section 302 of IPC for planning, provoking or concealing the murder/s or unlawfully hiding the murderers.

There are various relevant sections of the IPC which allow the prosecution of the family members as well as the members of the community under the section 302. The murder/s planned and executed by four or less than four persons, (including by the family members) is an offence under the section 302 of the IPC as per the section 34 of the IPC while in case of the involvement of five or more than five persons, the members of the community can be prosecuted under charges of murder/s as per the section 145 the IPC. Furthermore, section 120(b) and 202 of the IPC allow the prosecution of the members of the community under section 302 of the IPC, who are suspected as deliberately concealing the information about the planning of the murder/s and/or execution of the murder/s.

### India's National Commitment

Article 14, Constitution of India	The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
Article 15(1) , Constitution of India	The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
Article 15(3) , Constitution of India	Nothing in this article shall prevent the State from making any special provision for women and children.
Article 21 , Constitution of India	No person shall be deprived of his life or personal liberty except according to procedure established by law.

### Procedural Law

Although Criminal Procedure code, as with the IPC, does not provide procedural measures specific to *honour killings*, it provides for procedures that are relevant to crimes carried out in the name of honour.

Relevant sections of the CrPC	Procedure	Relevance
Section 98	Power to compel restoration of abducted females.	A magistrate can make an order for the immediate restoration of a woman to her liberty, or in the case of a minor, to her legal guardian. Force can be used in order for there to be compliance with the order.
Section 198	Prosecution for offence against marriage	This Section outlines situations when another person can make a complaint on another's behalf. This includes when the complainant is 18 years or when the complainant is a woman who, according to custom, is not allowed to appear in public.
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Section 482	Saving of inherent powers of the High Court.	This section states that no provision of the criminal procedure code shall be deemed to limit the inherent powers of the High Court, and it becomes the duty of the court to prevent the abuse of the process of court or otherwise to secure the ends of justice, and intervene whenever required. As such the High Court can exercise suo-motu jurisdiction in the interest of justice. It is invoked in the protection matters regarding run-away couples.
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### Existing Penalties under Indian Penal Code

- **Sections 299-304:** Penalizes any person guilty of murder and culpable homicide not amounting to murder. The punishment for murder is life sentence or death and fine. The punishment for culpable homicide not amounting to murder is life imprisonment or imprisonment for upto 10 years and fine.
- **Section 307:** Penalizes attempt to murder with imprisonment for upto 10 years and a fine. If a person is hurt, the penalty can extend to life imprisonment.
- **Section 308:** Penalizes attempt to commit culpable homicide by imprisonment for upto 3 years or with fine or with both. If it causes hurt, the person shall be imprisoned for upto 7 years or fined or both.
- **Section 120A and B:** Penalizes any person who is a party to a criminal conspiracy.
- **Sections 107-116:** Penalizes persons for abetment of offences including murder and culpable homicide.
- **Section 34 and 35:** Penalizes criminal acts done by several persons in furtherance of common intention.
- **Section 300:** introduce “fifthly” clause to Section 300 of IPC which at present defines “murder” under four categories. The additional definition would make khap-dictated *honour killings* a distinct offence and make all those who participate in the decision liable to be tried for the main charge, that is murder, and liable maximum penalty, death.

### Prevention of Interference with the Freedom of Matrimonial Alliances Bill, 2011

In order to keep a check on the high-handed and unwarranted interference by the caste assemblies or panchayats with sagotra, inter-caste or inter-religion marriages, which are otherwise lawful, the Law Commission of India<sup>xvi</sup> has suggested a legal framework in the name of Prevention of Interference with the Freedom of Matrimonial Alliances Bill, 2011 so as to prevent the acts endangering the liberty of the couple married or intending to marry and their family members in the name of Honour Killing. It is considered necessary that there should be a threshold bar against the congregation or assembly for the purpose of disapproving such marriage/intended marriage and the conduct of the young couple. The members gathering for such a purpose, i.e., for condemning the marriage with a view to take necessary consequential action, are to be treated as members of unlawful assembly for which a mandatory minimum punishment has been prescribed<sup>xvii</sup>. So the acts of endangerment of liberty including social boycott, harassment, etc. of the couple or their family members are treated as offences punishable with mandatory minimum sentence. The acts of criminal intimidation by members of unlawful assembly or others acting at their instance or otherwise are also made punishable with mandatory minimum sentence<sup>xviii</sup>. A person participating in an unlawful assembly shall be

presumed to have also intended to commit or abet the commission of offence under the proposed Bill<sup>xix</sup>. Power to prohibit the unlawful assemblies and to take preventive measures are conferred on the Sub-Divisional/District Magistrate. Further, a SDM/DM is enjoined to receive a request or information from any person seeking protection from the assembly of persons or members of any family who are likely to or who have been objecting to the lawful marriage<sup>xx</sup>. The provisions of this proposed Bill are without prejudice to the provisions of Indian Penal Code. Care has been taken, as far as possible; to see that there is no overlapping with the provisions of the general penal law. In other words, the criminal acts other than those specifically falling under the proposed Bill are punishable under the general penal law<sup>xxi</sup>. The offence will be tried by a Court of Sessions in the district and the offences are cognizable, non-bailable and non-compoundable.

### Arguments favouring new law

- Making the crime of honour killing a separate offence would help bring more clarity for law enforcement agencies.
- One of the proposals is to amend the Indian Evidence Act to put the burden of proof on the accused. Thus, the khap panchayat or the family members would be responsible for proving their innocence.
- There would be joint liability under the proposed new law. The khap panchayat (or any group ordering *honour killings* and the person who carries out the killing would be jointly liable for punishment.
- Presently there is no definition of Honour Killing/ crime or clarity.
- Since *Honour killings* /Honour crimes are not separate crime and hence we don't have any data.
- Protection powers to the magistrate at the District level
- New law will provide mandate for special police cell in each district to provide protection to couples.
- New law comes with an institutional machinery and the required coordination of all stakeholders. It will also mandate the different state government and the Centre to work on sensitization of the law enforcement agencies. The new law will mandate social initiatives and awareness to curb such violence through social means.
- Honour crimes should include all the crimes against women which are perpetrated by the community. There are many cases of women being branded witches, paraded naked, tortured in public which are very heinous offences of honour and hence need to be strengthened by a special law and to have stringent punishments.
- Having a special law can be deterrent.

### Arguments against new law

- The existing penalty for the offence of murder is sufficient if they are implemented strictly and effectively.
- A new set of laws would not deter *honour killings* because the basic issue is social sanction for acts committed to curtail same gotra marriage, inter-caste marriage, inter-religion marriage.
- Need for creating awareness among traditional communities through education.
- Holding khap panchayats collectively accountable can be detrimental to members who do not support such killing. Also, it could be misused for vindictive agendas.

### CONCLUSION

Honour killing is done for saving the honour of the family. But there is no such honour in killing any person. 'Religion' and 'culture' cannot and must not be invoked as excuse for the killing of women, because religion and the laws which derive from it are always subjective

interpretations. No 'culture' has the right to kill and harm women based on their perceptions of morality or honour. The freedom of belief does not mean freedom to kill.

Honour killings, similar to various other social evils in Indian society, had been possessing the social and legal acceptance formally or in latent manner until Indian society had become familiar to the Western liberal universal value system through the process of socio-psychic and legal-political modernization since the British era in India. Historically, the leniency of the Indian law and silence of socio-religious reformers towards honour killings and the identical intention of community elites to justify the honour killings approves the same viewpoint. Thus, the practice of honour killings in India should be observed as one of the consequences of the lag of social, psychological and legal-political modernization among various Indian communities which, due to illiteracy, rural settings, pastoral economy could not adopt the liberal and secular universal value system and still maintain the bigoted conservatism as per their community based values system. Though, the civil society and the government has become more concerned during recent years due to the emergence of feminist movements, exploration by the media and the transformation of India from traditional prejudiced society to a legal and rational society and from rigidly patriarchal to egalitarian society. But the socioculturally tribal communities, untouched to the process of social, psychological and legal political modernization, still pursue the evil of honour killings as an accepted and even prestigious socio-cultural tendency.

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