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Ph: +918255090897 Website: journal.lawmantra.co.in

E-mail: info@lawmantra.co.in contact@lawmantra.co.in

HONOUR KILLING: A SOCIO LEGAL STUDY*

Abstract

The origin of honour killing can be traced back to the Roman times when the paterfamilias or the senior male member within a household, retained the right to kill an unmarried but sexually active daughter or adulterous house wife. Honour based crimes were known in medieval Europe where early Jewish law mandated death by stoning an adulterous wife and her partner. Even today the practice is most commonly associated with regions like North Africa, Middle East and in some Asian Countries as well.

An honour killing or shame killing is the homicide of a member of a family by other members, due to the perpetrators' belief that the victim has brought shame or dishonour to the family or has violated the principle of the family or of the religion, usually for reasons such as refusing to enter into an arranged marriage, being in a relationship disapproved by the family, having sex outside the marriage, becoming the victim of rape, dressing in ways deemed to be inappropriate and so on.

This Article is an attempt to make a comparative study of the different legal systems of the world on Honour Killing, to find out the causes of such killing which is deeply rooted in different social structures and to provide suggestive measures that may be adopted to update the law in order to prevent this social menace.

Introduction:

Sharif Kanaana, professor of anthropology at Birzeit University states that honour killing is "a complicated issue that cuts deep into the history of Arab society." The notion of honour killing and its justification for violence and killing is not limited to any particular society or region. Indeed, honour and honour based violence are reflected in historical events of many countries, and in many works of literature. For instance, duelling was a key practice through which claims of masculine honour were made, maintained and understood in western societies.

In England the fifth wife of Henry VIII was beheaded based on the allegation of adultery. In British literature, Shakespeare's Desdemona was killed on allegation of infidelity and Romeo and Juliet tracked an ancient family feud over honour. King Arthur and the Knights of the Round Table centred on the notion of honour.

* Mr. Debabrata Roy, Assistant Professor, Faculty of Law, the ICFAI University, Tripura.

Similar notions can be traced in Latin American Societies. In Brazil and in parts of Latin America, Machismo is often described as a code of honour. In the early times of Peru, the laws of the Incas permitted the husbands to starve their wives to death as punishment for committing an adulterous act.

In fact, several great wars started over honour. Likely, the clearest of those was the Trojan War, which began over the honour of Helen. Her father required that all her suitors defend his choice for her marriage, thereby setting all of Greece against Troy.

In ancient Roman times, the senior male within a house hold retained the right to kill a related woman if she was engaged in pre-marital or extra-marital relations. According to Blackstone, the Roman law justified homicide when “committed in defence of chastity either of oneself or of relations.¹”

According to Statistics provided by United Nations up to November 28, 2013, one in five cases of honour killing every year comes from India. Of the 5000 cases reported internationally, 1000 are from India².

Honour Killing and its Characteristics:

Honour killings are acts of violence, especially death committed by male members of the family against female family members, who are held to have brought dishonour to the family. A woman can be targeted by her family for a variety of reasons, including refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce even from an abusive husband and allegedly committing adultery³.

Although rarely, men can also be the victim of honour killings by the family of women with whom they perceived to have inappropriate relationship⁴. The Term “Honour Killing” applies to both women and men in the culture that practice it.

The Distinctive nature of honour killing is the collective nature of the crime – many members of an extended family plan the act together, sometimes through a formal family council. Another significant feature is the connection of honour killings to the control of women’s behaviour in particular in regard to sexuality or male interaction or marriage by the family as collective. Another aspect is the importance of the reputation of the family within the community and the stigma associated with the losing of status, particularly in the tight-knit communities⁵. Another significant aspect of honour killing is that perpetrators often don’t face negative stigma within the communities because their behaviour is seen as justified⁶.

¹ <http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/hk-ch/p3.html>.

² <http://www.aljazeera.com/indepth/opinion/2013/11/honour-killings-india-crying-shame-20131127105910392176.html>.

³ Violence Against Women and “Honor” Crimes”. Human Rights Watch. Retrieved 6 April 2001.

⁴ Al Jazeera English (16 August 2010). Retrieved on 1 October 2011.

⁵ *Hbv-awareness.com*. Retrieved 2015-02-15.

⁶ “Introduction – Preliminary Examination of so-called Honour Killings in Canada “. *Justice.gc.ca*. Retrieved 2015-02-15.

The incidence of honour killing is very difficult to determine and estimate vary widely. In most countries data on honour killings is not collected systematically and many of these killings are reported by the families as suicides or accidents and registered as such⁷. Although honour killings are often associated with Asian continent, especially the Middle East and South Asia. They occur all over the world⁸. The methods used in honour killing are of different kinds such as stoning, stabbing, beating, burning, beheading, hanging, throat slashing, lethal acid attacks, shooting and strangulation. The murders are sometimes performed in public to warn the other women within the community of the possible consequences⁹.

Often minor girls and boys are selected by family to act as killer, so that the killer may get benefit of the most favourable legal outcome¹⁰.

Specific Triggers of Honour Killing:

The causes of honour killing are diverse in nature and vary from society to society. These causes are deep rooted in the society and can be explained as under:

- a. Refusal of an arranged marriage is often a cause of honour killing. The family which has prearranged the marriage risks disgrace if the marriage does not proceed.
- b. A Woman attempting to seek divorce or separation without the consent of the husband or extended family can also be a trigger for honour killings.
- c. In certain societies an allegation against a woman is enough to tarnish her family's reputation, and to trigger honour killing the family's fear of being ostracised by the community is enormous.
- d. In certain other societies victims of rape suffer severe violence including honour killings, from their families and relatives. In many parts of the world women who have been raped are considered to bring dishonour to their families. This is especially the case if the woman becomes pregnant.
- e. Homosexuality can also be considered as a ground for honour killings by relatives, it is not only the same sexual acts that trigger violence- behaviours that are regarded as inappropriate gender expression can also create suspicion and lead to honour violence.
- f. Honour killings are often a result of patriarchal views on women and the position of women in society. According to Shahid Khan, a Professor at the Aga Khan University in Pakistan "Women are considered the property of males in their family irrespective of their class, ethnic or religious group. The owner of the property has the right to decide its fate. Concept of ownership has turned women into commodity which can be exchanged, bought and sold. In such societies women are not allowed to have control over their bodies and sexuality: these are the properties of the males of the family who must ensure virginity until marriage; and then the husband to whom his wife's sexuality is subordinated- a woman must not undermine the ownership of her guardian by engaging in premarital sex or adultery.

⁷ <http://www.unl.edu/rhames/courses/212/readings/honor-kil-ng.pdf>.

⁸ *Honor Killings: Amnesty USA*". *webcache.googleusercontent.com*. Retrieved 23 December 2013.

⁹ http://www.genevadeclaration.org/fileadmin/docs/Co-publications/Femicide_A%20Gobal%20Issue%20that%20demands%20Action.pdf.

¹⁰ http://www.humanrights.ch/upload/pdf/070419_Kvinnoforum_HRV.pdf.

- g. The concept of family honour is very important in many communities. The family is viewed as the main source of honour and the community highly values the relationship between honour and the family. Acts by family members which are inappropriate are seen as bringing shame to the family in the eyes of the community. Such acts often include behaviours of women that are related to sex outside the marriage and way of dressing, but may also include homosexuality. The family loses face in the community and shunned by the relatives as well. The only way through the shame can be erased is honour killing.
- h. Legal framework can encourage honour killings. Such laws include on one side leniency towards such killings, and on the other side criminalisation of certain behaviours, such as extramarital affairs, indecent dressing in public places and homosexual acts etc. with these laws reassuring the perpetrators of honour killings that people engaging in these behaviours deserve punishment.
- i. A forced suicide may be a substitute for honour killings. In this case the family members do not directly kill the victim themselves, but force him or her to commit suicide, in order to avoid punishment. Such suicides reported to be common in South-eastern Turkey, Iraq and Iran.
- j. In the case of an unmarried girl associating herself with a man, losing virginity or being raped, the family members may attempt to restore its honour with a “shotgun wedding”. The groom will usually be the man who dishonoured her, but if this is not possible the family may try to arrange a marriage with another man, often a man who is a part of the extended family of the one who has committed the acts with the girl. This being an alternative to honour killing, the girl has no choice but to accept the marriage¹¹.

Religion and Honour killing:

Widney Brown, the advocacy director of Human Rights Watch, said that the practice of honour killing “goes across culture and across religion. Phyllis Chesler, professor emerita of psychology and women studies at the College of Staten Island stated in a study that worldwide, 91 percent of the perpetrators were Muslims. Resolution 1327 (2003) of the Council of Europe states that, “the Assembly notes that whilst so called ‘honour crimes’ estimate from culture and not religious roots are perpetrated worldwide (many in patriarchal societies or communities), the majority of the reported cases in Europe have been amongst the Muslims or migrant Muslim Communities (although Islam itself does not support death penalty or honour-related misconduct)”¹².

Trends in Honour Killings:

To combat the epidemics of honour killings requires understanding of what makes these crimes unique. They differ from plain and psychopathic homicides, serial killings, crime of passion, revenge killings and domestic violence. Their motivation is different and based on code of morality and behaviour that typify some cultures, often reinforced by the fundamentalist religious debates.

¹¹ <http://www.meforum.org/2646/worldwide-trends-in-honor-killings>.

¹² Ibid.

Most of the killings are not classified as such, are rarely prosecuted, or when prosecuted in the Muslim World, results in relatively light sentence. When an honour killing occurs in the West, many people, including the police still shy away from calling it an honour killing.

Honour killings accelerated significantly within a period of 20 years between 1989 to 2009. This may mean that honour killing is genuinely escalating.

Worldwide average age of victims of honour killing for the entire population is twenty three. This is true for all geographical regions. Thus, wherever honour killing is committed it is generally a crime against young people. Just over half of these victims are daughters and sisters; about a quarter are wives and girlfriends of the perpetrators; the remainder includes mothers, aunts, nieces, cousins, uncle and non-relatives.

Honour killings are a family collaboration. Worldwide, two-third of the victims was killed by their family of origin. The following table (table one) is a clear evidence of this point¹³.

Table One¹⁴:

REGION	Worldwide	North America	Europe	Muslim World
AVERAGE AGE	23	25	22	23
Killed by Family of Origin	66	49	66	72
Daughter/Sister	53	50	49	56
Wife/Girlfriend	23	27	34	17
Other	24	33	27	27
Paternal Participation	37	53	39	31
Multiple Perpetrators	42	42	45	41
Multiple Victims	17	30	7	21
Tortured	53	39	67	49
"too Western"	58	91	71	43
"sexual impropriety"	42	9	29	57

Worldwide 42 percent of these murders were carried out by multiple perpetrators, a characteristic which clearly distinguishes it from Western Domestic Femicide. Multiple murders were at their highest in North America and at their lowest in Europe. In the Muslim World just under a quarter of murders involve multiple victims.

Worldwide more than half the victims were tortures; i.e., they did not die instantly by in agony. In North America, over one-third of the victims were tortured; in Europe thro-third were tortured; in Muslim World half were tortured. Torturous death include: being raped or gang-

¹³ <http://www.meforum.org/2646/worldwide-trends-in-honor-killings>.

¹⁴ Ibid.

raped before being killed; being stabbed many times; being stoned or burned to death, being beheaded or having one's throat slashed.

Finally, worldwide 58 percent of the victims were murdered for being too western and for resisting or disobeying culture and religious expectations. The Accusation "Too Western" is the exact term used by the perpetrators. Being too western means being seen too independent¹⁵.

Honour Killings in India and its Failure to Legally Recognise the Problem:

Dr. B. R Ambedkar has said in the context of a discussion on inter-caste marriage: "political tyranny is nothing compared to social tyranny and a reformer, who defies society, is a much more courageous person than a politician who defies government."

In spite of increase in the number of crime in the name of honour, in spite of Judgments and expression of outrage in courts across India, successive governments have displayed criminal negligence in their approach to these crimes. There is no definition of this crime, no legal recognition of the various aspects of the crime, no legal protection has been afforded to the couple in self-choice partnership, no measures to prevent this crime, no accountability, no punishment. And additionally, since there is no legal recognition of the crime, there are no statistics available. In the records of the National Crime Records Bureau , such crimes do not exist.

In July, 2009 in a calling attention motion, members across party line, for the first time spoke about honour crimes and supported the demand of a separate law. In response the then Home Minister said: "I think the demand for a separate law is the one that has been made most eloquently. But I am afraid that is a very simple demand.....the answer is not to make a separate law. Whatever law we made, honour killing is murder.... I would look into this whether we can define honour killing but prima facie I am sure whether that will take us very far."¹⁶

In August, 2010, the legal cell of All Indian Women's Democratic Association (AIDWA) headed by Kriti Singh, in consultation with many women organisations and individuals, drafted a comprehensive law entitled "The Prevention of Crime in the name of Honour and Tradition Bill" and gave it to the government. The Bill defines honour crimes in relation to a violation of the rights of the couple. The Bill goes on to list various types of crime, in addition to murder; it suggests preventive measures; it provides punishment for varying degrees; it includes khap panchayats or other bodies acting in the name of caste or community; it ensures accountability of the police and administration. The Bill was supported by the National Commission of Women, then headed by Girija Vyas, who gave a similar named Bill to the government but unfortunately the government didn't cade to take it forward.

Two years later in August 2012, the Law Commission of India, to which a reference had also been made by the government, brought out its own version of the Bill in its 242nd report. Although it stated that its draft was closer to the one submitted by the National Commission of Women, in fact it was extremely narrow and conservative in its approach. The Bill is named as

¹⁵ Ibid.

¹⁶ <http://www.thehindu.com/opinion/lead/honour-killings-are-a-separate-horror/article8381779.ece>.

“Prohibition of Unlawful Assembly (Interference with the Freedom of matrimonial Alliance) Bill, 2011, the Bill primarily dealt with the “unlawful assemblies” called by caste panchayats to prevent a self-choice marriage. This was a far cry from the actual realities which needed to be addressed.

In August 2015, the Central Ministry has sent a letter stating that they are still awaiting the response of different state governments on the recommendations of the Law Commission.¹⁷

Khap Panchayats and Honour Killing:

The origin of khap panchayat is till date not known but is believed to originated back in 600 AD. In ancient times, during the time when man was living a nomadic life, villages are being formed at a rapid rate and man was heading towards civilization and better standards of living.

Panchayat literally means assembly of five prudent and respected elders chosen and accepted by the village community. Usually, some mighty and powerful persons, were coerced public consensus and without any election group together and declare themselves ‘the king of the caste’, thereby constituting the caste panchayats.

The “Khap” is an ancient concept which has written references found back from the Rig Vedic times. There are basically socio-political groups, which usually comprise of the upper caste and elderly men who are united by geography and caste. The word Khap is probably derived from Latin word “corpus” which means an organization of individual. Hence khap is a term for a social political grouping and used in geographical sense.

Khaps panchayats are active in various states of the country especially Haryana. Khaps of these states are notorious for their outlandish edicts like declaring married couples siblings, ostracising families and such other atrocious acts. The reason behind all these atrocious verdicts is to save the so called honour and culture of the society. The Question here arises: who are Khap Panchayats? Who gave them right to kill in the name of honour? These Khaps are an affront to human rights along with social evils like dowry and child marriages and need to be dealt strongly as possible just the country fight naxals or ultras.

The reason governing these khaps is that different societies have different customs or system of prohibitions, according to which a male or a female cannot have marriage with another male. Khap Panchyats, Adjudicating Cultural Dishonour? Female of other caste. They follow the rule of endogamy which means the rule restricting marriage to members of the same tribe, village, caste, sub caste or other social group. Most people think that caste system is a static rigid feature of Hindu society and it cannot change. This kind of thinking gives strength to the system of khap panchayats in our society¹⁸.

Indian Judiciary on Honour Killing:

In *Lata Singh v. State of U.P. and Anr.*¹⁹ wherein it was observed that a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the

¹⁷ Ibid.

¹⁸ http://www.legalservicesindia.com/article/print.php?art_id=1610.

¹⁹ 2006 (5) SCC 475.

obvious exception of 'adultery'), even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she likes". In that case, the petitioner was a woman who had married a man belonging to another caste and had begun cohabitation with him. The petitioner's brother had filed a criminal complaint accusing her husband of offences under Sections 366 and 368 IPC, thereby leading to the commencement of trial proceedings. This Court had entertained a writ petition and granted relief by quashing the criminal trial. Furthermore, the Court had noted that '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'.

In *S Khushboo V Kanniammal & Another*²⁰ the Supreme Court held that While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of 'adultery' as defined under Section 497 IPC. The Court referred to its earlier decision in *Lata Singh v. State of U.P. and Anr* wherein it was observed that a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of 'adultery'), even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she likes".

On May 09 2011 in the Case of *Bhagwan Dass v. State (NCT) of Delhi*²¹ stated that in our opinion honour killings, for whatever reason, come within the category of 'rarest of rare' cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate 'honour' killings should know that the gallows await them.

In *Ashish Sharma and Another v. State of UP and others*²² in our Country, even in 21st century so many factors are involved in connection with the life and security of the married couples. Casteism, religionism, 'honour' killings, forcible departure of the boy and girl from each other even by the parents or family members, threat, pressure and many other nature of transgress, infringes their life and personal liberty as guaranteed under Article 21 of the Constitution of India. As a result whereof, we have started believing that such actions are not in the garb of but in the wake of violation of Article 21.

However, such western culture has not been accepted by our society, but that does not necessarily mean that right of major boy and girl to choose their better half will be interfered with in all possible manners.

Suggestive measures to combat "Honour Killings":

- i. "Honour killing" continues because of a perception of lost honour - which inter alia describes as "an entitlement to respect". Thus we must understand that honour is "first of all not about being respected, but about being worthy of respect"²³.

²⁰ AIR 2010 SC 3196.

²¹ 2011 (6) SCC 396.

²² (2011) 9 S.C.R. 860.

²³ <http://www.aljazeera.com/indepth/opinion/2014/06/how-can-stop-honour-killings-201461819244152343.html> .

- ii. The urgent need for the massive transformation of attitudes towards women is evident. In Muslim and non-Muslim countries, we must continue to speak up and challenge injustices and cultural elements that deny the dignity and respect for all women and men²⁴.
- iii. We must seek, in our hearts and minds, the strength to persevere in this fight. The nightmare of violence and murder will only end when the notion of honour is transformed and upheld by respecting lives, not taking them²⁵.
- iv. 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 punishment²⁶.
- v. Presently there is no definition of Honour Killing/ crime or clarity. 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 a 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 deterrent²⁷.
- vi. Community Action Grants will support local community action to reduce violence against women, and for sporting clubs to establish zero tolerance programmes in local clubs²⁸.

Conclusion:

At the end, it can be said that honour killing has definitely done more harm than good. The families need to understand that there is no honor in killing one's own child and that killing is not the only solution. In this 21st century it has to be understood that if a child of 18 years of age can be given a right to elect his own representative then he is smart enough to take his own personal life decisions and has the right to live. One of the steps taken against honour killing was on August 2nd, 2010, when Youth in Uttar Pradesh's Meerut district came up with the idea of organising a "Lovers' Party" across the country to motivate lovers into standing united against caste councils, which is known to be innovative. Therefore, honour killing is a grave sin and people practicing it should be given harsh punishment so that one should think twice before committing such crime²⁹.

²⁴ Ibid.

²⁵ Ibid.

²⁶ <https://indialawyers.wordpress.com/tag/honour-killings/>.

²⁷ Ibid.

²⁸ <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/take-action/commit/government-commitments>.

²⁹ <http://www.legalservicesindia.com/article/article/honour-killing-a-bane-or-a-boon-627-1.html>.