

VICTIMISATION OF WOMEN IN HONOUR KILLING

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ABSTRACT

Violence against women's independence and liberty in all the aspects and especially in case of sexuality and marriage is considered one of the most widespread gender-based violence practiced against women in India. There is a need to create awareness about the pathetic conditions of women prevailing in India and regarding the crimes that women faces such as honour killing, which is against their dignity and respect. It has become necessary to address this widespread menace and aware women about their rights and privileges. Women are considered as the most suppressed part of the society as most of the crime scenes are practiced against women and this calls for an urgent need for the people of the society as well as the authorities to look into the matter and make women feel safe both outside and inside their home. This paper seeks to aim largely at the concept of the status of women in honour killing in India and the reasons behind it and what the present legal environment has to do with it.

Keywords: *Honour Killing, Culpable Homicide, Honour, Legislations, Customary Practices*

INTRODUCTION

The concept of Honour killing have been originated long ago and this have been a wide spread problem not only concerning our country but also across the globe. Historically, there has been no concrete evidence regarding the clarification of the origin of Honour Killing. The element, which make the Honour Killing as a crime more heinous, is that the victim is none other than murders or assailant own family member, kindred or acquaintance. Honour Killing simply mean killing of any member of the family particularly women, when perpetrator believe that she brought some kind of shame or dishonour to the family customs, culture and practices.

Violence against women's independence and liberty in all aspects and especially in case of sexuality and marriage is considered one of the most widespread gender-based violence practiced against the women in India. Thousand of innocent lives have been taken under the name of Honour Killing, as the victim have opposed the choices of its own family which were enforced on him and stood for his own choice. Majority of the victim are observed to be women, and in cases like inter-religion, inter-caste and homosexuality even men are easy targets. A small rumour is said to be an enough cause which can lead to the commencement of this vengeance act.

In better words, Honour Killing is a commitment of crime by the traditionalist or conservative, patriarchal society which abhors or believe that any young person whether men or women who goes against the standardised norm of the society i.e finding a partner outside their religion , caste or coming out as a homosexual or any other reason which as per the mindset of the that society bring humiliation , shame or dishonour to the family's reputation is killed to protect the same. Also, there is a strong co-relation between Honour Killing, illiteracy and lack of legal awareness which leads to the commencement of this crime even though there are legal provisions protecting the right of an individual but practise of killing an innocent live still prevail in the name of family culture and tradition.

Hypocritically, the family feels no shame in taking a life of its own family member but also feel proud of is action believing to set an example in front of the society that their family reputation is far more important than the choices of its family member.

The basic question revolves around that this issue need to be catered by the law governing bodies to frame separate specific law for it. It will become easier for the concern authorities to take actions against those who are still engaged in such heinous crimes and it will also enable such authorities to reach those areas where the local authorities are not deliberately taking any action to curb such kind of menace. There is an imperative need to discuss about the pathetic vulnerabilities faced by women in India, in the name of honour killing, the current prevailing conditions and what steps which must be taken by the law making and law enforcing authorities to put an end to such evil customary practices enrooted deep in the roots of the society.

ORIGIN AND CAUSE

The mindset of indignity in the crime scene is basically to harm the victim who has brought some type of shame to the family or to the community to which the person belongs. This type of killing has its origin which is deep-rooted in the history of the caste based and gender-based discrimination and practices which were directly or indirectly related to the inter religious marriages or inter caste marriages. Largely such practices are majorly towards the women of the society who are in some or the other way harassed and tortured by people of such stereotypical thinking, who are always behind their back and forced to live a life which is best suited to the community or to their family members.

It is considered that honour is the utmost important thing for the people of Indian Society. It diverges from region to region, culture to culture, caste to caste and religion to religion. It is considered that a family having good reputation and honour is taken as ideal and cultured family in society. All the family members are bound by certain values, customs, rituals or traditions and they have to follow the same in order to show respect to their family and community at large. As the years are passing by, the crime honour killing has set up its roots deep into the society and have a very wicked effect on the society. *Manu*ⁱ, the famous Indian ancient law giver said “*Where women are honoured there the God dwells*”.

The victimisation against women is on rise in the countryⁱⁱ and such practices are common in some Indian states and is increasing day by day and thus making the soul of our society hollow.

Honour killing practices are different in different parts of the world and are practised by the people from ancient times which still exists in the current legal environment and there is a dire need to change it. People should have a positive attitude towards the women. Caste system and religion system should be discouraged so that it's helpful in the development of the society itself.

There are several reasons which constitute as the element of this crime on which such criminal activities take place are: -

- When a person exhibits the desire to marry a person of his own choice and ends up opposing the forced choice of the family.
- In some cases where women seek to file a divorce or separation in the court of law against the will of the husband then this behaviour of her is considered to be misconduct by the husband himself, husband's family members or the community.ⁱⁱⁱ

- Dowry can also be considered one of the element for this crimes where there is exchange of some gifts in the name of rituals and customs and when the family members of husband realises that the amount or the goods brought by the bride is not satisfactory than such crimes scenes are created and executed by them.
- When at times women discuss her marital problem with her neighbours or acquaintance than this is considers as such, she has brought discomfiture and dishonour to the family.^{iv}
- Victims of rape faces relentless violence and criticism by her family and relatives. In these cases, victim is killed by her family or community on the belief that she has been the cause of the humiliation they have faced. Such practices are more common where the victim becomes pregnant.^v
- In circumstances where a question is raised against women's dignity or on her character and the family members of the women is convinced that she has tarnished the reputation of the family and the fear of being ostracized by the community, they feel no fear in taking the live.^{vi}
- It is presumed by the society that a women's virginity must be preserved until and unless she is marriage. Sometime this is one of the reasons for commission of such heinous crimes.^{vii}
- The people who are having a desire towards someone of same sex or women and girls engaging in homosexual acts or relationship are killed by the people of patriarchal society. It's not only related to same-sex sexual acts but sometimes male members acting, dressing or expressing them in a feminine manner is one of the factors.^{viii}
- Women or wife of somebody engaged in any kind of sexual acts outside her marital bond or even before her marriage is linked to other person, she is brutally killed to death.
- Sometimes when women are dressed against the standard form of society, she is victimized on the belief of being inappropriate and unacceptable to the family or community.

After highlighting all of these reasons it's important to understand that honour killing is not constrained to one gender. The means used for killing people who practice something more

than what their customs provide for are harsh and brutal as the people do not limit them to murder someone rather than they use different ways in which person can be put to death such as stabbing, stoning, hanging, beheading, throat slashing, acid attacks, burning and sometimes creating such circumstances where people do not have an option rather committing suicide and by performing such cruel acts they try to set an example for others living in the community.

ROLE OF LAW AND THE PRESENT LEGAL ENVIRONMENT

The framers of the Constitution of India have enshrined provisions in the Constitution for safeguarding and protecting the interest of the people and for maintaining peace and harmony in the society. The Constitution provides certain rights to every citizen of India irrespective of their caste, gender, religion. Etc. Honour Killing is a crime which can be simplified as killing of a being by another and the punishment for the same is provided under the Indian Penal Code, 1860 through section 299^{ix} i.e. culpable homicide and section 300^x i.e. murder by under taking the degree of criminality and mens rea i.e. the mental intention of a person committing such crimes. As far as law is concerned, the code does not provide with the punishment specifically defined for the honour killing crimes and therefore there is an urgent need that necessary amendments should be made or a separate specific law should be drafted with respect to these crimes so that people must have fear of law.

The honour killing crimes also violate certain provisions of the Indian Constitution such as Article 14, 15(1), 15, 19 and 21. The criminals somewhere violate these fundamental rights of any individual whether deliberately or without his acknowledgement. Article 14 and 15(1) & (3)^{xi} of the constitution deals with the Equality before law and that there should be no discrimination on any basis such as gender, sex place, birth place, religion, race, caste or any of them respectively. In the case of *Jaganth Prasad v. State of Uttar Pradesh*^{xii}, the Apex Court held that equal protection of laws means that every citizen should be treated equally without discrimination on the basis of religion, caste, gender, race etc. Taking into representation of article 14 lays which lays down equality before law and that every citizen should given equal protection but these heinous crimes are practiced commonly towards women in the society. Undertaking such scenarios, the law commission should make proper provisions in regards to women's and children safety where children are dragged in such

matters and there is no help at their hand. The focus should not be only towards them but also to the men in the society who are also victims sometimes and suffer fatal injuries leading to death.

Article 19 and 21^{xiii} are Fundamental Rights pillars enshrined in the Indian Constitutions, dealing with Right to Freedom, Right to life and personal Liberty respectively. Every citizen of India has a right to choose a life which they want to live irrespective of the other's view and such existence of such crimes leads to the violation.

In Indian scenarios honour killing crimes are majorly revolving around the marital ties between two individuals and such crimes are committed when these individuals disagree to their family member or opens up their love relationship with some another person. Recently, the Supreme Court in its judgement given by CJI Dipak Misra has recognised that Right to choose life partner is a fundamental right and comes under article 19 and 21. This judgment was basically given concerning the honour killing crimes that are practiced by people of every region having their own code of conduct for their community.

Even after the existence of codified law the crime rate is not taking a step back and it can be perceived from the same that somewhere there are some loopholes in the working of law enforcement authorities and a specific frame work should be derived in this concern so that people have a way to go if such crimes are there. Hence, there is an imperative need that some legislative action should be taken in order to take this matter into consideration and to make sure that the growing rate of such widespread menace is curbed.

MARRIGES IN INDIA

Marriages are considered one of the most sacred ritual to be performed by every individual. According to Hindus, *Manu* once said that it is the one of the seven sanskara to be performed by a Hindu. Similarly, according to the Muslims marriage is considered as one of the most divine ritual to be performed by every Muslim. Even though the founders of the Hindu and Muslim or any other religious laws from ancient time believe that marriage being one of the most holy and sacred ceremony, then also there is presence of evil practices present in the society which are considered to be a grave threat to humanity. In a diverse country like India

where people of different culture, religion, castes resides, it is normal in such a situation wherein people from vast disparities may have feeling towards someone who is not belonging to their caste, religion or any does not match any other norms of their community. Such true feelings are not taken into consideration by the people of patriarchal society where they live in and these feeling are murdered by their family member or the community.

In India, rules and regulations relating to marriages are prescribed under certain law for Hindus it is defined in Hindu Marriage Act, 1955, Muslim solemnized according to the Holy Quran and so is the case of Christian or Parsi where solemnization of their marriage undertakes according to their personal laws. Undertaking this aspect if people from different religion want to marry each other than they can get their marriage solemnized under the Special Marriage Act, 1954. In our country caste system plays a very important role in solemnization of marriages whether its Inter caste, Intra caste and Inter Religious. Though the role of intra caste marriages is low in honour killing crimes but the major concern for the entire society is Inter caste marriages where the marriage is solemnized between two individuals of different cast, community and religion. The caste system is considered as an evil in the society which is practiced by people of stereotypical thinking. In *G. Krishan s/o Govindan V. Union of India*^{xiv}, it was observed by Justice Katuja, that so-called upper caste and even OBCs insulted the member of SC and ST. In the era of modernisation this will not be tolerated as the very basic characteristic of this era is equality and no community will tolerate such type of ill treatment by any other community, caste or religion. Later in another important case *Arunmugam Servai V. State of Tamil Nadu*^{xv}, it was observed by the bench that caste system is a blight to the country and society and it should be demolished sooner. They said that inter caste marriages are in national interest as they will destroy the caste system. It was also pointed by them that violence against men and women undergoing the inter caste marriages is on rise and people engaged in such activities should be punished. Further it was laid down by them that in a free democratic country every person who have attained the age of majority according to the Indian Majority Act, 1875^{xvi} are free to marry whomsoever they like. If their parents are against the marriage than extreme, they can do is that they can cut-off their social ties with their son or daughter, but they cannot commit any kind of violence against them. Thereafter, the administration and police authorities throughout the country were made alert about the same but then also the number of crimes against men and women in the name honour killing were not taking a step back.

In Hinduism, according to Manu inter caste marriages were prohibited were he classifies them into two categories i.e. anuloma marriages, that took place between the boy of high caste and girl of low caste and in partiloma marriages, the boy belong to the lower caste and girl to the higher caste.^{xvii} After the codification of the Hindu Personal Laws there were no such difficulties and chaos as separate specific acts were enacted for inter and intra caste marriages. Even after enactment of such laws that provide inter caste and inter religion marriage, people still consider it to be dishonour for their family and community and they are not ready to accept this against their customary practices. It has been observed that in some of the Indian states such as Haryana, Punjab, Bihar and Rajasthan people are murdered if they marry without the consent or approval of their family members and in some cases it is seen that if they are marrying outside their caste, community or religion such serious crimes are committed.^{xviii} In case of *Geeta Sabharwal v. State of Haryana*^{xix} the court remarked that a boy or girl who have attained the age of majority and undergoes the inter caste or inter religion marriages than if the couple were threatened, harassed or violence was committed against them. The court directed the state to take appropriate and strict actions against people who are involved in spreading such menace in the society. There are several incidents that showcase that such practices are still common among people of patriarchal society such as in one of the case where a girl is a member of Gadaria caste fall in love with a boy belonging to schedule caste and then when couples eloped to Ludhiana their parents forcible brought them back to village and the girl was forcible poisoned by her family in the name of honour thinking that she brought dishonour to the family and community^{xx}. In another incident of Pune district, Yerwada Village, the accused sister got married to a man. The marriage was solemnized against the will of the accused family as they were not pleased with the inter caste marriage and later in the dispute between both the families, the accused attacked his sister's husband with a sharp weapon resulting in his death.^{xxi} According to the Constitution of India, everyone have a right to choose their partner if they have attained the age of majority.^{xxii} In the following of case *Sujit Kumar v. State of Uttar Pradesh*^{xxiii} the court held that any person after attaining the age of majority can marry anyone according to their wish and their parent have no right to stop them. The court in its judgement further declared that police authorities should take strict actions against those who commit such Honour Killings.

Taking into consideration of such a widespread menace in the society which is committed by the people of conservative society in the name of "Honour Killing", there is an urgent need

that the people of the society should change their mindset and attitude towards inter caste, intra caste, inter religious marriage and traditional outlook towards women and adapt to the new upcoming environment. The Legislature and Judiciary of the Country have a very significant part to play in the transformation of the society and both should work hand in hand making strict separate provisions for making a person accountable for commission of such heinous and barbaric crimes and separate punishable provisions should be made by the Law Commission so that people have some sort of fear in their hearts before committing of such crimes which leaves the entire society in disgrace.

INTERNATIONAL ORGANISATIONS AND CONVENTIONS

On international forefront laws are made to maintain peace and harmony in the world and also to ensure that the Fundamental Rights of Individuals are not being violated. Honour Killing crimes are not only limited within the boundaries of the nation but it's a worldwide spread concern that have to be brought in limelight so that not only nationally but people internationally should have a sense of change in their behaviour for crimes against men and women. Honour Killing crimes are against the nature of law and are directly affecting the Human Rights of people internationally. Observing the records of past years, it's perceived that honour Killing crimes are majorly performed against women. Most of the honour killing crimes transpire in the countries where women are considered as a sign of family reputation.^{xxiv} There have been no significant changes in the situation of the women across the globe from the ancient times. This calls for an urgent need that the International Organisations now should make more strict policies and laws to tighten up this matter. The United Nations in its resolution 55/66 has well thought-out that this matter of killing people in the name of honour is very serious and brutal and the organisation is effectively working in this concern since then for eliminating crimes against women.^{xxv} The General Assembly recognised that there is an imperative need for the implementation of women's rights regarding dignity, security, integrity, liberty and equality by its resolution.^{xxvi} Efforts have been made internationally to resolve this widespread concern.

Universal Declaration on Human Rights (1948)

Universal Declaration on Human Right (UDHR) is one of those significant instruments at the international level which lays down certain principles and standards for all people and all nations in order to make effective globally concerning human rights. This declaration basically revolves around two aspects i.e. non admissibility of discrimination and inequality. The main aim is to proclaim that man and women should not be discriminated and should be treated in with equal dignity. Honour killing crimes violates the Universal declaration of human rights. UDHR lays down that “*all humans being are born free and equal in dignity and rights*”.^{xxvii} UDHR also states that, there is a right to life, liberty and security of person and every woman has a right to enjoy it irrespective of the ill treatment and inhuman behaviour towards her in the name of customary practices.^{xxviii} Under article 16 of the UDHR declaration it was made clear that there are certain rights where every individuals who wishes to marry someone has a right to marry and make a family and it is the duty of the state and the society to protect it.

International Convention on Economic, Social and Cultural Rights (1976)

The people of the patriarchal society commit violence, torture and harassment against men and women who do not follow the societal norms which are rigid and are followed by people from a long span of time. According to ICESCR, the parties have to take all necessary measures to make sure that every individual in the society should enjoy highest possible physical and mental health.^{xxix} Therefore India was bound by the guidelines given by ICESCR to take necessary measures and to make sure that individual in the society who suffers fatal injuries and become victims of crimes like honour killing and that later on it becomes duty of the state to ensure them and to protect their rights. Later on, several conferences were organised for gender equality and for giving women opportunity at national and international level. All of these conferences were arranged at international level for advancement of women and to uphold the women status in the society.

Convention on Elimination of All forms of Discrimination against Women (1981)

CEDAW was adopted by United Nations General Assembly and came into existence on 3rd September, 1981.^{xxx} Convention on Elimination of All forms of Discrimination against Women

(CEDAW) was the first legal document among all other International treaties and convention that aimed to provide legal relief to women on the grounds of any kind of violence and crimes such as honour killing. Its preamble lays down that despite of several initiatives taken at international level there is no fall in the rates of crimes against women and it continues. It also provided and established the equality of women rights in the global scenario.^{xxx} India being a state party to United Nation Convention is bound by the declarations made by UN for safety, security and upliftment of women in every aspect. The CEDAW lays down certain provisions to overcome such evil practices widespread globally. The provisions provided by the convention are raging from the question of equality, right to choose life partner, prohibition of prejudice & discrimination against women whether it's through customary practices (such as honour killing) or in any other way and providing with safety and security measures to women in the society at every level.

Declaration on the Elimination of Violence against Women (1993)

The declaration was adopted in 1993 by the General Assembly of United Nations^{xxxii}. The declaration exclusively focused on the issues of violence against women and for the protection of Fundamental Rights of women. The declaration provided that “*any act of gender-based violence that result in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life*”^{xxxiii}. The word used “*gender-based violence*” here in article 1 of the declaration can include the honor killing crimes within the scope of customary practices.

Elimination of Crimes against Women Committed in the Name of Honour (2003)

The United Nations Organisation provided with various legal documents for abolition of honour killing crimes against women in the society. UN seems that there is an imperative need that the state party are require to make strict legislations in this concern so that this widespread killing of people in the name of honour killing.

The Indian society is dependent on its customary rites, practices and norms due to which violence against women in the society is rampant and there is a need that these evil customary practices should be put to an end.

International Convent on Civil and Political Rights (ICCPR)

International Convent on Civil and Political Rights provides that every individual of a country is having right to quality and protection against any form of discrimination. India being a member party has to abide by the rules and regulations laid down thereon. The Convent provides that, *“prohibit any discrimination and guarantee to all person equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”*.^{xxxiv} It also provides that *“no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”*^{xxxv}. The ICCPR also make it clear that every individual has an inherited right to life and this should be protected by law.

CONCLUSION

Honour killing, is one of the worst and barbaric crimes registered against the humanity still have its existence in the present legal environment even after the strict guidelines laid down by the Apex Court in this regard. The Present environment needs that the antiquated stereotypical thinking of people who consider women as least important sector of the society have to be eradicated at the earliest so that there can be an end to such evil customary practices.

With the change in the time the mindset of the people over the time their perspective to look at life and society.

The future new generation demand for a place where there is no discrimination on any basis and they also consider equality as the utmost important part of the society. At the same time the legislature and judiciary have a very important role in shaping the environment which has

its deep-rooted impact in the society. These authoritative bodies can put forward their hands in making separate legal framework embodied with severe penal provisions directly relating to honour killing crimes and also should frame separate guidelines for education and awareness among people of rural areas who are not aware about the rights and remedies available to them in such cases.

The changing mindset of the people of the society and the legal framework with proper guidelines will eventually put up an end to the evil customary practices such as honour killing.

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