

HONOUR KILLINGS: THE LAW IT IS AND THE LAW IT OUGHT TO BE

ANAND MISHRA

INTRODUCTION

Cultural crimes are basically the crimes that seek to place within the context of culture or under the head of it. As we all know recently; there has been a spate of honour killings which has shocked the country. Honour killing is one of the types of cultural crime present in the country. An honour killing (also called a customary killing) is the murder of a (typically female) family or clan member by one or more fellow (mostly male) family members, in which the perpetrators (and potentially the wider community) believe the victim to have brought dishonour upon the family, clan, or community.¹

The aim of the present article is two-fold. *Firstly* we intend to show that what actually an 'honour killing' means and what are the reasons behind its occurrence. Also we will discuss about the position of International Law over 'Honour Killing'. *Secondly*, we will be going to see that what are the various laws are present instantly in the country against the 'honour killing' and will try to find what more laws ought to be there to stop such a heinous crime.

The present article is divided into three parts. The first part deals briefly with the meaning of honour killing and the reasons behind it. Further in the second part the author had discussed the laws present and proposed for the stoppage of 'honour killing' with the help of judicial decisions. Also the International Law on Human rights is discussed with reference to Honour Killing and various countries position is also discussed over it. The third and the last part of the paper describes about the possibility of various other laws and rules which ought to be there for the 'honour killing'.

1. DEFINITION OF HONOUR KILLING

Human Rights Watch defines "honour killings" as 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

*By Anand Mishra, 2nd Year Student, Hidayatullah National Law University, Raipur, India. The author can be contacted at anandmishra.hnlu@gmail.com.

¹ See, <<http://www.jeywin.com/blog/the-evil-of-honour-killing-in-india/>> as accessed on 12th December, 2010.

the victim of a sexual assault, seeking a divorce—even from an abusive husband—or (allegedly) committing adultery. The mere perception that a woman has behaved in a way that "dishonours" her family is sufficient to trigger an attack on her life.²

Thus an honour killing (also called a customary killing), can be said as the murder of a member of a family or social group by other members, due to the belief of the perpetrators (and potentially the wider community) that the victim has brought dishonour upon the family or community.³ Hence a murder committed in order to save what is considered in a specific culture the "honour" of one's family against the shame caused by another member of the family could be termed as the honour killing.

Reasons for honour killing:-

The main reason for commitment of an 'honour killing' is belief that any member of family had brought dishonour to the family. The dishonour can be of different types for different families. The perceived dishonour is normally the result of the following behaviours, or the suspicion of such behaviours, which are dress codes unacceptable to the family/community; or wanting to terminate or prevent an arranged marriage or desiring to marry by own choice; or engaging in certain sexual acts, including those with the opposite or same sex, etc.

Also the most obvious reason for this practice to continue in India is because of the fact that the caste system continues to be at its rigid best and also because people from the rural areas refuse to change their attitude to marriage. Also in our country the society is mainly the patriarchal. Men are expected to enforce such norms and traditions and protect family and male honour from shame. Women are expected to conduct themselves honourably. This understanding of the notion gives legitimacy to all forms of social regulation of women's behaviour and to violence committed against them.

2. LAWS PRESENTLY ON THE 'HONOUR KILLING'

So far, there is no specific law to deal with honour killings. The murders come under the general categories of homicide or manslaughter. Sometimes the honour killings are also done

²See, 'Violence against women and Honour Crime' at <http://www.hrw.org/press/2001/04/un_oral12_0405.htm> as accessed on 3rd December 2010.

³ See, 'Honour Killing' at <http://en.wikipedia.org/wiki/Honor_killing> as accessed on 5th December 2010.

by a mob and so when a mob has carried out such attacks, it becomes difficult to pinpoint a culprit. The collection of evidence becomes tricky and eyewitnesses are never forthcoming. But ‘Honour Killings’ are against International Law on Human Rights and against United Nation agendas. But still even though we don’t have any law to deal with it specifically in India but we have judicial precedence over it. There are also some bills which are in the latent stage against the honour killings, which are planned to be introduced in the parliament sooner. Let us discuss them under the following heads.

International Laws Regarding Honour Killing

"Honour killings" are a recognized form of violence against women in international human rights law because they violate women's rights to life and security of the person. International law obligates states to protect women from gender-based violence, including by family members, and to disqualify "honour" as a legal defence for acts of violence against women.⁴. ‘Honour killings’ are an extreme and brutal abuse of human rights, violating the most basic of human rights—the right to life—as well as every other article in the International Convention on Human Rights (1948). The presence of laws that treat ‘honour killings’ leniently is also a brazen disregard of the International Convention of Civil and Political Rights (1966), protecting individuals against the use of the death penalty except for the most serious of crimes. ‘Honour killings’ also violate the Convention on the Elimination of All Forms of Discrimination against Women (1979).

Article 1 of the Convention states that “For the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field.”

Article 2 states that “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay

⁴ See, <<http://www.satireandcomment.com/sc1007honor.html>> as accessed on 18th December 2010.

a policy of eliminating discrimination against women and, to this end, undertake:

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.”

This UN charter has been signed by 185 countries world wide - over ninety percent of the members of the United Nations – including most countries where ‘honour killing’ occurs. ‘Honour killings’ violate both the wording and the spirit of this law. India is also a part of it.⁵

Also the General Assembly resolution of United Nation that established the Human Rights Council back in 2006 decided “that the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner”.⁶ Thus we can see that International Law on Human Rights are against the Honour killings and are in no mood to save it in the name of “cultural or traditional rights”.

Judicial Precedence in India & World

Normally the cases of ‘honour killings’ were admitted inside the courts in India, in the forms of homicide or manslaughter. But after seeing the nature and the facts of the killings, courts were also used to follow the flimsy, so-called “honour” of the family in the name of which the heinous crime was done and the perpetrators usually were rescued. This we can observe from the judgement of Supreme Court, in which Justice VS Sirpurkar and Justice Deepak

⁵ See, <http://stop-stoning.org/faq_honour> as accessed on 18th December 2010.

⁶ See, <<http://www.stophonourkillings.com/?q=taxonomy/term/22&page=6>> as accessed on 18th December 2010.

Verma said it wasn't a rarest of rare case. *"The murders were the outcome of a social issue like a marriage with a person of so-called lower caste. Such killings do not fall in the category of the rare of the rarest as the family of the girl has to face lot of taunts and humiliation in the society for the acts of the girl. However, time has come when we have to consider these social issues relevant while considering death sentence in such circumstances,"* they said. In other words, the court classified the shameful caste-based 'honour killings' as different from other homicides in which the maximum punishment of death can be awarded. In this case the brother of the girl, who belonged to Uttar Pradesh, had killed five members including his brother-in-law who was a Scheduled Caste.⁷

This was the earlier tradition, but nowadays from the various judgements of the courts we can say that now the 'honour killings' are not termed differently. Courts through their judgements had reiterated that killing anyone even in the name of 'honour' is the violation of the constitution of India and anyone going contrary to the constitution will be punished. This we can see from the following cases.

In a landmark judgment, in March 2010, the Karnal District Court ordered the execution of the five perpetrators in an 'honour killing' case of Manoj & Babli, while giving a life sentence to the khap (local caste-based council) head who ordered the killings of Manoj Banwala (23) and Babli (19), two members of the same clan who eloped and married in June 2007 and later their mutilated bodies were found a week later from an irrigation canal. In her verdict, district judge Vani Gopal Sharma stated, *"This court has gone through sleepless nights and tried to put itself in the shoes of the offenders .Khap panchayats have functioned contrary to the constitution, ridiculed it and have become a law unto themselves"*. The case was both the first court judgement convicting *khap panchayats* and the first capital punishment verdict in an honour killing case in India. The Indian media and legal experts hailed it as a "landmark judgement". Also, few honour killing cases go to court, and this is the first case in which the groom's family in an honour killing filed the case.⁸

⁷See, 'SC's conflicting judgement on honour' at <<http://news.webindia123.com/news/articles/India/20100613/1525659.html>> as accessed on 8th December 2010.

⁸ See, <<http://ibnlive.in.com/news/5-get-death-penalty-in-honour-killing-case/112360-3.html?from=tn>> as accessed on 7th December, 2010. See also, <http://news.bbc.co.uk/2/hi/south_asia/8595168.stm> as accessed on 7th December, 2010.

Also on August, 2010 the Supreme Court in a case of *State of U.P. v. Krishna master & Ors*⁹ awarded life sentence to three persons who caused the death of six persons of a family in a case of 'honour' killing at a village in Uttar Pradesh in 1991. A Bench of Justices H.S. Bedi and J.M. Panchal reversed the order of acquittal passed by the Allahabad High Court after the trial court handed them the death sentence. The Bench said: "*There is no manner of doubt that killing six persons and wiping out almost the whole family on the flimsy ground of saving the honour of the family would fall within the rarest of rare cases and, therefore, the trial court was perfectly justified in imposing the capital punishment on the respondents.*"

Also a bench of Supreme Court headed by Justice Markandey Katju in the case of *Lata Singh Vs State of Uttar Pradesh and others*¹⁰ had said, "*Honour killings are nothing but barbaric cold blooded murder and no honour is involved in such killings.*" The Supreme Court while dropping all criminal proceedings against Singh's husband and her in-laws had gone to the extent of observing that "*inter-caste and inter-religious marriages should be encouraged to strengthen the social fabric of society.*"¹¹

Recently on June 22, 2010 the Supreme Court had issued notice to the Central Government and nine states in the face of rising '*Honour Killings*' across the country on the Public Interest Litigation filed by *Shakti Vahini*. The court wants to know what steps are being taken to curb such violence.¹²

Thus we can see that in lack of any specific law on 'Honour killing' the judgements of the cases are normally conflicting. But now after the landmark judgements of Supreme Court cited above we can normally presume that where there is 'rule of law', law does not rescue any person to kill anyone in the name of honour of his family or clan.

⁹ See, CRIMINAL APPEAL NO. 1180 OF 2004, at < <http://judis.nic.in/supremecourt/helddis3.aspx>> as accessed on 6th December, 2010

¹⁰ 2006 (5) SCC 475

¹¹ See, 'SC's conflicting judgement on honour' at <<http://news.webindia123.com/news/articles/India/20100613/1525659.html>> as accessed on 8th December, 2010.

¹² See, 'Honour killings and the need for new legislation' at <<http://indialawyers.wordpress.com/2010/07/03/honour-killings-and-the-need-for-new-legislation/>> as accessed on 2nd December, 2010.

Moving to the scenario of the world we can see that the other countries are too standing on the same footing as India is on the issue of 'Honour Killing'. The first instance can be drawn from U.S.A. where in 1999; a Texas judge sentenced a man to four months in prison for murdering his wife and wounding her lover in front of their 10-year-old child.¹³ In Turkey, the Istanbul 2nd High Criminal Court adjudicated one more "honour killing" in the hearing and had given a life imprisonment to a perpetrator for strangling his wife.¹⁴

Moving to any '*statutory body*' set-up till now in India on the issue of 'honour killing', we will find that till now only a single statutory body had been set-up that too in 1990. The National Commission for Women set up a statutory body in order to address the issues of honour killings among some ethnic groups in North India. This body reviewed constitutional, legal and other provisions as well as challenges women face. The NCW's activism has contributed significantly towards the reduction of honour killings in rural areas of North India.¹⁵

Bill proposed in the Parliament

As we all know that we don't have any codified law on 'honour killing.' But alarmed by the rise of honour killings, the Government is planning to bring a bill in the session of Parliament (2010) to provide for deterrent punishment for 'honour' killings.¹⁶ Chidambaram asserted, "The vilest crimes are committed in the name of defending the honour of the family or women. Whoever is the cause of the crime, an individual or a collective, must be punished. My duty is to ensure that laws adopted by Parliament are obeyed and enforced. Once the law is made, it must be enforced."¹⁷

So the drafters of the proposed bill intend to add a clause to Section 300 of the Indian Penal Code, 1862. Section 300 deals with the crime of murder, the maximum punishment for which is death and/or a fine. It also wants to amend the Indian Evidence Act and the Special

¹³ See, <<http://www.satireandcomment.com/sc1007honor.html>> as accessed on 18th December 2010.

¹⁴ See, <<http://www.stophonourkillings.com/?q=taxonomy/term/22&page=6>> as accessed on 18th December 2010.

¹⁵ See, <<http://www.jeywin.com/blog/the-evil-of-honour-killing-in-india/>> as accessed on 12th of December, 2010.

¹⁶ *Ibid.*

¹⁷ See, <http://www.thaindian.com/newsportal/uncategorized/honour-killings-a-shame-on-india-chidambaram_100224214.html> as accessed on 13th of December, 2010.

Marriages Act, 1954, which would do away with the provision for the mandatory 30 days notice period for marriages intended to be solemnized under this Act. The amendment in Special Marriage Act, 1954 is necessary because the present procedure of getting a marriage registered is a long process. The complete process takes about 45 days. During this period a couple may be vulnerable and incidence of killing in name of ‘honour’ may happen. So steps need to be taken to simplify the registration process by amendment. The new bill is also expected to bring in a definition of such honour killings so that it will be treated as special crime and will ensure clarity for the law enforcement agencies.

3. LAW OUGHT TO BE ON HONOUR KILLING

As we have seen that the government is going to amend the Indian Penal Code, 1862, for the honour killing. But if we watch closely our Constitution and Indian Penal Code, 1862, we can see that they are in itself sufficient to combat with the ‘honour killing’. As we already know that ‘honour killing’ are not so different from the homicide; so we have already the following sections of Indian Penal Code, 1862, to punish the perpetrators behind the honour killings. Those can be mentioned as follows:-

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.

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 upto 3 years or with fine or with 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.

Also along with that the perpetrators in ‘honour killing’ can be punished under the various articles of Constitution of India. We can see that the “honour killings” are the violation of the

following constitutional provisions like articles 14¹⁸, 15 (1)¹⁹ & (3)²⁰, and 21²¹ of the Constitution of India. Honour killing violates the women right to live, right to move freely, right to equality and right to security. Hence the ‘honour killings’ can also be combated with the constitutional provisions too.

But to make our law more strong on the issue of ‘honour killing’ an important amendment in the Section 300 of Indian Penal Code, 1862, must be done by adding a new definition of ‘Murder’ in the form of ‘Honour Killing’. This amendment will make it easier for the judges to classify the ‘honour killing’ cases and will ease them in deciding the matters according to the above mentioned sections and articles. Making the crime of honour killing a separate offence would help bring more clarity for law enforcement agencies.

Along with that the system of joint liability must be introduced in the case of ‘honour killing’. Normally there are groups involved who firstly orders for killings in the name of ‘honour’ (for e.g. Khap Panchayats) and secondly the execution of it is taken by other persons. So by introduction of the ‘**joint liability**’ system both (i.e. person giving orders & executers) will be equally liable and this will be efficient to reduce the ‘Honour killing’. Also we can seek some amendments in the sections of Indian Evidence Act, 1872, by which the ‘**burden of proof**’ can be transferred over the family members over whom the guilt of ‘Honour Killing’ had been bestowed on. By this amendment it will be quiet easier to punish those who commit crime in the name of ‘honour’.

CONCLUSION

We have so far discussed at length various aspects of laws related till present times over the issue of ‘honour killing’. Also we have seen the various ought to be rules and laws to strengthen our judiciary over this most dishonourable practice. The above mentioned laws should be actively introduced in the society by the means of formal governance and active policing. Normally in a country where there is rule of law, the customary laws should not be

¹⁸ “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

¹⁹ “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”

²⁰ “Nothing in this article shall prevent the State from making any special provision for women and children.”

²¹ “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

given much value over the codified laws in matters of such heinous crimes like 'honour killing'. Hence the penal actions should be imposed seriously over the perpetrator with the help of various provisions of Indian Penal Code, 1862, and Constitution of India. These measures will definitely help to reduce the spate of honour killings.

Honour killing is done for saving the honour of the family. But there is no such honour in killing any person. 'Religion' and 'culture' cannot and must not be invoked as excuse for the killing of women, because religion and the laws which derive from it are always subjective interpretations. No 'culture' has the right to kill and harm women based on their perceptions of morality or honour. The freedom of belief does not mean freedom to kill. Everyone has right to life with full dignity and equality. Hence active laws are the only antidote to such dishonourable practices.