

CASE COMMENT: SHAKTI VAHINI VS UNION OF INDIA & ORS.

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Bench: Chief Justice Dipak Mishra, Justice A.M Khanwilka and Justice D.Y Chandrachud

FACTS OF THE CASE

The Petitioner Shakti Vahini Organization approached Supreme Court under article 32 of The Indian Constitution. Petitioners organization was authorized for doing a research study on “Honour killings in Haryana and western Uttar Pradesh” by order dated 22.12.2009 passed by National Commission for Women. It was observed that in Haryana, Uttar Pradesh and Punjab tendency of honour killings has increased and it creates fear among youth who intend to get married. According to NCRB report in the year 2014, 2015 and 2016 288 cases of honour killing are reported. According to the data, 28 honour killing cases were reported in 2014, 192 in 2015 and 68 in the year 2016 (provisional data). Sixty-five cases of culpable homicide for the motive of honour killing have also been reported between 2015 and 2016¹.

Petitioner put also forward that the parallel law enforcement agency consisting of men are meeting periodically to deal with problems related to the group or the caste affecting; they call themselves panchayat which has the power to punish for crimes and direct for social boycott or killing by a mob. The social pressure and the constant inhuman treatment by the core group who arrogates themselves as lawmakers and impose punishment.

The Petitioner seeks directions under the Indian constitution seeking directions to the respondents including The State and The Central Government to take preventive steps to

¹ 288 cases honour killing reported, available at <http://www.newindianexpress.com/nation/2017/aug/01/288-honour-killing-cases-reported-since-2014-government-1636725.html> (last accessed on 12/02/2019))

combat honour crimes, to submit a National Plan of Action and State Plan of Action to curb crimes of nature and further direct state to constitute special cells for couple's safety.

Petitioner identified the following acts/reasons/basis which is linked to honour related crimes:-

1. loss of virginity outside marriage
2. pre-marital pregnancy
3. infidelity
4. having unapproved relationships
5. refusing arrange marriage
6. asking for divorce
7. demanding of custody of children after divorce
8. leaving marital home without permission
9. causing sandal or a topic of gossip
10. Falling victim of rape.

ISSUES OF THE CASE

Issue raised by the petitioner:

Petitioner raised that honour killing takes place in the Northern state of the country more than Southern states; states like Haryana, Punjab, Uttar Pradesh, Jharkhand, Delhi.

Petitioner observed that tendency of honour killing in these states are keep on increasing more than 300 cases are reported in last three years².

The social pressure and the consequent inhuman treatment by the core group who arrogate to themselves "the position of law makers and impose punishment" which are extremely cruel in still immense fear that compels the victims to suicide or to suffer irreparably at the hands of these groups³.

² Honour killing more than 300 cases in last three years, available at <https://timesofindia.indiatimes.com/india/honour-killings-more-than-300-cases-in-last-three-years/articleshow/65908947.cms> (September 2018)

³ Supra at page no.1 Paragraph no.3 Page no. 4 of 53 of the Judgement

These core groups are “self-proclaimed/quasi-judicial/non-legal parallel law enforcement agency” consisting of male members of the group “having linkage with group or the caste or the religion” which often meets to “solve or to deal with the problems relating to the group.”

These self-proclaimed/quasi-judicial/non-legal parallel law enforcement agencies call themselves “Panchayat which has the power to punish for crimes or to direct/order the society/group for social boycott or killing by mob⁴.”

State Government and The Central Government needs to take preventive steps to combat honour killing, to submit National Plan of Action and State Plan of Action to curb crimes of the said nature and further to direct the State Government to constitute special cells in each district which can be approached by the couples for their safety and well-being⁵.

Respondent Submissions:

Respondent 1 Union of India, Ministry of Home Affairs and Ministry of Women and Child Development: -

A counter affidavit has been filed on the behalf of Union of India, Ministry of Home Affairs and Ministry of Women and Child Development. It has been contended that honour killings are treated as murder as defined under section 300 of IPC and punishable under 302 of the IPC. As the police and public order state subject under the constitution, it is primarily the responsibility of the states that deals with honour killing⁶.

On 9th September 2013, The Union of India has filed another affidavit stating, inter alia, that in order to tackle the issue of honour killings, a Bill titled “The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill” has been recommended by the Law Commission of India vide the 242nd Law Commission report. The union of India has further contended that since the matter of the 242nd Law Commission Report falls under List III, i.e., Concurrent list of the seventh schedule of the constitution of India⁷.

⁴ Supra at page no.1 Paragraph no.7 Page no. 7 of 53 of the Judgement

⁵ Supra at page no.1 Paragraph no.2 Page no.3 of 53 of the Judgement

⁶ Supra at page no.1 Paragraph no.8 Page no. 9 of 53 of the Judgement

⁷ Supra at page no.1 Paragraph no.9 Page no. 9 of 53 of the Judgement

Respondent 2 State of Punjab: -

An affidavit has been filed by the state of Punjab stating that is not taking an adversarial position and it does not intend to be a silent spectator to any form of honour killing. Department of home affairs and justice laying down and bringing into force the revised guidelines/policies in order to remove any doubt and to clear any uncertainty and/or threat prevalent amongst the public at large. The policy, as put forth, envisages dealing with protection to newly wedded couples who apprehend danger to life and liberty for at least six weeks after marriage it also asserted that the state is determined to take protective measures and whenever any individual case comes to notice or is highlighted, appropriate action has been taken and shall also be taken by the Government⁸.

Respondent 3 State of Haryana: -

The state of Haryana has filed an affidavit denying the allegations made against the state and further stating that adequate protection has been given to couples by virtue of the order of the high court and district court and sometimes police directly coming to know of the situation. It is contended that FIRs have been lodged against persons accused of the crime and the cases are progressing as per law. An action plan has already been prepared and the crime against women cells are functioning at every district headquarters in the state and necessary publicity has already been given and the citizens are aware of the cells⁹.

Respondent 4 State of Jharkhand: -

The state of Jharkhand has filed its response stating, inter alia, the measures taken against persons in such crimes. Apart from asseverating that honor killing is not common in the State of Jharkhand, it stated that it shall take appropriate steps to combat such crime¹⁰.

Respondent 5 NCT of Delhi: -

A counter affidavit has been filed on behalf of NCT of Delhi. It states that Delhi police does not maintain a separate record for cases under the category of “honour killings”, it is urged that

⁸ Supra at page no.1 Paragraph no.11 Page no.11 of 53 of the Judgement

⁹ Supra at page no.1 Paragraph no.12 Page no.12 of 53 of the Judgement

¹⁰ Supra at page no.1 Paragraph no.13 Page no.12 of 53 of the Judgement

such cases are handled by the district police and there is a special cell functioning within Delhi police meant for serious cases relating to internal security. The department of women and child development has also made arrangements for rehabilitation of female victims facing the threat of honour killings and efforts have been made to sensitize the society against the commission of such crimes¹¹.

ANALYSIS OF ISSUES

Origin/Composition of khap panchayat:

A Khap is a community organisation representing a clan or a group of related clans. They are found mostly in northern India, particularly among the Jat people of Western Uttar Pradesh and Haryana. Although historically the term has also been used among other communities. A Khap Panchayat is an assembly of Khap elders, and a Sarv Khap is an assembly of many Khap Panchayats like Ror Khap, Dahiya Khap. Khaps are not affiliated with the formally elected government bodies and is instead concerned with the affairs of the Khap it represents. It is not affiliated with the democratically elected local assemblies that are also termed Panchayat. A Khap Panchayat has no official government recognition or authority, but can exert significant social influence within the community it represents¹². Lately Khap panchayat they have emerged as quasi-judicial bodies that pronounce harsh punishments based on age-old customs and traditions, often bordering on regressive measures to modern problems. They are union of a few villages, mainly in north India though it exists in similar forms in the rest of the country. They self-proclaimed panchayat who arrogates themselves as lawmakers and can impose punishment to anyone who is wrong according to their norms and traditions, they are extra-constitutional bodies that began as clannish organization in the tribal era but have literally transformed into kangaroo courts¹³. Kangaroo courts are referred as an unauthorized trial that takes place in an unfair, biased or hasty manner and most often ends in a harsh punishment that

¹¹ Supra at page no.1 Paragraph no.14 Page no.13 of 53 of the Judgement

¹² Khap, available at <https://en.wikipedia.org/wiki/Khap> (last accessed on 3/02/2019)

¹³ Panchayats turn into kangaroo courts, available at <https://timesofindia.indiatimes.com/home/sunday-times/deep-focus/Panchayats-turn-into-kangaroo-courts/articleshow/2351247.cms> (last accessed on 22/02/2019)

is commensurate with the gravity of alleged crime¹⁴. The mere perception that a woman has behaved in a way that “dishonours” her family is sufficient to trigger an attack on her life¹⁵. In a patriarchal society females are linked with the honour of the family and male are their protector. These self-proclaimed lawmakers are quasi-judicial bodies who with the support of local people give themselves immense power that can take law in their hand and punish anyone on any grounds.

Regulation of Marriages- Freedom of Marry National Regulation:

In a country like India which is secular and multicultural in nature they are legalisation regulating for marriage who are broadly divided into two categories i.e. Under Indian Civil Law and Under Indian Personal Law; Under Indian Personal Law, Hindu Marriage Act,1955 where both bride and groom are Hindu, Sikh, Buddhist or Jain or if they are converted their religion into one of these. Both bride and groom can register their marriage under this act.

And Under Indian Civil Law there is Special Marriage Act,1954 is a civil contract therefore no religious ceremonies are prerequisite for a marriage to be complete. Any person, irrespective of religion including individuals that are Hindu, Sikh, Buddhist or Jain can get married under this act as well. Nowhere in any acts or in our constitution is it mentioned that inter-religion, inter-caste or sagotra marriages are illegal or unlawful.

"When two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognized under Articles 19 and 21 of the Constitution" held by the Supreme Court.

Violence created by these “panchayats” or self-claimed law makers is not new or it’s not hidden; anyone who marries or even thinks of involving in any relation with other caste, religion or gotra which is socially or immoral according to old traditions and norms are criminals that needs to be punished and the punishment given by the khap panchayat is so cruel

¹⁴ Kangaroo courts and khap panchayat, available at <https://www.scribd.com/document/294806079/Kangaroo-Courts-and-Khap-Panchayat> (last accessed on 22/02/2019)

¹⁵Impact of honour killing in the society, available at <http://www.legalserviceindia.com/legal/article-397-impact-of-honour-killings-in-the-society-of-india.html> (last accessed on 19/02/2019)

that it creates fear among the other people especially the youth who face immense about of mental and emotional trauma due to these panchayats.

Under Constitution of India, Article 21 ensures right to life which also includes the right to marry. So this right to marry is not merely about the marriage, rather it is the right to marry according to the choice. In *Lata Singh v State of Uttar Pradesh*¹⁶ the Supreme Court observed that, “This is a free and democratic country, and once a person becomes a major, he or she can marry whosoever he/she likes.”, but practically in India the idea of choice is not individual and depends largely on the society. So whenever anyone becomes the victims of the crimes of honour, all these rights of that person is violated.

Freedom to marry as marriage under International Human Rights Convention

The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly on 10 December 1948. The International Covenant on Civil and Political Rights entered into force on 23 March 1976. Both of these documents recognize human rights that are applicable across the world. Universal Declaration of Human Rights (UDHR) guarantee every human being a large number of rights related to the freedom of choice. Article 16 of UDHR deals with the notion of free will in case of marriage. Apart from that there are several other rights related to the matrimony¹⁷. Article 12 of the Universal Declaration of Human Rights states: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” The preamble of UDHR reaffirms the “faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women”. Article 17 of the International Covenant on Civil and Political Rights states: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. The

¹⁶ Writ Petition (crl.) 208 of 2004

¹⁷ Claiming human rights, available at http://www.claiminghumanrights.org/udhr_article_15.html#at16 (last accessed on 2/03/2019)

implementation of ICCPR is dealt by The Human Rights committee and they also give General Comments on particular issues concerning the Covenant¹⁸.

International human right council, Article 16 states, 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The social pressure and the consequent inhuman behaviour by core groups who exclaim themselves as lawmakers and inflict extreme punishment to their own accords. Due to which an intense fear has been created for victims to compel suicide or to suffer irreparably at the hands of these groups. Victims not only face physical pain but also economical as well as mental pain, forcefully moving away or displacing from the soul land to an alien place which take away their income source, they face social boycott these elements traumatizes the individual more than they already are. Constitution of India, under Article 21 states “No person shall be deprived of his **life** or personal liberty except according to procedure established by law.” ‘**Life**’ in Article 21 of the **Constitution** is not merely the physical act of breathing.” State has primary duty to protect the **right** to live with human dignity as fundamental rights of each citizen, by Khap Panchayat right to livelihood, right to residence which is vital part of Article 21 right to life is being violated.

The brutal violation of human rights and destruction of fundamental rights taken in the name of honour, class or group rights or perverse individual consider their behaviour as justified learning on the theory of socially sanctioned norms. Right to choose a life partner is a fundamental right, consent of family, community, clan not necessary for marriage between two adults. The law commission had prepared a draft bill refers to “khap panchayat” to mean any person or group of persons who have gathered, assembled or congregated at any time with the view or intention of condemning any marriage, including a proposed marriage, not prohibited

¹⁸ Honour killing and its impact on society, available at <https://racolblegal.com/honor-killing-and-its-impact-on-society/> (last accessed on 23/02/2019)

by law, on the basis that such marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family other people of the locality concerned.

In view of above mentioned facts The Supreme Court held:

- SC upheld human rights of a daughter, sister or son “are not mortgaged to the so-called or so understood the honour of family or clan or the collective.”
- SC reaffirmed / reiterated Right to choose a life partner is a fundamental right, consent of family, community, clan not necessary for marriage between two adults. “When two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognized under Articles 19 and 21 of the Constitution” held by the supreme court.
- SC referred to the law commission draft bill refers to “khap panchayat” to mean any person or group of persons who have gathered, assembled or congregated at any time with the view or intention of condemning any marriage, including a proposed marriage, not prohibited by law, on the basis that such marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family other people of the locality concerned.
- The State Governments should forthwith identify Districts, Sub-Divisions and/or Villages where instances of honour killing or assembly of Khap Panchayats have been reported in the recent past, e.g., in the last five years.
- The Secretary, Home Department of the concerned States shall issue directives/advisories to the Superintendent of Police of the concerned Districts for ensuring that the Officer Incharge of the Police Stations of the identified areas are extra cautious if any instance of inter-caste or inter- religious marriage within their jurisdiction comes to their notice.
- If information about any proposed gathering of a Khap Panchayat comes to the knowledge of any police officer or any officer of the District Administration, he shall forthwith inform his immediate superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police.

- The Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of such violence and to implement the constitutional goal of social justice and the rule of law.
- There should be an institutional machinery with the necessary coordination of all the stakeholders. The different State Governments and the Centre ought to work on sensitization of the law enforcement agencies to mandate social initiatives and awareness to curb such violence.

Supreme Court issued: Preventive measures: -

1. the DM/SDM of the district/area has the information of gathering of a “khap panchayat”; the officer in charge would be required to meet with the self-styled decision maker of khap panchayat and reason with them that such a meeting should not be held illegal and if any decision is proposed to be taken, the police is bound to file an FIR against Khap panchayat under section 141 r/w 143 and 503 r/w 506 of IPC¹⁹.
2. If member of khap panchayat still persist in holding a meeting and the police officers have a reason to believe that such gathering has reasonable apprehension of the harm to the couple or their family, the officer in charge of the police station/superintendent of police would be duty bound to take preventive measure under Cr.P.C like invoking section 144 of Cr.P.C on the request of the police officer or even suo moto²⁰.

Supreme Court issued: Remedial steps: -

1. SHO, Superintendent of police and district magistrate has to ensure safety of the couple of such a marriage by taking steps as may be required, including, but not limited to, providing a safe house, police protection²¹ etc.

¹⁹ Supra at page no.1 Paragraph no.3 Page no.1 of 53 of the Judgement

²⁰ Supra at page no.1 Paragraph no.3 Page no.2 of 53 of the Judgement

²¹ Supra at page no.1 Paragraph no.5 Page no.3 of 53 of the Judgement

2. If it comes into the notice of SHO/SP/DM that khap panchayat has passed any dictate against the couple or their family, the SHO/Superintendent of police would be duty bound to immediately loge an FIR under provision of Penal Code including the section 141,143 IPC²².

Supreme Court issued: Punitive measures: -

1. SHO and the Superintendent of police would be duty bound, in case any substantive offence is committed against a couple or their family of inter-caste/religion marriage, to conduct an investigation not only to apprehend the actual perpetrators of the crime, but also to investigate the role of khap panchayat, if any²³.
2. The final report of the police submitted to the learned Magistrate under section 173 of Cr.P.C.

RESEARCHER INFERENCE

In the case of *Shakti Vahini vs Union of India* honour killing has not been defined or anywhere in our Indian Penal Code it has been briefly defined about honour killing. Honour killing is treated as murder/culpable homicide and are given punishment under the IPC section 302.

Honour killing is not related to one country, one caste, one clan or one religion. It is an international social-evil, in some countries like Jordan, honour killings are either legal or minimally punished. Article 340(21 February 2000) of the Jordanian Penal Code exempts from punishment those who kill female relatives found “guilty” of committing “adultery”, and Article 76 of the temporary penal code allows defendants to cite “mitigating reasons” in assault crimes²⁴. In the case of *Lata Singh vs State of UP & Anr Supreme Court* held that 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, they cannot see what offence was

²² Supra at page no.1 Paragraph no.4 Page no.2 of 53 of the Judgement

²³ Supra at page no.1 Paragraph no.6 Page no.3 of 53 of the Judgement

²⁴ Honour killing, available at <https://www.britannica.com/topic/honor-killing> (last accessed on 20/02/2019)

committed by the petitioner, her husband or her husband's relatives. In Supreme Court opinion 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 as well as of the administrative machinery at the instance of the petitioner's brothers who were only furious because the petitioner married outside her caste²⁵.

So-called 'honour killings' are an extreme symptom of discrimination against women, which – including other forms of domestic violence – is a plague that affects every country, the United Nations human rights chief states that, calling on governments to tackle impunity for this crime²⁶.

Indian society is a multicultural and patriarchal society; women are considered as bearer of honour of the family. This perception is so well entrenched that any attempt by women to assert their rights is seen as an attack on the cultural norms of the community and is strongly countered. And these counter activities taken by the family in the name of honour is known as Honour Killing, though here are no specific laws on such killings, certain other provisions in statutes are used to punish the perpetrators²⁷. Honour killing is either lead by "khap panchayat" or either done single handily by a family member of the victim.

"Khap Panchayats" are considered as kangaroo court of the Indian society who often held by a group or a community to give appearance of a trial but in actuality, they have already decided the punishment which ends up being a very cruel and harsh punishment which leaves a negative impact on lives of victims as well as the society. Killing people for marrying their choice of partners is not a way to deliver any sort of justice is one of the example of the practice done by "Khap Panchayat". The "Khap Panchayats" are all male unelected village councils and while there have been one or two instances of Khap leaders doing constructive work these institutions have mostly been **orthodox, archaic, irrational and dangerous**²⁸.

²⁵ Supra at page no. 6, Lata Singh case supreme court, available at <https://nlrd.org/lata-singh-case-supreme-court-2006/> (last accessed on (20/02/2019))

²⁶ Impunity of domestic violence, 'honour killing' cannot continue-UN officials, available at <https://news.un.org/en/story/2010/03/331422> (last accessed on 21/02/2019)

²⁷ HONOUR KILLING IN INDIA – A SOCIO LEGAL STUDY, available at <https://acadpubl.eu/hub/2018-120-5/4/399.pdf> (last accessed on 21/02/2019)

²⁸ Khap panchayat, available at <https://www.quora.com/How-do-Khap-Panchayats-affect-Indias-social-structure-What-can-be-done-to-control-their-dictatorial-policies#> (last accessed on 21/02/2019)

Honour killing is not new to our country pre- Shakti Vahini Judgment; cases like 1. ***Bharti Yadav vs State of UP on 14th November 2006***, Nitish Katara has been murdered. FIR No. 192/2002, Legal provision (IPC) applied to address honour killing under Sections 302/201/364 read with Section 34 of the Indian Penal Code has been registered. Two accused was jailed for 30-years jail term without remission by The Delhi High Court. The Supreme Court declines the death penalty saying that “it may be a planned murder but it certainly is no heinous. And every murder is planned. Tell us which murder is not planned? If it is not planned, strictly speaking it will not be murder. If it is in heat of the moment, it will come under exception clause of Section 300(murder)²⁹”. 2. ***Manoj-Babli honour killing case***; Manoj Banwala and Babli were a newly married couple who were accused by “khap panchayat” to be of same gotra therefore they are considered to be siblings’ despite of not being directly linked to each other. By the “khap panchayat” they were given a cruel punishment of murder. The Karnal District court found the “khap panchayat” guilty of murder, kidnapping, conspiracy, and destroying evidence under respective sections in the IPC. The next day, 30 March, for the first time in Haryana state history, a death penalty verdict was announced in the double murder case for the five accused. All were related to Babli, and included her brother Suresh, cousins Gurdev and Satish, paternal uncle Rajender, and maternal uncle Baru Ram. The leader of the *khap panchayat* Ganga Raj (52), was given a life sentence for conspiracy, while the driver, Mandeep Singh, held guilty of kidnapping, was given a jail term of seven years. The court asked the Haryana government to provide a compensation of Rs. 100,000 to Chandernagari, who had filed the case. Ganga Raj was fined Rs. 16,000, and the other six convicts Rs. 6,000 each³⁰.

Honour killing’s legal provision (IPC) applied to address honour killing in Indian judiciary and there is no separate law base to fight this social-evil. Penalties under IPC for murder which are same for Honour killing as well **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 up to 10 years and fine.

²⁹ Nitish Katara murder case, available at <https://www.thehindu.com/news/national/Nitish-Katara-murder-case-what-you-need-to-know/article15423924.ece> (last accessed on 17/02/2019)

³⁰ Manoj-Babli honour killing case, available at https://en.wikipedia.org/wiki/Manoj%E2%80%93Babli_honour_killing_case#Court_judgement (last accessed on 21/02/2019)

Post *Shakti Vahini vs Union of India* there are cases registered; 1. *Kirti Jaiswal vs the state of MP*³¹ this writ petition has been filed by the petitioners seeking police protection on the ground that their relatives and member of the society are harassing them on account of their entering into the wedlock. The high court mentioned cases like *Lata Singh vs state of UP* and as well as *Shakti Vahini vs union of India* and asked to follow the same measure as mentioned in *Shakti Vahini vs Union of India* given by the Supreme Court. 2. *Veena and Anr vs State of Punjab & Others*, petitioner's issuance of a direction to the official respondents to protect the life and liberty of the petitioners and not to harass them at the instance of respondent. Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of³².

In several cases court has involved these following IPC section:

Section 307: Penalizes attempt to murder with imprisonment for up to 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 up to 3 years or with fine or with both. If it causes hurt, the person shall be imprisoned for up to 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.

Recommendation given by Law Commission of India report no. 242 after analysing Honour Killing and Khap Panchayat, 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-religious marriages, which are otherwise lawful, the legislation has been proposed so as to prevent the

³¹ W.P.No.7808/2018, available at <https://indiankanoon.org/doc/78011112/> (last accessed on 2/03/2019)

³² CRM-M No.26855 of 2018, available at <https://indiankanoon.org/doc/69918409/> (last accessed on 2/03/2019)

acts endangering the liberty of the couple married or intending to marry and their family members 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 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. So also 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.

A presumption that a person participating in an unlawful assembly shall be presumed to have also intended to commit or abet the commission of offences under the proposed Bill is provided for in Section 6 which states that about burden of proof for these cases; “ground to deviate from the well-established canons of criminal jurisprudence. The evidence may not be forthcoming in many cases of ghastly murders and barbaric killings or the witnesses may be scared to speak against notorious criminals. A holistic approach is called for and any attempt to drastically expand the rigour of criminal procedure to cope up with *ad hoc* situations may be counter-productive.” Power to prohibit the unlawful assemblies and to take preventive measures are conferred on the Sub-Divisional / District Magistrate. The provisions of the 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. The offence will be tried by a Court of Session in the district and the offences are cognizable, non-bailable and non-compoundable³³.

In a country like where honour related crimes are not new nor on the decline, there is no separate law related to tackle these issues. Women’s rights activist, Brinda Adige, thinks that there needs to be separate law against honour crimes in IPC. “Lawyers and policemen look at

³³ Law commission report no. 242, available at <http://lawcommissionofindia.nic.in/reports/report242.pdf> (last accessed on 2/03/2019)

honour killing as just another murder case, no one looks at what preceded the murder. Honour killings are usually premeditated-there is immense brutality that is committed, especially atrocities against SC and ST individuals. Lawyers base their defence claiming 'a crime of passion' was committed, or that it was an 'emotional' attack. Judges, in the same way, hear the case a murder, and not an honour killing³⁴."

Every illegal thing is immoral but not every immoral thing is illegal. Immorality is a difference in opinion.



³⁴ Separate law for honour killing, available at <https://www.thenewsminute.com/article/india-needs-separate-law-tackle-honour-crimes-activists-demand-govt-listening-62382> (last accessed on 6/03/2019)