

HONOUR KILLING: ITS CHALLENGES, GLOBAL CONCERNS AND SOLUTIONS

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Abstract

Even after so many years of independence in the newly liberalized India, which is proud of her democracy, most marriages tend to be arranged by families, either through a marriage broker, a newspaper classified advertisement, the long-established oral tradition: word of mouth. But where it does not work, marriage can be forced to save honour and women can be murdered for rejecting a forced marriage and marrying a partner of their own choice (Inter-caste), who is not acceptable by the family of the girl or boy. Honour killings are the illegal decrees by caste/community, Panchayats to annul or prohibit marriages, and even murder of couples, have finally drawn the attention of the State, killing in the name of honour amounts to utter rejection.

This paper proposed some possible solutions to tackle the emerging global concern on honour killing. The post-modern human rights approach which does not shy away from treading into the untouched cultural and traditional arena of family has brought this topic to the concern of the international agencies. The analysis of the problem across cultural barriers have proposed solutions to eradicate this evil form society, has been discussed in depth.

Keywords: Honor Killing, Global Concern, Panchayat, Solutions.

Honour killing is the “unlawful killing of a woman for her actual or perceived morally or mentally unclean and impure behavior” (Hassan et.al, 1995). Honor killings are murders by families on family members who are said to have brought shame on the honor and name of family (Sheri & Bob Strit of 2005). These are acts in which “a male member of the family kills a female relative for tarnishing the family image” (Free Dictionary by Farlex 2007). The term is also defined as the purposeful pre planned murder, generally of a woman, by or at the command of members of her family stimulated by a perception that she has brought shame on the family (Oxford Dictionary of Law Enforcement, 2007). “Honor killings can also be described as extra-judicial punishment of a female relative for assumed sexual and marriage offences. These offences, which are considered as a misdeed or insult, include sexual faithlessness, marrying without the will of parents or having a relationship that the family considers to be inappropriate and rebelling against the tribal and social matrimonial customs. These acts of killing women are justified on the basis that the offence has brought dishonor and shame to family or tribe” (Amnesty International; 1999).

Another report says that “The regime of honor is unforgiving: women on whom suspicion has fallen are not

given an opportunity to defend themselves, and family members have no socially acceptable alternative but to remove the stain on their honor by attacking the woman” (Amnesty International, 2001). Honor killings elucidates that the custom is not related to a feudal societal arrangement, “There are also perpetrators who are well educated university graduates.

Of all those surveyed, 60 percent are either high school or university graduate or at the very least literate” as per a study by Dicle University (Gezer .et.al, 2001).

International Scenario

According to United Nations in 2002 “The report of special reporter Concerning cultural practices in the families are violent towards women (E/CN. 412002/83), indicated that honour killings had been reported in Egypt, Jordan, Lebanon, Morocco, Pakistan, the Syrian Arab Republic, Turkey, Yemen and other Mediterranean and Persian Gulf countries and that they had also taken place in western countries such as France, Germany and the UK within migrant communities”, Every year in the UK a dozen women are victims of honour killing, occurring almost exclusively to date within Asian and middle eastern families and often cases are unresolved due to the unwillingness of family, relatives and communities to testify (A June 2008 report by Turkish Prime Ministry).

Human Rights Directorate says that in Istanbul alone, there is one honour killing every week. The tradition of honour killing was first viewed in its most horrible form during the Partition of other country in between the years 1947 and 1950 when many women were forcefully killed so that family honour could be preserved.

During the Partition, there were a lot of forced marriages which were causing women from India to marry men from Pakistan and vice versa. And the latest case of honour killing was when the two teenage girls were shot dead by a cousin in Noida for daring to run away to meet their boyfriends. Many such killings are happening regularly in Punjab, Haryana and western Uttar Pradesh. These are socially sanctioned by caste Panchayats and carried out by mobs with the connivance of family members.

Constitutional Provisions

The Constitution of India has ample provisions allowing an individual to exercise his/her choice independent of caste, religion or gender and protection from honour related crimes including honour killings. Following are those Constitutional provisions that substantiate this:

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 khap panchayats or family members can also be booked under Section 302 of IPC for instigating suicide, those who transgress the so called norms of the community. Such killings also violates Articles 14, 15 (1) & (3), 17, 18, 19 and 21 of the Constitution of India. Article 14 of the Indian Constitution guarantees to every person the right to equality before the law or the equal protection of the laws. Every person, whatever is his or her status or situation is subject to the jurisdiction of the ordinary courts. This right to equality is thus documented as one of the fundamental features of the Indian Constitution. Honour Killings are thus hideously against this very Constitutional Right provided for the protection of Indian citizens. Honour killings are mainly directed towards women and thus give rise to gender violence.

In cases where the khap panchayats have compellingly separated married couples who are of eligible age to get married, these have violated the provisions under the Indian Constitution. The Indian Majority Act,

Section-3, 1857 states that every person domiciled in India shall attain the age of majority on completion of 18 years and not before. Unless a particular personal law specifies otherwise, every person domiciled in India is deemed to have attained majority upon completion of 18 years of age. However, in the case of a minor for whose person or property, or both, a guardian has been appointed or declared by any court of justice before the age of 18 years, and in case of every minor the superintendence of whose property has been alleged by the Court of Wards, age of majority will be 21 years and not 18.

The Act is relevant in cases where the khap panchayats have forcefully separated married couples who are of eligible age to get married. It is a violation of the provisions under this Act. The main reason behind the enactment of the Special Marriage Act, 1954 was to provide a special form of marriage for the people of India and all Indians residing in foreign countries, irrespective of the religion or faith followed by either party, to perform the intended marriage. Scheduled Castes (SC) and Scheduled Tribes (ST) (Prevention of Atrocities) Act, 1989 was enacted by the Parliament of India, in order to avert atrocities against Scheduled Castes and Scheduled Tribes. The intention of the Act was to help the social inclusion of Dalits into Indian society. It defines acts such as forcing an SC/ST to eat or drink any inedible or obnoxious substance, removing clothes, parading naked or with painted face or body, assaulting, dishonouring and outraging the modesty of an SC/ST woman, sexual exploitation of an SC/ST woman, forcing an SC/ST to leave his or her house or village as punishable.

The Act is linked to honour killings because numerous incidents of honour killing are in relation to caste and religion. The Protection of Human Rights (Amendment) Act, 2006 makes the provision for protection of individual rights of human beings and the constitution of a National Human Rights Commission, State Human Rights Commission and Human Rights Courts for better protection of human rights of individuals. The Protection of Women from Domestic Violence Act, 2005 provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected there with or incidental there to.

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –

- (a) Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) Harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

The Indian Evidence Act, 1872 makes provision to punish those who conceal facts, either before or at the time of, or after the alleged crime. Article 13 of the Act: Facts relevant when right or custom is in question - Where the question is as to existence of any right or custom, the following facts are relevant:

- (a) Any transaction by which the right or custom in question was created, claimed modified, recognized, asserted or denied, or which was inconsistent with its existence;
- (b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from. The Act is relevant to bring to justice those who become

victim because of the verdicts issued by the khap panchayats.

International Provisions

India is a signatory to the United Nations Convention on the Elimination of all forms of Discrimination against Women (CEDAW 1979) and has also ratified the convention. The provisions of CEDAW can be used to argue that the tradition and practice of punishing individuals for ill-informed ideas of dishonouring the family, is essentially institutionalized discrimination against individuals and creates a legally binding obligation for India, as a State party to the convention, to take all measures to end all forms of the practice of honour killing and ensure that all discrimination against women in matters relating to marriage and family relations are eliminated, providing them with the equal right to enter into marriage and to freely choose a spouse and to enter into marriage with their free and full consent as enumerated in Article 16 of the Indian Constitution. This means ensuring that informal decision making bodies functioning on customary laws, such as khap panchayats, are refrained from enforcing their dictates, and intrusive with the right of individuals to choose their spouse.

Two major UN documents call for the “elimination of honour killing”. The concept of elimination appears in the “Declaration on the Elimination of Violence against Women” (1993) and in “Working towards the Elimination of Crimes against Women Committed in the Name of Honor” (2003).

But the eradication of any such phenomenon like honour killing requires a serious intervention in the status quo. Equal gender relations have not yet been achieved and violence still exists in the name of honour. The whole system in itself is patriarchal and insensitive. In the words of the UN Declaration on the Elimination of Violence against Women: “Violence against women is a manifestation of historically unequal power relations between men and women, which have led to discrimination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”.

Honour Killing- Dispensing Justice

The judiciary does have a crucial role to play but has its limitations too. On June 23, 2006 Justice K.S. Ahluwalia of the Punjab and Haryana High Court made a revealing observation while simultaneously hearing 10 cases pertaining to marriages between young couples aged 18-21. "The High Court is flooded with petitions where ... judges of this Court have to answer for the right of life and liberty to married couples. The State is a mute spectator. When shall the State awake from its slumber and for how long can Courts provide solace and balm by disposing of such cases?"

A recent landmark judgment by the Additional Sessions Court at Kamal in the Manoj-Babli "honour" killing case, in which five accused were given the death sentence, sent shock waves among caste panchayat leaders, as it reminded them that they were not above the Constitution.

The court' took serious note of the fact that the policemen deployed for the security of Manoj and Babli actually facilitated the accused in perpetrating the crime. After the judgment in the Manoj-Babli case, however a congregation of caste, panchayats representing the Jat neighbourhoods from Haryana, Uttar Pradesh and Rajasthan was called at Kurukshetra on April 13. It was decided that panchayats would now fight for legal status to legitimately maintain the "social order". One of the main agendas of this sarv-khap panchayat was to push for amendments to the Hindu Marriage Act, 1955 that would ban marriages within the same gotra (clan within which men and women are considered siblings and hence cannot marry). Under this Act, marriages

between certain lineages from the paternal and maternal sides are already barred.

In *Lata Singh v. State of UP* 24 the Supreme Court while 'speaking through Justice Markandey Katju observed: 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 or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petition, her husband or her husband's relatives.

In a very recent case - *Arumugam Servai v. State of Tamilnadu* the Supreme Court strongly deprecated the practice of Khap/Katta Panchayats taking law into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice. Justice Markandey Katju while delivering the judgment observed:

We have in recent years heard of "Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) which often decree Or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in *Lata Singh* case, there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal minded persons deserve harsh punishment. Only in this way can we stamp out such' acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.

Conclusion And Suggestions

It is the State's and the Society's responsibility to protect the human rights of its young citizens, to avoid honour killings, to create possibilities and opportunities for the people concerned to break free and to find protection, support and aid. Therefore, it is suggested that honour killing like social evil cannot be eliminated through law alone, rather almost every substitution be it social, economic, political and cultural will have to be sensitized against this crime; no doubt law could only be one of the important tools to fight this practice.

The usual remedies to fight against such a social on slaughter is to bring about immediate sensitization; police officials/ law enforcement agencies, setting up women police stations in the Khap belt, counseling women victims and civil administrations.

The following recommendations will go a long way in the elimination of such crimes:

- A combined external and domestic political struggle that makes honour killing a crime and unfair subsequent legal treatment of women a shame on the nation (Nadelmann, 1990, Weldon, 2006).
- Placing serious penal sanctions against such crimes, taking administrative measures to prevent the crime, and ensure conviction.
- Active police, local government and the entire government committed towards this goal.
- Imparting education that shuns the violence against women de-objectifies them and recognizes the Kantian thought of the moral autonomy of the people at large, especially people from rural areas.
- Active collaborative participation of civil society and international bodies relating to women empowerment.
- Reaching out to women of all ages and from all walks of life, to make them realize that they are equal to men.
- Persuading elements of the religious right to shun at least the "honour crimes" if not moral policing;
- Democratic setup that provides a ground for popular changes.

As Poet Shelly once said, "When winter comes can spring be far behind", thus on an overall basis it can be

hoped that winds have started to change directions. Empirical evidence needs to be gathered and concrete steps need to be taken to ensure the elimination of honour crimes.

References

- Ali, R. (2001). The dark Side of „Honour“: Women Victims in Pakistan, Lahore: Arqam.
- Amnesty International (2001). “Broken Bodies, Shattered Minds: Torture and ill Treatment of Women”, 6 March 2001 (<http://www.amnesty.org/en/library/info/ACT40/001/2001>).
- An-Na“im, A. A. (2006). The Role of „Community Discourse“ in Combating „Crimes of Honour“: Preliminary Assessment and Prospects. In L. Welchman & S. Hossain (Eds.), „Honour“: Crimes, Paradigms and Violence against Women (pp. 64-77), New Delhi.
- BBC News. (2010, March 30). Death penalty in India in 'honour killings' case from http://news.bbc.co.uk/2/hi/south_asia/8595168.stm
- Connors, J. (2006). United Nations Approaches to „Crimes of Honour. In L. Welchman & S. Hossain (Eds.), „Honour“: Crimes, Paradigms and Violence against Women (pp. 22-41). New Delhi: Zubaan an Imprint of Kali for Women.
- Coomaraswamy, R. & L.M. Kois (1999) Violence against Women. In K. D. Askin & D. M. Bening (Eds.), Women and International Human Rights Law, Vol.1. New York: Transnational Publishers.
- Dawn (2005, May 5). Honour Killings rise in Pakistan.
- Farlex (2007). “Honour Killings”, The Free Dictionary
- Gezer, Murat (2001). “Honour Killing Perpetrators Welcomed by Society”.
- Gill, A. (2006). Patriarchal Violence in the Name of „Honour“. International Journal of Criminal Justice Sciences, 1(1), 1-12.
- Goonsekere, S. (2000). Human rights as a foundation for family law reform. The International Journal of Children's Rights, 8(2), 83 – 99.
- Hassan, R. A., & Welchman, L. (2006). Changing the Rules? Developments on „Crimes of Honour“ in Jordan. In L. Welchman & S. Hossain (Eds.), „Honour“: Crimes, Paradigms and Violence against Women (pp. 199-208).
- Hoyek, D., Rafif, R. Sidawi., & Amira, A. M. (2006). Murders of Women in Lebanon: „Crimes of Honour“ Between Reality and the Law. In L. Welchman & S. Hossain (Eds.), „Honour“: Crimes, Paradigms and Violence against Women (pp. 111-136).
- Human Rights Watch (HRW) (2001). Item 12 - Integration of the human rights of Women and the gender perspective: Violence against Women and "Honor" Crimes.
- United Nations Population Fund (UNFPA) (2000). Chapter 3: Ending Violence against Women and Girls: A Human Rights and Health Priority. In: The State of World Population 2000: Lives Together, Worlds Apart (pp. 25-30), Retrieved on 15th June, 2011.

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