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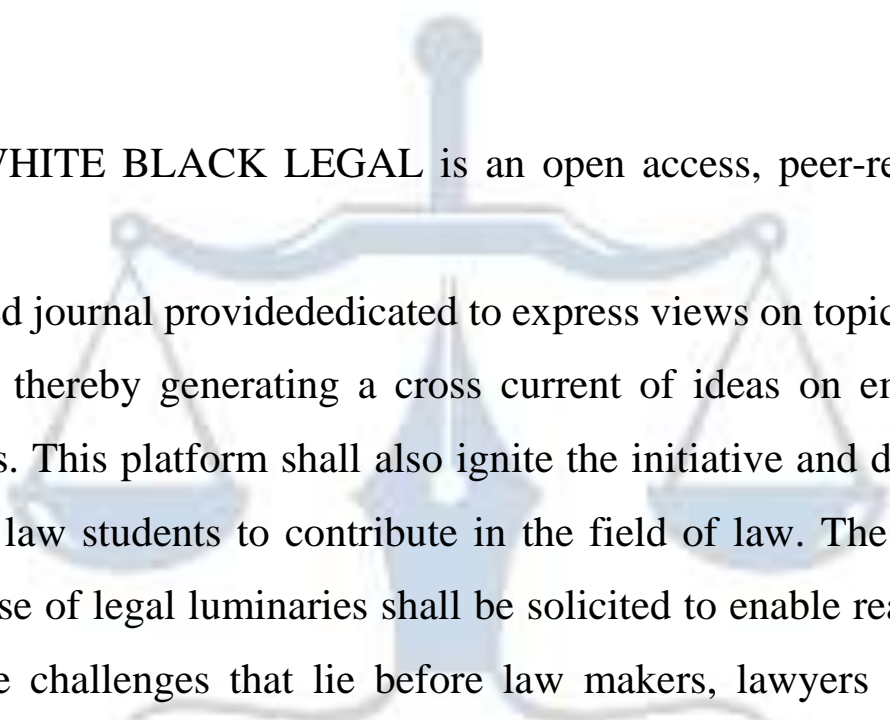


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

SUPREME COURT ON HONOUR KILLING IN INDIA: A LEGAL REGIME

AUTHORED BY - MOHAMMED ISMAIL SAIT^{1*}

ABSTRACT

India being a multicultural and pluralistic society where there are a lot of beliefs and faith which regulate the life of the citizens. Honour killing, a global phenomenon which is defined as the murder of a family member or social group by other members of the family on the basis that the victim has brought dishonour to the family. It is a remorseless behaviour of the members thinking about the purity of their family instead of the life of their loved one. The prime cause for such acts of cruelty are because of the relatives, society, neighbours by whom the accused feels dishonoured and gets provoked. Across the globe women have proven themselves equivalent to men but when it comes to honour killing then women are victims of no fault. Due to this, such crimes go unreported or are passed off as suicide, natural deaths by the family members involved.

This paper scrutinizes the impact of the Supreme Court's interventions, and analyses their effectiveness in challenging societal norms and fostering change. Through this research paper an insight is given towards all crimes in the names of so called Honour Killing which would ensure that the right of an individual to choose their life partner is protected under the constitution. Through a comparative lens, this research assesses the Court's decisions on landmark cases and against international approaches providing insights into potential avenues for legal reform, challenges or limitations in implementation. The study also examines the societal repercussions of Supreme Court decisions, probing shifts in attitudes and persisting challenges.

KEYWORDS: multicultural, pluralistic society, beliefs, honour killing, women, marital offences.

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INTRODUCTION

The history of Honour Killing in our country begins from the ancient time where there was a rigid caste system and marrying an outcaste person was a social taboo or considered to be a dishonour to the family. The ancient Indian society was categorized into four Varna's or castes which was depending upon the occupation carried out by them :Brahmins worked as priests, Kshatriyas were warriors, vaishyas were traders and the shudras were labourers and considered untouchables .According to the varna system marrying outside one's caste was prohibited and if a woman of the family married a outcaste person, she would be killed by the family members to maintain their prestige and social status in the society .

In our society women are subjected to various forms of violence and the main reasons for this are misogyny, men assuming that they are inherently superior to women. The social status of women is deteriorating day by day and the gender violence is normalized and it also enjoys the societal consent. Another important factor for the rising rate of Honour Killing in India is because of the socio economic control which is stressed upon by the victim's family, there is also a major part played by the society or the community in promoting this crime.

Honour Killing is the outcome of that socio-psychic milieu of typical societies where certain patterns of human behaviour are recognised as dishonour to families and communities. Honour, essentially involves the "maintenance of strict codes of gendered behaviour to control the concepts of shame and property." Honour Killing is generally defined as "the murder of women for suspected deviation from sexual norms imposed by society."

The following are some of the definitions of "Honour Killing"-

- 1. Amnesty International** - Honour Killing of a woman by a male relative is not an individual act of violence, but one which is collective, planned, sociologically predictable, and socially approved by both men and women in the family and community concerned.
- 2. Unni Wikan** - Honour killing is a murder carried out in order to restore „Honor“, not just for a single person but a collective. This presupposes the approval of a supportive audience, ready to reward murder with Honour.
- 3. The Oxford Dictionary of Law Enforcement-** Honour killing is the purposeful pre-planned murder, generally of women, by or at the command of members of her family stipulated by a perception that she has brought shame on the family.

4. **The Law Commission of India-** „Honour killings“ and „honour crimes“ are being used loosely as convenient expressions to describe the incidents of violence and harassment caused to the young couple intending to marry or having married against the wishes of the community or family members.
5. **Human Rights Watch-** Honour killing are the acts of violence, usually murder, committed by male family members against female family members, who are held to have brought dishonour upon the family. A woman can be targeted by (individuals within) her family for a variety of reasons including- refusing to enter into an arranged marriage, being the victim of sexual assault, seeking divorce - even from an abusive husband or (allegedly) committing adultery

The so-called "honour crimes," which aim to restrict women's sexuality, require new legislation in India. In India, one of the most pervasive and persistent types of gender violence against women is aggression against their autonomy in all spheres of life, but particularly in matters of marriage and sexuality. This type of violence is also little acknowledged. That is an example of violence that goes unnoticed. As there is no special law in India against crimes related to "honour," violence (against men and women alike) committed to prevent a woman from exercising her right to choose her partner and marriage is not adequately recorded. Examining the available Statutes closely and interpreting its meanings will help you identify and address this kind of assault.

Legal provisions

In 2014, An English daily monitored 583 rape cases that the district courts in New Delhi had resolved in 2013. It was discovered that consenting couples who had eloped were the single greatest category of cases (almost 40%), with the parents of the women typically filing rape claims afterward. This shocking revelation suggested that the statistics on rape are really hiding domestic abuse and coercion against women's sexual liberty. By confusing "relationships chosen freely by women" with "rape," authorities—including the police, women's hostels, and factory managers—are able to continue justifying limits on women's liberty as being required to protect them from rape. "

Some of the "safety" regulations imposed on women in workplaces and educational institutions that support the environment that "honour" crimes occur include strict curfews, bans on cell phone use, penalties for being caught talking to a man, dress codes that forbid wearing "immodest" or "western" clothing, and reporting a woman to her parents if she is caught

chatting with a man.

The phrase "honour" crime is a little deceptive, not just because it suggests that these kinds of acts are "honourable."² It also conveys the idea that the "culture"—that is, the traditions and customs—of particular groups or religions is the cause of these atrocities. It is difficult to accept how common these crimes are throughout India, across all areas and communities, because they are only associated with strict customs and certain communities. When Nirupama, a journalism student, was killed in 2010 by her family in Jharkhand because she was going to marry a man from a different caste, the then-Chairperson of India's National Commission of Women stated that her murder did not qualify as a "honour" killing because those kinds of killings were only committed in the Indian state of Haryana, where community councils known as "khap panchayats" are in place.

Due to honour killings connected to forced marriages, thousands of young people in India are executed each year; therefore, the nation must enact strict laws to combat this horrible crime. On the dictates of so-called "khap panchayats," an estimated 100 young men and women are assassinated in the regions of Delhi, Rajasthan, and Haryana.

Various Perspectives of Honour Killing and the need for a separate law on Honour Killing-

Adverting to the dimensions of the problem and the need for a separate law, the Report states:

1. A blatant violation of the rule of law and an invasion of the affected people's personal liberty is the harmful practice of Khap Panchayats and similar groups taking the law into their own hands and declaring that Sagotra and intercaste marriages are invalid and improper. They then punish the couple and put pressure on the couple's family members to carry out their decision by any means.
2. Despite historical perceptions to the contrary, sagotra weddings are legal. To allay any questions regarding this, the Hindu Marriage Disabilities Removal Act, 1946 was passed. The Act clearly stated that Hindus from the same gotra, pravara, or distinct caste sub-divisions might marry each other. Samotra and intercaste marriages are not forbidden by the Hindu Marriage Act.

²Honour Killing a major offence in India, available at: <https://timesofindia.indiatimes.com/readersblog/know-your-rights> (last visited on Dec 21, 2023)

3. The willing couple cannot be made to accept the opinions of the village or family elders, and no one has the authority to use force or inflict severe penalties in the sake of upholding family or community honour.³ According to reports, close relatives or other third parties have taken drastic measures against the alleged erring couple, such as wrongful confinement, ongoing harassment, mental torture, and threats or actual physical harm, either at the behest of the Panchayat or with their cooperation.
4. There have been multiple reports in the media of couples being murdered. The young couple, their relatives, and even a portion of the local population are frequently the targets of social boycotts and other unlawful consequences. All of this is carried out in the interest of honour and tradition. Public order aspects are involved in the cumulative effect of all these acts.

Statutory Provisions relating to Honour Killing:

Existing Penalties under Indian Penal Code:

- Section 299 to 304⁴: Penalizes any individual blameworthy of homicide and guilty crime not adding up to kill. The discipline for homicide is life sentence or passing and fine. The discipline for guilty crime not adding up to kill is life detainment or detainment for up to 10 years and fine.
- Section 307⁵: Penalizes attempt to murder with detainment for up to 10 years and a fine. On the off chance that an individual is harmed, the punishment can reach out to life detainment.
- Section 308⁶: Penalizes attempt to commit culpable homicide to submit guilty manslaughter by detainment for up to 3 years or with fine or with both. On chance that it causes hurt, the individual will be detained for up to 7 years or fined or both.
- Section 120A⁷ & 120B⁸: Penalizes any individual who is involved with a criminal conspiracy.
- Section 107 to 116: Penalizes people for abetment of offenses including murder and at fault crime like culpable homicide.

³Alternative Legal Framework to Curb Honour Killing, available at: <https://thelawmatics.in/law-commission-report> (last visited on Dec 22, 2023)

⁴ The Indian Penal Code, 1860 (Act 45 of 1860), s.304

⁵ The Indian Penal Code, 1860 (Act 45 of 1860), s.307

⁶ The Indian Penal Code, 1860 (Act 45 of 1860), s.308

⁷ The Indian Penal Code, 1860 (Act 45 of 1860), s.120A

⁸ The Indian Penal Code, 1860 (Act 45 of 1860), s.120B

- Section 34 and 35: Penalizes criminal acts done by a few people in the facilitation of regular expectation.
- Section 300: present “fifthly” provision to Section 300 of IPC which at present characterizes “murder” under four classes. The extra definition would make khap directed Honour killings a particular offense and make every one of the individuals who take an interest in the choice obligated to be gone after for the principle charge, that is murder, and subject most extreme punishment, passing.

Constitution of India:

Honour killings violate various Articles of the Constitution such as Article 14, 15(1) and 15(3), 17, 18, 19 and 21.

- **Article 14**⁹– This Article states that everyone is equal and he shall not be discriminated against on any basis.
- **Article 15(1)**¹⁰ **and 15(3)**¹¹ – These articles state that no one shall be prohibited on the basis of caste, creed, gender, sex, etc.
- **Article 21**¹²– This article states that everyone has a right to life and it includes the right to live a life with dignity.

Factors Contributing to honour killing in India:

- a) One of the factors that contribute to honour killing is the refusal to arrange a marriage. When honour killings occurred in the nation, we frequently observed that one of the main contributing factors was the refusal to arrange marriages.
- b) Getting married to someone outside of one's caste or religion: Getting married outside of one's caste or religion is another factor contributing to honour killings in the nation.
- c) Participating in pre-marital or extra-marital sex, as well as lesbian and gay relationships, has been linked to honour killing in the nation.
- d) The national mindset: The mentality of the populace is a significant contributing factor to honour killing. Some people aren't ready for their kids to wed outside of their caste and religion.

⁹ The Constitution of India, art. 14

¹⁰ The Constitution of India, art. 15(1)

¹¹ The Constitution of India, art. 15(3)

¹² The Constitution of India, art. 21

- e) Speaking with an unidentified male: One of the factors linked to honour killing in India is having a conversation with an unidentified or unrelated male.
- f) Lack of education: The rise in crime in society is largely due to illiteracy.

Preventive measures to control honour killing

- Public awareness campaign: To raise public awareness and put an end to this abhorrent kind of criminality, a public awareness campaign is necessary. Certain efforts should be carried out to raise people's level of education, particularly in rural areas. Making the public aware that these kinds of murders are not a way to deal with the problems in society.
- Strict rules and penalties must be implemented: To put an end to this behaviour in society, strict laws and penalties are required. Crime in society declines as a result of people's fear of retribution. Even those who participated in the deed ought to face harsh penalties.
- Education development: Every member of society should have access to education. Numerous dangerous behaviours in society are caused by illiteracy. Education need to be accessible to all societal segments.

Decisions of the Supreme Court regarding Honour Killing:

Before 2014, honour killings were not officially documented by the Indian government. The killings were frequently attributed to homicides or suicides because there were no particular laws against honour violence. For instance, between 2014 and 2016, the Indian Supreme Court documented 288 honour killings in India. But according to evidence, a non-governmental organization, there were 187 incidents in Tamil Nadu alone between 2012 and 2017.

The government is reluctant to enact new legislation to solve the issue since they are under the impression that honour killings are under control as a result of this false information. Initiatives by the federal government to shield vulnerable couples from honour killings either don't exist or don't work. The Supreme Court took action in 2018 to establish phone centres for couples who are at risk. Nevertheless, the government did not provide these call centres with funding or staff.

Smt. Chandrapati vs. state of Haryana and Ors, 2011

Also known as Manoj and Babli case

The case's victims were Manoj and Babli. Because they were in love, they decided to elope and get married to one another. The victims were located by the enraged family members after they learned of this. The family had brought the case before the khap panchayat, who at first said that anyone in contact with the victim would have to pay 25,000 and that, therefore, no one should get in touch. The family had tracked them down and took them before the khap panchayat, who was also opposed to the marriage.¹³

Because the victims belonged to a different caste, they made a decision that was against them. For the benefit of society, a choice based on religion and caste was made. In order to honour the family, the khap panchayat was also implicated in the victim's murder. Since Babi's grandfather was the khap leader, Babi's family members were implicated in the murder. Still, they kidnapped and murdered the victims.

Judgement: Nevertheless, the Karnal District Court had given life sentences to five of the murder's perpetrators when this case was brought before it. This case is the first instance of an honour killing conviction and a historic ruling awarding the accused a life sentence. Seven years in jail was the term imposed on the driver who took part in the kidnapping. Another view of the most heinous crime is honour killing.

*Shakti Vahini v Union of India*¹⁴

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

A counter affidavit has been filed on behalf of NCT of Delhi. The affidavit states that Delhi Police does not maintain separate record for cases under the category of Honour Killing.

However, it has been mentioned that by the time the affidavit was filed, 11 cases were registered. It is urged that such cases are handled by the District Police and there is a special

¹³Honour killing, India, available at: <https://www.legalserviceindia.com>(last visited on Dec 27, 2023)

¹⁴ 2018 7 SCC 192

cell functioning within Delhi Police meant for serious crimes relating to internal security and such cases can be referred to the said cell and there is no necessity for constitution of a special cell in each police district. Emphasis has been laid that Delhi Police has sensitized the field officers in this regard so that the issues can be handled with necessary sensitivity and sensibility.

The Department of Women and Child Development has also made arrangements for rehabilitation of female victims facing threat of honour killing and efforts have been made to sensitize the society against commission of such crimes. A circular dealing with the subject Action to be taken to prevent cases of "Honour Killing" has been brought on record.

*The State of Maharashtra vs Eknath Kisan Kumbharkar*¹⁵

It was further held that honour killings have become common place in many parts of the country, particularly in Haryana, western Uttar Pradesh and Rajasthan. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo courts.

It was held in Lata Singh case¹⁶ that there is nothing "honourable" in honour killings, and they are nothing but barbaric and brutal murders by bigoted persons with feudal minds. In our opinion honour killings, for whatever reason, come within the category of the rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate "honour" killings should know that the gallows await them".

Conclusion and suggestions

Considered to be among the most horrible crimes in recorded history is the crime of honour. A number of things, like a lack of education, societal attitudes, rejecting forced marriage, and so forth, are contributing factors to crime. Being the most vile and violent form of violence and prejudice against women and girls, this crime is not tolerated in society. We might get the conclusion that different regions of India have distinct laws against honour killing. In certain

¹⁵ MANU/MH/2124/2019

The State of Maharashtra vs. Eknath Kisan Kumbharkar (06.08.2019 - BOMHC) : MANU/MH/2124/2019

¹⁶ AIR 2006 SC 2522

regions, such as Uttar Pradesh, we could see that the practice is still in place. In order to curb this horrific behaviour in society, the government of Haryana, Delhi, and other places must enact severe laws and regulations. The severity of the punishment should also be raised.

As a result, the offender should face severe penalties enforced under the Indian Penal Code, 1862, and the Indian Constitution. The wave of honour killings will undoubtedly be lessened with the implementation of these measures.

Honour killing is carried out in order to preserve family honour. However, killing someone has no such honour. It is not acceptable to claim "religion" or "culture" as justifications for the murder of women, as both religion and the laws that stem from it are inherently interpreted subjectively. Based on their ideas of honour or morality, no "culture" has the right to murder and injure women. The right to free speech does not equate to the right to kill everybody is entitled to a life of equality and complete dignity. Therefore, the only way to stop these dishonourable activities is through active laws.

Since these crimes impede the advancement of a civilized nation, India, a multicultural and multi-traditional nation, ought to outlaw them. As a result, it is imperative that everyone be respected regardless of gender, caste, or religion, that people look out for one another, and that society as a whole is protected. Honor killing is a terrible practice that cannot be justified by any religion or society.

Each and every person has the fundamental right to live in dignity. Nobody has the authority to deny someone their basic rights or their life. Families that engage in dishonourable behaviour against conventional rituals and conventions will become the victims of honour killing, which is done to maintain and preserve the family's honour and dignity.

It is now time for both national and international action against honour killings to be taken strictly. According to the above mentioned cases the state, federal government, and court have all respected the fundamental values of human dignity and fulfilled their respective roles with great effectiveness. It has looked into a number of cases involving grave abuses of citizens' human rights. The objective of these judicial decisions are to ensure-

- To guarantee the effectiveness and efficiency of the state, the following recommendations are made. If these suggestions are accepted as accurate, everyone will

be able to live in society with honour and human decency. Curbing traditional harmful practices in society is a simple task.

- To guarantee the effectiveness and efficiency of the state, the following recommendations are made. If these suggestions are accepted as accurate, everyone will be able to live in society with honour and human decency. Curbing traditional harmful practices in society is a simple task.

Suggestions to effectively counter the offence of Honour Killing-

- a) The federal and state governments ought to take the lead in enacting sufficient, new, strict laws against crimes motivated by religion and honour killings, as well as in enforcing harsh penalties against community leaders who condone or enable these kinds of crimes.
- b) When a member of the Khap Panchayat commits an illegal act that results in a person's death, the entire Panchayat should be held accountable for the person's death and should be sentenced to death or life imprisonment with a heavy fine. Their entire property should also be seized.
- c) People should be made aware that honour killing is wrong and that situations involving sex-selective abortions, female infanticides, genital cutting, rape, physical assault, and forced marriage will be considered instances of honour killing.
- d) Additionally, it is recommended that the State Government provide a monthly report on violence against women to the Central Government, which would then create a plan to reduce these types of crimes.
- e) A particular law such as the Prevention and Control of Honour Killing Act is desperately needed, and it should be treated on the same level as the Dowry Prohibition Act of 1961 and the Sati Prevention Act of 1987.