

## **Inter-Caste or Inter-Religious Marriages and Honour Related Violence in India**

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**Abstract:** *Honour Crimes are a kind of Human Rights Violation in which the young men of much liberal thoughts, one who don't believe in the chains of caste and creed are targeted, by harassing and murdering them. This is due to the reality that our patriarchal society is too narrow-minded to permit an Inter-Caste Marriage or Inter-Religious Marriage. India has seen an exorbitant rise in these Honour Crimes. This paper deals with the socio-legal and judicial frameworks of 'Honour Crimes' in India and the uncertainties surrounding the different judgments. The paper also emphasizes and criticizes the government's casual approach in encountering the massive problem.*

**Keywords:** *Honour Crimes, Inter-religious marriage, Khap Panchayat, Human Rights*

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### **I. INTRODUCTION**

Honour related violence is a global phenomenon<sup>[1]</sup> and has been widely reported in countries such as Iran, Turkey, Afghanistan, Iraq, Saudi Arabia, Egypt, Palestine, Jordan, Bangladesh, Algeria, Brazil, Ecuador, Morocco, Israel, Ethiopia, Somalia, Uganda, the Balkans, Sweden, Holland, Germany, Italy, Yemen, India and many more countries<sup>[2]</sup>. It is a belief that the dishonour of the family or the community is the root cause of such violent crimes. Such violent crimes are directed especially against women. Men also become targets of attack by members of family of a woman with whom they are perceived to have an 'inappropriate relationship'.

In India, there's been a tremendous rise [about 792%] in 'Honour Killings', in the year 2015, mainly due to the fact that most of them were left unreported by the police. There's been a rigorous data collection by the National Crime Records Bureau [NCRB]<sup>[3]</sup>. A campaign by the various women Organizations has seen a separate data collection by the bureau. There were no gender-wise data for the crime until then. The state of Uttar Pradesh, which is the most inhabited to Honour Killings, was reported have more than 125 Honour Killings in the data collection conducted by NCRB.

'Honour killings' and 'honour crimes' 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<sup>[4]</sup>. 'Honour killings' and 'honour crimes' targeting men and women is apparent in a variety of forms and is usually carried out together with a combination of other human rights violations. These offences, which are considered as a misdeed or insult marrying without the will of parents or having a relationship that the family considers to be inappropriate and rebelling against the community and social matrimonial customs. These crimes encompass a range of apparent form of violence from unlawful confinement, assault, acid burning, humiliation, torture and exploitation and face the risk of the worst violence, terror, deprivation, discrimination and devaluation, rape and of course the most classic and extreme form of cold blooded murder. These acts of killing women and men are justified on the basis that the offence has brought dishonour and shame to family or community.

Honour of the male members of the family is understood to reside in the bodies of the women of the family, and in protecting this honour the men aim to regulate and direct women's sexuality and freedom to exercise any control over their own choices/lives. Unfortunately the only responses found adequate enough to achieve this multipurpose aim are that they reaffirm the physical and social dominance of the male members over the female members and manifest themselves in acts of violence against the women. Women who marry a man of their choice moreover take recourse to law, placing themselves outside the traditional scheme; by the public nature of their action, they shame their guardians leading them to resort to violence to restore their honour. Marriage arrangements are delicate and seen to involve serious balancing acts. Any disturbance regarding this balance by woman, refusing a father's choice are considered to affect the father's standing in society.

### **II. CAUSES OF HONOUR CRIMES AND ROLE OF KHAP PANCHAYAT**

Changing cultural and economic status of women and the women going against their male dominated culture has been one of the causes of honour crimes. In some western cultures, honour killings often arise from women seeking greater independence and choosing their own way of life. In some cultures, honour crimes are considered less serious than other murders because they arise from long standing cultural traditions and are thus

deemed appropriate or justifiable. An adulterous behaviour of woman or pre-marital relationship or assertion of right to marry according to their choice, are widely known causes for honour crimes in most of the countries.

In Indian society “honour crimes” are mostly reported from the States of Haryana, Punjab, Rajasthan and U.P and Bihar. Marriages with members of other castes or the couple leaving the parental home to live together and marry provoke the harmful acts against the couple and immediate family members. Honour crimes occur in those States where people marrying without their family’s acceptance and for marrying outside their caste or religion. Marriages between the couple belonging to same Gotra have also often led to violent reaction from the family members or the community members. The ‘Khap Panchayats’ try to adopt the chosen course of ‘moral vigilantism’ and work as the role of social or community guardians<sup>[5]</sup>. In Northern India, particularly in the Haryana region, young persons are challenging the caste and kinship ideologies upheld by the senior male members of the caste by breaching the sexual codes and taboos, by defying demands of caste status, hyper gamy and village exogamy and are thereby, discarding the notions of honour. Elopement of the young couples in love in defiance of their family, caste-village customs and sentiments result in direct violence perpetrated by the male family members on them and more particularly on the girl. Breach of the caste and community moral norms, family and kinship codes by a woman leads to greater social pressure and protest since it is treated as a direct attack on the patriarchal power and is deemed fit to be crushed, controlled and channeled. Women’s respectability determines that of the men, family and the whole caste. This kind of social thought leads to either killing the woman or forcing her to commit suicide by the family members. Many times, she is forced to enter into a greatly compromised marriage where the bridegroom is either a widower, an old man, a man with children, a handicapped or drunkard, not matching her educational qualifications or a fit for nothing person. Thereafter, the family severs all connections with her<sup>[6]</sup>.

Whenever, a young couple elopes after marriage or for marrying, usually the girl’s family tries to criminalize their action and contest the validity of the marriage. It is alleged that the girl is a minor and charges of kidnapping, abduction, wrongful confinement or rape is slapped against her husband and his family members for harassing them. For the loss of their family’s honour, the honour of the offending family is attacked. This strategy is adopted to force the married couple to surface or to withdraw from the much disputed marriage. After surfacing, in majority of the cases, they run the risk of humiliation, physical injury, death and decisions of caste panchayats. Death penalty is regarded a valid method of retrieving the lost honour. At times, the woman is pressurized by her family to support their case of kidnapping or is sometimes solitarily confined by the family members or is sent to the state run protective homes<sup>[7]</sup>.

For re-establishing the family honour, presumed guilty girl or woman must be retrieved and punished and cannot be disowned. Usually absorbing her back into the traditional *biradari* network being a difficult task, her physical elimination appears to be a better honourable option open to her family. She is made to take the stigma which can be removed only by extinguishing her *i.e.*, the object of dishonour. On the contrary, no stigma attaches to the perpetrators of the honour crimes by the society who are absolved of their guilt on the premise that sacrificing the natural bonds of love and kinship for preserving and restoring honour purifies the family. In North India, honour crimes are slowly showing their ugly head even in other parts of the country. Moreover, violence and crimes behind ‘closed doors’ hardly leaves any remedy for them<sup>[8]</sup>. Preservation of family honour at all costs results into her safety, choices and rights being compromised.

### **III. CONSTITUTIONAL AND LEGISLATIVE PROVISIONS IN INDIA**

Honour crimes are violation of Articles 14, 15 (1) and (3), 17, 18, 19 and 21 of the Constitution of India. The Article 21 under the chapter of Fundamental Rights of the Indian Constitution guarantees the Right to Life and Liberty to all persons irrespective of their citizenship. Through various relevant judgments of the Supreme Court of India, the existing provisions in constitution are sufficient to protect various human rights including the right to life. The landmark judgments interpreting the rights to life conclude that the right to life means the right to live with dignity and it also includes the right to livelihood, right to education and right to health and so on. However, the interpretation through judgments do not particularly comprise the right to marry the girl or boy of one’s own choice but it is implied that it is include the right to live with dignity corroborates the same.

In cases where the khap panchayats have compellingly separated married couples who are of eligible age to get married, these have violated the provisions under the Indian Constitution. The Indian Majority Act, Section-3, 1857 states that every person domiciled in India shall attain the age of majority on completion of 18 years and not before. Unless a particular personal law specifies otherwise, every person domiciled in India is deemed to have attained majority upon completion of 18 years of age. However, in the case of a minor for whose person or property, or both, a guardian has been appointed or declared by any court of justice before the age of 18 years, and in case of every minor the superintendence of whose property has been alleged by the Court of Wards, age of majority will be 21 years and not 18.

The Act is relevant in cases where the khap panchayats have forcefully separated married couples who are of eligible age to get married. It is a violation of the provisions under this Act. The main reason behind the enactment of the Special Marriage Act, 1954 was to provide a special form of marriage for the people of India and all Indians residing in foreign countries, irrespective of the religion or faith followed by either party, to perform the intended marriage.

Sagotra marriages are not prohibited by law, whatever may be the view in olden times. The Hindu Marriage Disabilities Removal Act, 1946 was enacted with a view to dispel any doubts in this regard. The Act expressly declared the validity of marriages between the Hindus belonging to the same 'gotra' or 'pravara' or different sub-divisions of same caste. The Hindu Marriage Act does not prohibit sagotra or inter-caste marriages<sup>[9]</sup>.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted by the Parliament of India, in order to avert atrocities against Scheduled Castes and Scheduled Tribes. The intention of the Act was to help the social inclusion of Dalits into Indian society. It defines acts such as forcing an SC/ST to eat or drink any inedible or obnoxious substance, removing clothes, parading naked or with painted face or body, assaulting, dishonouring and outraging the modesty of an SC/ST woman, sexual exploitation of an SC/ST woman, forcing an SC/ST to leave his or her house or village as punishable. The Act is linked to honour crimes because numerous incidents of honour crimes are in relation to caste and religion. The Protection of Human Rights (Amendment) Act, 2006 makes the provision for protection of individual rights of human beings and the constitution of a National Human Rights Commission, State Human Rights Commission and Human Rights Courts for better protection of human rights of individuals.

Honour crimes are considered as brutal crimes of homicide under the IPC (Indian Penal Code). Section 299 and 301 of the IPC, deals with culpable homicide not amounting to murder while Section 300, deals with murder. Honour crimes amount to homicide and murder because the acts are done with the intention of murdering the victims as they have purportedly brought dishonour upon the family. The perpetrators can be punished as per Section 302 of the IPC. The members of the family as well as community can also be prosecuted under Section 302 of IPC for instigating suicide those who transgress the so called norms of the community.

The National Commission for Women has drafted a Bill titled "Prevention of Crimes in the name of Honour and Tradition". The Bill is closer in the line of thinking to the law proposed by the Law Commission. It suggests certain prohibitive and penal measures. It provides for recording of declaration of an intended marriage by the couple concerned as a means of seeking protection apart from penalizing the acts of harassment etc. caused to the woman or her partner. However it misses the necessity and desirability of the focus on directly dealing with unlawful assemblies and their vicious influences. Further, the offences under general law are also included in the said Bill. But, certain aspects contained in that Bill have been usefully incorporated in the proposed law.

The problem of forced marriages has a different dimension as the members of khap panchayats are not directly involved in these kinds of marriages eventually leading to no action taken against the convicted by the police. They can be effectively taken care of within the ambit of general penal law and Child Marriages (Prohibition) Act. Further, it is felt that by enlarging the scope of the proposed law to include offensive conduct of individual family members / relatives, the integrity of the proposed law will be lost as far as it aims to replace or substitute the entire corpus of existing criminal law on the subject of 'Honour Crimes'.

#### **IV. JUDICIAL RESPONSE ON HONOUR CRIMES**

In the case of **Arumugam Servai vs. State of Tamil Nadu** <sup>[10]</sup> the Supreme Court strongly deprecated the practice of khap/katta panchayats taking law into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice.

In the land mark judgment of **Lata Singh vs. State of U.P.** <sup>[11]</sup> the Supreme Court observed and directed as under:

*"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will.*

*There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism".*

In a case of **Bhagwan Das vs. State (NCT of Delhi)** <sup>[12]</sup> the Supreme Court opined:

*"The so-called honour killing comes within the category of rarest of the rare cases deserving death punishment. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate 'honour killing' should know that the gallows await them". [This decision in Bhagwan Das Vs. State (NCT of Delhi) as well as the decision in Arumugam Servai (supra) were rendered by the same Bench.]*

A copy of the judgment was directed to be sent to all the High Courts who shall circulate the same to all the Sessions Judges. Following this judgment, in the recent times, as seen from the newspaper reports, almost all the accused in the so-called honour killing murder cases were sentenced to death by the Sessions Courts in U.P. and Delhi. With great respect, we are constrained to say that such a blanket direction given by the Supreme Court making death sentence a rule in "honour killings" cases, makes a departure from the principles firmly entrenched in our criminal jurisprudence by virtue of a series of decisions rendered by larger Benches of Supreme Court, for e.g. **Bachan Singh Vs. State of Punjab** <sup>[13]</sup> and **Machhi Singh Vs. State of Punjab** <sup>[14]</sup>. It is settled law that aggravating and mitigating circumstances should be weighed and it is only in very exceptional and rare cases, death sentence should be imposed. Death sentence, in other words, is a last resort. Further, where there is more than one accused, the degree of participation and culpability may vary. It is needless to emphasize that each case must be judged by the facts and circumstances emerging in that case. No hard and fast rule can be laid down in the light of the Supreme Court's consistent approach towards death sentence vs. life imprisonment issue. This judgment in the case of Bhagwan Das is bound to create uncertainty in the state of law and we are sure that in the near future, the correctness of such proposition will be tested by a larger Bench of Hon'ble Supreme Court <sup>[15]</sup>.

## **V. RECOMMENDATION OF THE LAW COMMISSION OF INDIA**

Law Commission of India in its Report No.242 of 2012<sup>[16]</sup> has recommended a Suggested Legal Framework for proposal of bill entitled 'Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition)'. The main recommendation of the proposed bill is as follows:

**1-** 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, this legislation has been proposed so as to prevent the acts endangering the liberty of the couple married or intending to marry and their family members. It is considered necessary that 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.

**2 -**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.

**3-** 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.

**4-** Power to prohibit the unlawful assemblies and to take preventive measures are conferred on the Sub-Divisional / District Magistrate. Further, a SDM/DM is enjoined to receive a request or information from any person seeking protection from the assembly of persons or members of any family who are likely to or who have been objecting to the lawful marriage.

**5-** The provisions of this 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.

**6-** The offence will be tried by a Court of Session in the district and the offences are cognizable, non-bailable and non-compoundable.

Since the report by the Law Commission on 'Honour Crimes' falls in the Concurrent list of the Indian Constitution, the Central Government's viewpoint was that to look for the opinions of the state Governments and Union Territories. The Central Government sought for the opinions and reports from the various State Governments on Law Commission's recommendations. About 22 states and Union Territories [Andhra Pradesh, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Uttar Pradesh, West Bengal and Union Territories of Chandigarh, Dadara And Nagara Haveli,

Daman And Diu, Lakshadweep and Puducherry] have supported the Law commission's recommendations but the government stated that after discussions and consultations, decisions will be taken for a new legal framework refusing to further tell the a fixed timeline for the process.

## VI. CONCLUSIONS

In several parts of India, there are hierarchical patterns of castes-within-caste and people belonging to a sub-caste of any caste do not marry their children to another sub-caste. Therefore, inter-caste marriages can be visibly seen as forbidden among all castes. The upper castes in the many parts of India are very possessive about their caste and assume themselves as superior in the scale of the caste-hierarchy in the region. Hence, they perceive inter-caste pre-marital or marital relationships of their daughters as a symbol of huge dishonour. This perception results into the honour based violence but actually the magnitude, extent and dimensions of these causes including elopements, unaccepted secret marriages and instant disclosure of sexual relationships further aggravates the problem which results into the murders of the girls, the boys or the couples.

In India where almost half of the population is that of women and they have always been ill-treated and deprived of their right to life and personal liberty as provided under the constitution of India. At present, women's have proved themselves in almost every section of life affirming that they are no less than men due to their hard work whether at home or working places.

Law Commission of India in its Report No.242 of 2012 has recommended a suggestive Legal Framework for proposal of bill entitled 'Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition)'. Reforming the laws is, in many ways, only a cosmetic solution. India already has a series of laws and other mechanisms in place designed to protect from honour crime. The problem is that exiting laws are rarely enforced. The Indian court system is clogged with cases. As aforementioned, the government has stated that after discussions and consultations only, the decision to enforce a new legal framework will be taken and further not specifying the timeline which is a concern as cases are filed in courts in multitudes, Honour Killings are carrying out at an enormous rate and police officials have got no idea to tackle the problem and add to that the government's casual way of dealing with such a serious crisis. The government institutions are rarely held accountable for failure, and rife with bureaucratic apathy. To attain a genuine deterrent for perpetrators of honour crime will require a more better-trained police, more judges and more efficient court.

It is the need for society to look deep within and work to root out the evil of honour crime from our mindset. Civil society groups, Government officials and NGO's and many more are working to improve the situation of evil of honour crime. For the honour crime, a change is required in the culture itself. Some part of India remains a deeply conservative. To change this arena requires a revolution in thinking and viewing the fundamental relationship between men and women.

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