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Vulnerable and Disadvantaged Groups Vis-a-Vis Criminal Justice- A Human Rights Perspective

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Killing In The Name Of Honour: A Threat To Humanity

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The killings are outcome of social issue like marriages with a person of so called lower caste. The family of a girl has to face lots of taunts and humiliation in the society for acts of the girl. However the time has come when we have to consider these social issues relevant while considering the death sentence in such circumstances. Now these should not be considered rarest of rare cases.¹

Introduction

Honour killing means the killings of couples who marry with the *same gotra*, sub-castes or some times against the wishes of the parents and thereby cause damage to the reputation of the family. These are acts of vengeance, committed by male family members against female family members, who are supposed to have caused heavily and ruined the 'so called culture' with their behaviour. This is a sort of violence supposed to be permitted in the name of protection of custom, traditions, culture, norms. Their family members find the only way to kill them in order to restore the lost honour. Victims are shot, stoned, burned, buried alive, strangled, smothered, and stabbed in the name of restoring honour.² This mishap happens not only with women but may take place against male members also.

To understand the problem with its magnitude it is essential to reflect the causes of this heinous crime and to see how it is deeply rooted in the country. This is also a type of domestic violence because the victim and also the perpetrator are belonging to same family within intimate relations, but only difference is that another co-victim is outside the family. Along with finding the roots author would like to reflect upon the judicial approach towards this social evil and the dire need to provide a strict and concrete legal framework in the present circumstances.

Magnitude

The killing in the name of honour is increasing day by day where many couples and specially women are brutally murdered and only few are reported as Honour killings. Mostly through the reports submitted to the United Nations Commission on Human Rights show that honour killings have occurred in Bangladesh, Great Briton, Israel, Brazil, Egypt, Pakistan, Sweden, Turkey, Uganda etc, India is not an exception. This is specifically found in Northern states such as Hararyana, Punjab and Uttar Pradesh where people strongly oppose inter-caste and inter-religion marriages. The human rights activist argue that they should be regarded as part of much larger problem of violence against women³

Nature and Causation of honour based violence in India

Honour based violence is violence against an individual who has 'dishonoured' their family.⁴ The important thing about this offence is the collective nature of crime. Many members of extended family plan and act together and commit crime. They are in closed or remote relations. The reputation of the family is considered to be so significant in the community that if it is dishonoured the only way to restore it is to apply violence. Another characteristic of honour killings is that the perpetrators often do not face negative stigma within their communities, because their behaviour is seen and protected under the justification of maintaining the honour of family, instead they are considered to be the protectors of pure culture. In such type of offences quite often the minors are selected by the perpetrators to act as killers because of the lenient legal treatment provided in the legal system. Women are used to control the erring (?) girl child as they are the best conductors of culture transmission and care takers for 'so called honour' of the family.

Today the major cause of this crime is found in changing cultural and economic status of women, and their agitation against the male dominated culture. Also it is due to the reason that honour killings are treated less



serious than murder because they arise from long standing cultural traditions and thus deemed appropriate and justifiable. An adulterous behaviour of women, premarital relationship or assertion of marriage according to own choice are widely known causes for honour killing. ⁵India has been since time immemorial followed and approved the patriarchal family set up, where man is perceived to be the owner and women as a property of the man. Being owner he can enjoy and can deal with her (property) as he desires. Patriarchal tradition casts the male as sole protector of the female so he must have total control over her, if the protection denied and control is lost, he losses honour as either as he failed to protect her or he failed to bring up her correctly. ⁶ To control her and to prove his superiority and power, he has exerts violence in every relation with her as daughter, sister and wife etc. The marital relationship has given him the licence to control her with social support. The extreme aspect of this power relationship has been seen in female sexuality been regulated by physical violence and ranging from all incidences of violence to honour based killings.

Women being the so called symbols of family prestige and culture transmitters in every culture are restricted in every possible manner. They were restricted to follow norms and customs even against their wishes and then few women who express their desires falling in love with, or maintain relations with other men of her choice, or choose their own husbands are seen as transgressors of the boundaries of appropriate sexual behaviour. As a result, they are subjected to the direct violence of the most horrific kind. The causes among other are viewed in cases of forced marriages and refusals by girls to arranged marriages, even taking the family matters outside or open to public is also causing as trigger to honour based violence in society.

The '*khap Panchayat*'s desperate move behind the honour killings is one of the most horrifying feature in its causation. The brutal killings in the name of honour are ordered by these '*caste panchayats*' or '*katta panchayat*' which is group belonging to particular caste and has the strong support of those belonging to that caste. They have the parallel system of administration of their caste and authority to control and interfere the personal lives of people in the name of upholding the norms and the culture. They take the law in their hands and order the family members to follow their order and kill their relatives in order to pure the caste or religion.

Legal Response to Honour Killings

The need of legal response against this social evil is very important to curb it as the family, sometimes alone, or in association with other relative, and certain body of persons like the '*caste*' or '*khap*' or community based *panchayats*, is instrumental in committing these killings and crimes. These *panchayats* or associations, through various kind of coercive and punitive actions, want to create terror and stop marriages and associations taking place.

Constitution as a Grund Norm / base law of the land has stand in the way of every human right violation, and specially provided protective discrimination in favour of weaker and vulnerable section of society. The Preamble, Fundamental rights, Directive principles, Fundamental duties and every part of Constitution has provided provisions to protect from unjust, harsh, and cruel treatment and have been the strong supporter of human rights by all means. It has also provided Constitutional remedies for violation of fundamental rights. The honour based violence has been dealt in detail with by the penal code through various sections like 299,300,307,308, 354 etc

Even after the big span of seven decades after the independence there are no desirable changes in our society. The religion and caste based society is not ready to accept the secular character in personal matters. The walls of these ancient norms are not broken, though we claim to be advanced in other matters. The social reformers have also tried their best to overcome these issues but it has not been accepted in practice. Still the marriages are held to be sacred and inter-caste or inter-religion marriages are the sinful acts and therefore unacceptable. The legislature had passed the Special Marriage Act, 1954 to facilitate these inter-caste marriages but still couldn't break the barriers up to the mark.

Other legislations such as Human Rights Protections Act, 1993, Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 have been passed to curb menace like honour based violence. The



Protection of Women from Domestic Violence Act, 2005 has covered every type of violence against women but still the blatant violation of human rights and honour based violence is rampant.

The legislative framework against this offence against is still awaited. The women's organisation AIDWA⁷ had drafted and submitted 'The Prevention of Crimes in the name of Honour and Tradition bill to Government in 2010. It hold all persons including young persons and women have the right to control their own lives, a right to liberty and freedom of expression, and a right of association, movement and bodily integrity. They have a right to choose their own partners in marriage or otherwise and any action to prevent the exercise of these rights shall amount to an offence under the provisions of this Bill.⁸ But this was not the finality as again in 2012 the Law Commission of India in it 242nd report presented a bill called "Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill 2011. The object was to control the unlawful assemblies by the *caste panchayats* to prevent the marriages by choice. It provided stringent measures by making the offence non- bailable, non compoundable and cognizable, but still it did not meet the success as the bill remain on paper. As the offences against humanity in the name of honour killings go unabated recently a private member⁹ proposed a new law to give the young couples a liberty to marry out of caste and religion. "The Prevention of Crimes in the name of Honour and Tradition and Prohibition of Interference with the Freedom of Matrimonial Alliances Bill, 2017" seeks to protect individual liberty, right of association, movement and bodily integrity and the right of adults to choose their own partners in marriage and provides for those endangering the liberty of a couple through social sanctions or ostracism and causing harm or harassment to them can evoke imprisonment of up to 10 years along with a fine and many other provisions, but today we are still in a dire need to have special law on the issue of this heinous crime.

The Judicial Concerns to issues of Honour Killing

After independence judiciary has actively contributed to root out the social evils and has stand in the way of blatant human rights violation by providing guidelines, giving directions, and also evolved benevolent jurisprudence to secure the rights of masses and specially to protect the rights of vulnerable section. In respect of honour killing also it has heavily responded and shown its concern thorough various judgments.

Inter-cast marriages in national interest-

In the landmark case of *Lata Singh v. State of U.P. and Others*¹⁰ Justice Ashok Bhan and Markandey Katju expressed views on honour killing that, "Such acts or threats or harassment are wholly illegal and those who commit them must be severely punished". The court also observed that, Inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. It further added that, if the parents of the boy or girl do not approve of such inter-caste or inter-religion marriage the maximum what they can do is that they can cut off social relations with the son or daughter, but cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage.

While observing the heinous nature of the act the court has directed to the administration and police authorities throughout the country the couples are not harassed by any one nor subjected to threats. Court observed that there is nothing honourable in such killing and in fact they are nothing but barbaric and shameful acts of murder committed by brutal and feudal minded persons who deserve death sentence.

Caste system a curse on the nation-

In *Arumugam Servai v. State of Tamil Nadu*¹¹ the bench stated that, the caste system is a curse on the nation and sooner it is destroyed the better. In fact it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly.

Not to tolerate in the age of democracy-

*G Krishanan s/o Govindan v. Union of India*¹², in this case the court observed that, In fact even today the upper caste and OBC often look down and insult the member of Scheduled Castes and Scheduled Tribes.



This can no longer be tolerated in this modern age of democracy. In fact there is nothing honourable in this and this is an abominable, disgraceful and shocking practice which must be suppressed by the state.

No jurisdiction and legality to Khap Panchayat-

It is observed that, the Indian judiciary has been persistently challenging the jurisdiction and legality of such community groups like Khap Panchayat where the criminal activities are a common practice. The Supreme Court of India in case of Smt. Laxmi Kachawahav. The State of Rajasthan¹³ observed that, 'Khap Panchayat do not have jurisdiction 'to pass social boycott order or impose fine on them because it violates the basic rights of an individual. It is also observed that, it is always a contravention to the rights conferred vide part III of the Indian Constitution.

Honor killing-Rarest of rare?-

In Maya Kaur Baldev Singh v. State of Maharashtra¹⁴ In this case of honour killing involving a Jat Sikh family in Maharashtra, the Supreme Court upheld the life imprisonment awarded by the High Court to five persons, including two women. A Bench comprising Justice S.B. Sinha and Harjit Singh Bedi, while upholding the sentence, held that the case fell within the category of the rarest of rare cases. It is observed that, Honour killing crimes are the by-product of patriarchal group norms and it is to a certain extent in conformity with the societal norms from which such atrocities practices virtually emanate.. Indian judiciary impose capital sentence in issues related to honour killing by bringing it within the strict ambit of the "rarest of the rarest" principle.

Sagotra marriages- valid-

The judiciary has given green signal for performing marriages within the same gotra is valid marriage. In the case of Madhavarao v. Raghavendrarao¹⁵ it was held that the marriage in question between a husband and wife belonging to the same gotra was valid. Through this landmark judgement by the Bombay High Court where it declared that same gotra marriages were legal.

Perpetrators to know the gallows await them-

In case of Bhagwan Das v. State of (NCT) of Delhi¹⁶ that, person who are planning to perorate honour killing should know that, the gallows await them. The Indian judiciary have opted for such a harsh punishment primarily to exterminate such barbaric and feudal practices which are a slur on our nation.

Role of police and society-

Honour killing seems to be spreading its tentacles in certain section of the society. It connotes a certain mind-set, that the chastity of the girl belongs to her family. This is a dangerous trend, which is not only to be deprecated but a holistic effort is to be made by all sections of the society to eliminate it completely. The role of police is of considerable significance for conducting prompt, efficient and independent investigation so that the real perpetrators of the crime are brought to book.


Need for urgent legislative framework

Recently in Shakti Vahini v Union of India decided on 27th March 2018 the Supreme Court has taken notice of the whole research findings in respect of this honour crime and also provided guidance to the legislature to draft a law on honour crime though preventive steps, remedial measures, and punitive measure in its direction to curb the evil of honour killing in our country. In the opening of judgment Chief Justice Dipak Misra has expressed a serious concern over this sorry state of affairs in the words of French philosopher Simone Weil as 'Liberty, taking the word in its concrete sense consists in the ability to choose. When the ability to choose is crushed in the name of class honour, and the persons physical frame is treated with absolute indignity, a chilling effect dominates over the brains and bones of the society at large.'

Conclusion-

The overview of the subject provides an insight that as a long term measure to curb such crimes, larger societal change is required via education and awareness. In our country judiciary has seriously contributed to the protection of human rights but it is observed that until now we are not able to provide a strong legislative framework due to reluctance of political parties.

Basically honour killing requires separate treatment thorough special legislation because, though the public perception of it is just a murder', it is not so. It is predetermined with utmost brutality and has no

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consciousness behind. It should be tackled more seriously because it is very much a caste issue, and not reported by families due to shame. It is less reported also because of fear of ostracized by community or village. More alarming issue is that we must not allow the caste panchayat to control the state and take law in its own hand and keep law and order at stake.

To conclude in the words of then Chief Justice Dipak Misra-”Freedom, independence, constitutional identity, individual thought of a woman cannot be allowed to be curtailed by application of physical force or threat or mental cruelty in the name of self assumed honour....one may feel ‘my honour is my life’ but that does not mean sustaining one’s honour at the cost of another. That apart neither the family members nor the members of the collective has any right to assault the boy chosen by the girl. Her individual choice is herself respect and creating dent in it is destroying her honour. And to impose so called brotherly or fatherly honour or class honour by eliminating her choice is a crime of extreme brutality. It is a vice, condemnable and deplorable perception of ‘honour’ comparable to medieval obsessive assertions.”

Reference-

- 1 Justice V. S. Sirpur Karnad and Justice Deepal Verma
- 2 “Impunity for domestic violence, ‘honour killings’ cannot continue” UN, March 2010
<http://www.un.org/apps/news/story>
- 3 ‘Honour Killings – Crime Against Women’ by Dr.Sarwati Rajulyer-IOSR Journal of Humanities and Social Science Vol 10,ISSUE 3 March April 2013
- 4 “Ethics Guide, Honor Crimes”, BBC, 2012.
http://www.bbc.co.uk/ethics/honourcrimes/crimesofhonour_1.shtml²Honor Violence – What Is Honor Violence? AyyanHirsi Ali Foundation, <http://theahafoundation.org/issues/honor-violence/>
- 5 Shakti Vahini v Union of India 2018
- 6 Dr. Sarwati Raju Iyer “ Honour Killing-Crime against Mankind “ IOSR Journal of Humanities and Social Science Vol 10 Issue 3 Mar-Apr 2013, PP01-04 e-ISSN 2279-0837
- 7 All India Women’s Democratic Association
- 8 Chapter II s.3 of the The Prevention of Crimes in the Name of ‘Honour’ & Tradition Bill, 2010
- 9 V Vijaysai Reddy has introduced a private member bill in the Rajya Sabha that aims to stop honour killings
10. Lata Singh v. State of Uttar Pradesh (2006(5)SCC 475). AIR 2006 SC, 2522 decided on 07 July 2006
11. (2011)6 SCC 405 (AIR 2011 SC 1859)
12. G Krishanan s/o Govindan v. Union of India W P No. 12240 of 1994
13. AIR 1999 Raj 254
14. Maya Kaur Baldev Singh v. State of Maharashtra, SC, Appeal no. 1364-66 of 2004
15. AIR. 1946 Bombay H.C. 377
- 16 AIR 2011 SC1863

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