



## Honour killing & judicial response - A need for comprehensive legislation in India

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**Abstract:** The honour killing phenomenon has become a social plague in many societies around the world. Violence in the name of honour must be combated as an obstacle to women's enjoyment of human rights. Interpretations of honour as strongly with female chastity must be changed. Respect for women's enjoyment of human right is intrinsically linked to democracy. Basing on the analysis, it is suggested that The Government should bring a comprehensive legislation to provide for deterrent punishment for honour killing. Besides, amendments to related Acts including Evidence Act, is necessary so that onus will be on the accused to prove their innocence. The Courts need to be Cautions because the pronouncement of Judgment once made by Superior Courts, the Police may use it as a yardstick in investigation of the cases.

**Key words:** honour killing, legislation, illegal action

### Introduction:

Honour killings are a problem in a number of countries around the world. It is a great concern for all reasonable people. An honour killing is the murder of a female member by one or more fellow family members, in which perpetrators believe that the victim has brought dishonour or disrepute upon the family, clan or community. When speaking about 'honour' we must remember that understanding of the word 'honour' may vary from culture to culture, from language to language and all precise definition would be difficult to establish. But the perceived dishonour is normally the result of the following behaviors: (a) member of a lower class marries a person of relatively higher class, (b) utilizing dress codes unacceptable to the family or community, (c) wanting to terminate or prevent an arranged marriage or (d) engaging in certain sexual acts including those with the opposite or same sex<sup>1</sup>. The loose term honour killing applies to killing of both males and females in cultures that practice it. The

understanding of honour is based on the patriarchal family system. Females seem to own family honour and can only lose it by their behavior while males on the other hand may be able to regain their lost honour through their subsequent behavior<sup>2</sup>.

### Historical perspective:

During the partition of the country in between the years 1947 and 1950, there were a lot of forced marriages which were causing women from India to marry men from Pakistan and vice-versa. There was search to hunt down these women who were forced to marry a person from another Country and another religion and when they returned home they were killed so that the family honour could be preserved and they were not declared social outcast from their religion. Rigidity of the caste system is believed to be the main reason of honour killing in India. The mentality of people has not changed and they just can't accept that marriages can take place in the same gotra or outside one's caste.



**Human rights approach in campaign against honour killing:**

The term 'Honour' as understood above, comes in the way of freedom of matrimonial alliance. This because marriage is tied to ideas of lineage, honour and religion<sup>3</sup>. Honour killings, other harmful traditional practices or violence against women can be altered by campaigning against those social evils through human rights approach. A human rights perspective may be very useful in the struggle against honour killings.

International human rights law offers an established and internationally recognized frame work for obtaining redress for violations of human rights. Victims or potential victims of human killings are threatened by their families, find neither understanding nor refuse in their communities and no redress before national judiciaries. For them and for their families international human rights law provides mechanisms for challenging regimes that fail to protect the fundamental rights of their citizens. On a perhaps more proactive note, human rights have a role as a tools for empowerment and emancipation. One of the major challenges of the human rights approach lies in preventing honour killing and other human rights abuses. Thus emphasis must be put on continuous efforts to enhance the legitimacy of human rights among communities where honour killings occur. While bearing in mind that human right approach must supplement, not undermine, other alternative approaches, a human rights perspective is of considerable value also when challenging honour killings.

**Statutory body:**

In 1990, the national commission for women set up a statutory body in order to address the issues of honour killings among some ethnic groups in North India. The body reviewed constitutional, legal and other provisions as well as challenges women face. The NCW's activism has contributed significantly towards the reduction of honour killings in rural areas of North India.

**Legal remedies:**

The usual remedy to such murders suggests that society must be prevailed upon to be more gender-sensitive and shed prejudice of caste, religion and class. Efforts should be made to sensitize people on the need to do away with social biases. But equally it should be made clear that there is no escape for those who take justice into their own hands. So far, there was no specific law to deal with honour killings. The murders came under the general categories of homicide or manslaughter. When a mob carried out such attack, it became difficult to pin point a culprit. The collection of evidence became tricky and eye witnesses were never forthcoming. Like the case of Sati and dowry where there were specific laws with maximum and minimum forms of punishment, honour killings too, need a second look under the law. Undoubtedly the virus of caste and class that affected those carrying out such crimes affected the police in the area too. But that could be no excuse to sanction murder. Active policing and serious penal sanctions is the only antidote to this most dishonorable practice in India. According to Indian Democratic Women's Association, the states like Haryana, Punjab and U.P. account for 900 honour killings and another 100 to 300 in rest of the country annually.



There is a legislative vacuum in countering honour based violence like honour killings. Existing legislations do not cover all the illegal action perpetrated in the name of honour nor prescribe adequate punishment. Legislative amendments have been proposed to see 300 IPC which defines murder including in it honour killing. The proposed amendment presumes all members of a group or caste panchayat which had ordered the honour killing to be guilty of murder and onus lies on them to prove their innocence.

**Judicial trend in India:**

The Supreme Court in *Lata Singh V. State of U.P. & Another*<sup>4</sup> held that the nation is passing through a crucial transitional period in our history and the SC can't 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. In fact it is dividing the nation at a time when we have to be united to face the challenges before the nation united. Hence inter-caste marriages are in fact in the national interest as they will result in destroying that caste system. However disturbing news is coming from several parts of the country that young men and women who undergo inter-caste marriage are threatened with violence or violence is actually committed on them. Such acts of violence or threats or harassment are wholly illegal and who commit them must be severely punished. This is a free and democratic country and once a person becomes a major, he or she can marry whosoever he/she likes. If the parents of the boy or girl don't approve of such inter-caste or inter-religious marriage, the maximum they can do is that they can cut off social relations with the son or the daughter, but they can't give threat

or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We sometimes hear of "honour" killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way we can stamp out such acts of barbarism.

The apex court directed the administration/police authorities throughout the country to ensure that if any boy or girl who is a major undergoes inter-caste or interreligious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation is taken to task by instituting criminal proceeding by the police against such persons as provided by law.

In *Arumugam Seruai V. State of Tamil Nadu*<sup>5</sup>, the court discussed the power of extra constitutional institutions to issue decrees. The court said about the existence of KHAP PANCHAYAT which encourages honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religions who wish to get married or have been married or interfere with the personal likes of the people. The court opines that this is wholly illegal and has to be ruthlessly stamped out. Moreover, these acts take the law in to their own hands and are wholly illegal. The SC directed the administrative and police officials to take strong measures to prevent such atrocious act. If any such



incident happens, apart from instituting criminal proceeding against those responsible for such atrocities, the State Govt. is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge sheet them and proceed against them departmentally if they do not (i) prevent the incident if it has not already occurred they do not have knowledge of it in advance or (ii) if it has occurred, they do not promptly apprehend the culprits and others involved and initiate criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.

The Supreme Court in Bhagwan Dass V. State (NCT) of Deth<sup>6</sup>, examined the concept of honour killing on the basis of circumstantial evidence where motive plays an important part. In this case the deceased daughter was living in adultery with her uncle. The accused father felt humiliated and murdered her. The motive was to avenge family honour. The accused father did not intimate the police about the death of his daughter for about 10 hours after the death which depicts unnatural conduct on his part. The mother of the deceased was too old to commit the crime. The court ruled out the possibility of someone else other than accused father to commit the crime. More so, the accused had admitted that the deceased stayed in his house on the fateful night of incident. Had police not arrived accused would have cremated deceased without postmortem to destroy evidence of strangulation. Entire circumstances point out to guilt of accused. Conviction based on the circumstantial evidence is proper. The apex court held that honour killing comes within category of rarest of rare cases

deserving death punishment. The court said all persons who are planning to perpetrate honour killing should know that the gallows await them. The court said 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. The court directed that the copy of the judgment be sent to the Registrar Generals/Registers of all the High Courts who shall circulate the same to all Judges of the court, copy of the judgment shall also be sent to all the Chief Secretaries/Director Generals of Police of all States and Union Territories of the country.

**In Re:** Indian Women says gang-raped on orders of Village Court published in Business and Financial News<sup>7</sup>, the Supreme Court took suo motu cognizance of the HBV of gang rape committed in a women on the orders of the Village Panchayat for having a relationship with a man of different community. It ordered compensation enable rehabilitation of the victim.

In Nitish Katara Case the Supreme Court held that, the murder of Katara, Whowas in love with Vikas's sister was an "honour killing" which was done in very carefully planned and premeditated manner with extreme vengeance. A bench of Justices J.S.Khehar and A.K.Goel dismissed the appeal filed by Vikas and Sukhder and regretted that only criminals are crying for Justice in this country. The bench confirmed the conviction under charges of murder, Criminal conspiracy and destruction of evidence<sup>8</sup>.

In Dandu Jaggaraju V. State of A.P<sup>9</sup>. the Supreme Court acquitted the accused on the ground that the motive of honour killing was under suspicion. The accused



took away the deceased with him under pretext that her grandmother was ill. Killed her by smothering chunni in to her mouth. Deceased was Kshatriya and had married a member of SC, due to which annoyance was felt by accused, parental uncle of deceased. Marriage between them performed 6 years back and even child had born to couple. It is seen that a few cases of honour killing are brought before the court. In these cases motive is to be proved by addressing circumstantial evidences. The honour killing is committed with pre-determined mindset and the perpetrator executes it so meticulously that it leaves a little scope for the investigating agencies to collect evidence for prosecution of the accused. Therefore a change in procedural law is need of the hour to deal with such type of heinous crime.

**Conclusion:**

The honour killing phenomenon has become a social plague in many societies around the world. Violence in the name of honour must be combated as an obstacle to women's enjoyment of human rights. Interpretations of honour as strongly with female chastity must be changed. Respect for women's enjoyment of human right is intrinsically linked to democracy. The question arises, what can we do to prevent such a thing from happening?

Firstly, the mentality of the people has to be changed. The parents should accept their children's wishes regarding marriage as it is they who have to lead a life with their life partners and if they are not satisfied with their life partner then they will lead a horrible married life which might even end in suicide. Secondly, we need to have stricter laws to tackle these kinds of killings as this is a crime which can't be pardoned because family members or

community members do not have the right to write down death sentences of innocent teen aged fellow humans. The Government should bring a comprehensive legislation to provide for deterrent punishment for honour killing. Besides, amendments to related Acts including Evidence Act, is necessary so that onus will be on the accused to prove their innocence. The Courts need to be Cautions because the pronouncement of Judgment once made by Superior Courts, the Police may use it as a yardstick in investigation of the cases.

At present there is no separate law to deal with the problem. It is dealt with under the provisions of IPC, Cr.P.C. Honour killing are bringing dishonour to the families, the community and the country. A law should be made which will identify the crime and award punishment with more severity. Whoever is the cause of crime, an individual or a collective, must be punished. Women's rights need to be protected as human rights at all costs.

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