

## **HONOR KILLING: SHAKTI VAHINI VS UNION OF INDIA**

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### **ABSTRACT**

The traditional approach of Indian families specifically in villages towards issues relating to marriage is one of the causes of honor killing. The immoral and western tag being attached to the concept of love marriages is of great concern. There is a cultural lag in Indian society. The ethnocentric approach is used to judge the conduct of couples as bad or immoral or against the principles of the superior in basically the under-developed and pre-modern societies of India with mechanical solidarity. A social stigma is attached to such conduct of couples and such couples are labelled as characterless and the families are labelled to lack mannerisms and morals. A social peer pressure exists on the elder male family members supported by the heads of the villages to take action against such individuals. In the case of Shakti Vahini vs Union of India, the state of Jharkhand was mandated to take steps to stop the horrific act of honor killing. International conventions such as Universal Declaration of Human Rights (UDHR), 1948 and International Covenant on Civil and Political Rights (ICCPR), 1966 talks about right of a person to have a marriage of his choice. Despite various Supreme Court rulings, the role of khap panchayats in honor killing is prominent. These reasons are basically the orientations of the act of honor killing and these factors should be treated at their roots with help of educational awareness and legal provisions to solve the problem of honor killing.

## INTRODUCTION TO HONOR KILLING AND STATISTICS

**Honor killing**, is the murder of a family member(usually a girl) by the elder male members of the family believing that the person has brought the shame to the family by engaging in sexual activities or affairs before the marriage or refusing to enter arrange marriage or being a sexual assault victim or asking for divorce from the husband or homosexuality. Rarely, sometimes men are also the victims of honor killing.<sup>i</sup> The person is considered as a deviant in the values, norms and culture of the society and hence punished.

Honor killing, in India, is **not** a specific statutory offence. It is treated as a part of culpable homicide or murder. Section 2 of the criminal procedure code defines the term '**victim**' as, "*a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression includes his or her guardian or legal heir.*"<sup>ii</sup>

There is no specific database regarding total number of honor killings in whole of India and specific states as a number of cases go unreported as sometimes whole of community or village is involved in such acts. But taking into account the number of cases reported, as many as 288 cases of honor killing were reported between 2014 to 2016. 2015 alone recorded more than 200 cases. Caste difference being the major factor of honor killing. There should be more steps taken to prevent honor killing in India. There should be made a specific statutory legislation of honor killing so that it brings more clarity, or a municipal law regarding honor killing should be made or, an IPC amendment like section 304B must take place or a judicial legislation like Vishaka guidelines is required.

### ***International Conventions:***

Or, India being a member or signatory of UN treaty needs to follow **Convention on Elimination of All forms of Discrimination Against Women (CEDAW), 1979** for youth. Also called as International Bill of Rights for Women requires countries to eliminate discrimination against females of all age group in all territories and procure equal representation and rights for them.<sup>iii</sup> Convention on elimination on all forms of discrimination against women has been ratified by government of India and thus, it is the duty of the state to implement its principles.

*Article 16 of Universal Declaration of Human Rights (UDHR), 1948* talks about right of a person to marry and get a family, to have equal right as to get married and its termination. The protection of the family is the duty of the state and society.<sup>iv</sup> Universal declaration of human rights has been ratified by India and is a signatory to it. Essential steps need to be taken to ensure its implementation. *Article 23 of International Covenant on Civil and Political Rights (ICCPR), 1966* talks about the right of a person of eligible marriage group to marry and have a family and also the right of children to have provision and protection after termination of marriage.<sup>v</sup> India is a signatory to international covenant on civil and political rights. Being a party to these conventions, it is mandatory that India should enact law so that policy should be implemented.

### ***Shakti Vahini vs. Union of India:***

When there was no specific legislation being made, and nothing was done to implement the UN treaties of which India is a party, a judicial legislation took place that is the case of shakti vahini.

The submissions on the part of the government of India was that , to combat the issue of ‘honor killings’, the 242<sup>nd</sup> law commission has recommended the bill ‘The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill’ and in view of the fact that the topic of 242<sup>nd</sup> law commission report falls under concurrent list that is list 3 in constitution of India, discussion with the state governments is necessary before reaching any conclusion related to policy.

The state of Jharkhand was mandated to take essential steps to tackle honor killing. In the law commission report, it was mentioned that the belief that actions of the couple or the girl has brought shame to the family and the community is the main reason behind the crime of honor killing. The patriarchal society can’t handle the very fact that the girl is acting as her wish and taking her life decisions by her own. The report presented the horrific and terrible state of the right of an individual to choose her partner. The Court observed that there is no bar for inter-caste marriage under the Hindu Marriage Act or any other law and no offence was committed by the petitioner, her husband or husbands relatives.<sup>vi</sup> **The court directed** the executive wing of the state to take necessary steps to stop such horrific acts. The fact that the family members are unhappy with the decision of the girl or boy does not matter and this does not authorize

them to commit brutality on them. However it is their own choice whether to have further relations with the person or not.

Some of the earlier cases discussed were-

**In Re: India Woman says Gang-raped on Orders of Village Court** – the court referring to the case of **Lata Singh** held that the ambit of **article 21** of the constitution, that is, *the right to life and personal liberty* extends to freedom of choice in marriage (the right to choose a spouse) and the state has a duty to protect the fundamental rights of citizen.<sup>vii</sup>

In **State of UP vs Krishna Master and others**, death sentence was awarded for killing six members of a family on the name of saving the reputation of the family by the trial court. The court held that this falls under rarest of rare cases. The supreme court held that the trial court was right in its approach. However, since the case was 20 years old, this was considered as a mitigating factor and life imprisonment was awarded instead of death penalty.<sup>viii</sup>

**Lakshmi Kant Pandey vs Union of India**- Hindu Adoption and Maintenance Act is used in India to administer the adoption of children and its procedure for Indian citizens. But this case laid down the procedure for adoption to be followed by foreign nationals. There were many problems faced by foreigners who were willing to adopt child in India as courts did not approve of the documents authenticated out of India and the delay in taking on was a result of such an attitude.<sup>ix</sup>

**Vishaka and others vs State of Rajasthan and others**- where there is an emptiness in the domestic legislations of the country, the domestic laws must be made in attention and consideration to international conventions and norms. These conventions must be used for interpreting the fundamental rights guaranteed in the constitution of India. In the case of **Nilabati Behera vs State of Orissa**, International Covenant on Civil and Political Rights (ICCPR), 1966 was referred to sustain the idea by the court.

Along with the above mentioned cases of **Prakash Singh and others vs Union of India and others** was also referred to demonstrate the power of the court to issue directions on the basis of foundation laid in these cases. It was **directed** by the judiciary to government that *“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.”*<sup>x</sup>

Though honor killing is not defined as a specific offence in India, the ambit of the term ‘victim’ has been expanded to include family members also.

## **THE ROLE OF KHAP PANCHAYATS IN HONOR KILLING**

khap panchayats, it is an orthodox, non-constitutional and wholly unlawful body, can be explained as the unification of quite a few villages, have their subsistence comprehensively in the village areas of Haryana state and western UP state. They carry out chiefly three types of functions, judiciary, legislative and executive. They are like “self-established courts” managed by the old people of leading caste societies which are famous for “self-styled decision making” and sometimes are also called as social dictators.<sup>xi</sup>

There exists high cultural relativism in the rural parts of India. It is the tendency to consider our own culture superior to the foreign culture and any person found leaning outwards from the tradition and customs is termed as a deviant and immoral and punished according to the wish of the khap panchayat. An ethnocentric approach is adopted to judge the conduct of the individual. Their own culture, norms, customs, and tradition are kept as a parameter to judge the conduct of a girl and boy who according to them, has brought dishonor to the family or community as a whole and the punishment, which is usually brutal, harsh and death sentence is awarded arbitrarily by illiterate elderly villagers. A social stigma is attached to such conduct of couples and such couples are labelled as characterless and the families are labelled to lack mannerisms and morals. A social peer pressure exists on the elder male family members supported by the khap panchayats to take action against such individuals. These reasons are basically the orientations of the act of honor killing and these factors should be treated at their roots with help of educational awareness and legal provisions to solve the problem of honor killing. The justification of such acts by khap panchayat is generally saving the culture and tradition of the group. Village khap panchayats come together to form sarv khap panchayats. In the case of *Shakti Vahini vs Union of India*, it was held by the court that, ‘*the Khap Panchayat or any Panchayat of any nomenclature cannot create a dent in exercise of the said right*<sup>xii</sup>.



## **SOME FAMOUS HONOR KILLING CASES**

“Dalit man hacked to death in Nalgonda, ‘honour’ killing suspected”- in an incident of honor killing, a 23-year-old backward cast man, Peramala Pranay Kumar was killed. Pranay belonged to backward Caste Mala sub-group and 19-year-old Amrutha was from Vysya community of upper caste. They were childhood friends. The two ran away in January and tied the knot at Arya Vysya Samaj in Hyderabad in opposition to the desires of Amrutha’s father Maruthi Rao. In the first week of February, the two had approached the Inspector General-Hyderabad Stephen Raveendra seeking protection as the father of the girl continued to trouble them<sup>xiii</sup>. He had a problem with the marriage since he was from upper cast and is suspected in the killing of the boy.

## **POSSIBLE SOLUTIONS TO THE PROBLEM OF HONOR KILLING**

1. There should be a change in attitude of people. No so called lost honor can be regained through killing a member of the family.
2. There should be a specific legislation regarding honor killing, or a municipal law, or even an IPC amendment to the section of murder would work. This crime must have a separate recognition to avoid confusion on the part of authorities and to make it more effective.
3. The parallel judicial local bodies of khap panchayats must be curbed to an extent. They don’t have the right to take life and liberty of a person without the procedure established by law. If such actions happen, all the members of khap panchayats must be made criminally liable.
4. There must be made awareness campaigns to inform the girls about their rights and the elderly must be informed about the consequences they may face in furtherance thereof.

## **CONCLUSION**

At the end, it can be said that honor killing is complete violation of the fundamental right of right to life and personal liberty, that is, article 21. The ambit of this article has been extended to the freedom to choose a partner and establish a family. The khap panchayats play a major

role in honor killing. Absence of specific statutory legislation regarding honor killing, or even a municipal law is also a reason why such crimes can't be stopped. An IPC amendment must take place like section 304B which will be helpful in curbing the problem of honor killing. There must be a change in the traditional orthodox mindset of people which can be brought about through awareness campaigns. Honor Killing has been recognized as a worldwide problem, India should take inspiration from developed countries as how they have been working towards eradication of this problem. India have a long way to go for eradication of this problem.

## REFERENCES

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