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Human Rights v Tradition: Honor Killing in India

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Honor killing is the practice of killing a female member of the family claiming that she has harmed the prestige of the family. The victim is killed to restore the honour which has been harmed. A woman can be killed by her family for a variety of reasons including refusing to enter into an arranged marriage, inter-caste marriage, adultery, cruelty by her husband, and seeking divorce from her husband. A mere perception that any of the following acts bring dishonour to the family, they are killed. This grievous crime infringes basic human rights including the right to life and personal liberty, the right to equality and non-discrimination, and the right to freedom of expression and opinion. There are many reasons behind this grievous event such as the caste system, patriarchal mindset, pressure from society, etc. There are various provisions in India that deal with crime but there is no specific law governing the same. There is an urgent need for strict laws. Furthermore, there should be robust law enforcement efforts to investigate and prosecute honor killings and punish the perpetrators. We can combat this heinous crime by spreading awareness, education, enforcing strict laws, and reforms in mindset.

Keywords: *honour killing, patriarchal mindset, khap panchayat, personal autonomy.*

INTRODUCTION

How can honour be bigger than someone's life? And how can it be restored by killing someone? How can someone kill their family member? And why, most of the time, are women associated

with honour? No one has the right to kill someone and it is a basic human right that every human has had since birth. It is unconstitutional and violates the law. This right to live is guaranteed as a fundamental right by the Indian constitution. No tradition or custom can justify the murder of a person and there can be no custom or tradition above the life of a person. Everyone has the right to life with dignity, which cannot be snatched from them by anyone. Honour killing violates all of these and is not correct in any way. Through this article, we will try to understand what is meant by honour killing, how it is promoted by society, the reasons behind the practice, related provisions under Indian Law, and landmark judgments related to it. When a woman's actions are perceived to jeopardize family honor, honor killing is seen as the only remedy. Honor killing is a traditional practice that is performed by killing the female by the male member of the family when found engaged in activities that tarnish the family's social standing. Despite 76 years of independence, India is still burdened by its caste system and patriarchal attitude, with women yet to gain freedom from cruelty. In this culture of honor killing, the women's lives are dictated by the men, and their reputations hinge on their actions. Her consent does not matter whether it is the right of choice, life, liberty, freedom, right to marry, body integrity, or choosing a partner. Engaging in an inter-caste or inter-religion marriage, refusing the arranged marriage, experiencing rape, and having a relationship are all perceived as bringing shame to the family and the only cure is killing to restore that honor. 'Honor' is a very subjective term for some beings from the LGBTQ community who can bring shame to some live-in relationships, pre-marital sex, and even dress code. As per the latest data from the National Crime Records Bureau (NCRB), the number of honor killings reported in India was 25 each in 2019 and 2020, and 33 in 2021.¹ But these figures are based on those reported, and the number could be much higher than mentioned². The Constitution has given every citizen the right to life and dignity. It covers the right of choice, personal autonomy, and protection from any kind of danger to his/her life. Thus, no one can take away the rights guaranteed by the Constitution. Henceforth, it's vital to remember that India is a democratic nation where rules and laws apply to all, without exception.

¹ Ashwini M Sripad, 'Killing honour in the name of 'honour killings' *The New Indian Express* (04 September 2023) <<https://www.newindianexpress.com/states/karnataka/2023/Sep/04/killing-honour-in-the-name-of-honour-killings-2611437.html>> accessed 01 May 2024

² *Ibid*

FACTORS LEADING TO HONOR KILLING

Patriarchal Mindset: The most obvious reason for this practice to continue in India is because of the patriarchal mindset of society. Even after all these years of struggle, she does not stand on equal footing with men and is owned and controlled by them. When she resists following orders, she is punished by being killed. Though human rights have evolved and the Constitution gives equal rights, there is still an underlying regressive mindset that lingers. In patriarchal societies, the activities of girls and women are closely monitored. The maintenance of a woman's virginity and 'sexual purity' is the responsibility of male relatives – first her father and brothers and then her husband. Men are expected to enforce such norms and traditions and protect the family and male honor from shame. Women are expected to conduct themselves honourably. They never find release from this cycle, and their lives and choices are perpetually controlled by men.

Caste System: The caste system's pervasive influence in Indian society is another factor that contributes to honour killing. India is a land of diversity where religion, gotra, and caste systems are deeply rooted. Newspapers are often filled with tragic events of honor killing occurring across the world, where a man or woman is brutally killed by family members for entering an inter-caste or inter-religious marital alliance. Honour killings,' as they are called, are deeply rooted in the caste-based, Brahmanical, and patriarchal norms of societal organization and kinship in the Indian subcontinent.³ Castes are essentially 'endogamous' social groups, and the 'Brahmanical Code of Conduct' decides for every individual and social group falling within its 'fold' their position, location, occupation, as well as rules pertaining to romantic relationships and marriage⁴. Members of the majority caste deny inter-caste marriages under the pretext of safeguarding their caste dignity and societal rank. People are so overly concerned by caste, sub-caste, religion, gotra, etc. that they end up taking someone's life.

Society: Society plays a vital role in promoting honor killing through its loyalty towards traditional beliefs, cultural norms, and gender roles. These societal norms prioritize family

³ Khushbhu Sharma and Mahesh Choudhary, 'How Continuous Caste-Based 'Honour' Killings In India Prove That Mere Love Is Not Enough' (*Feminism in India*, 25 May 2022) <<https://feminisminindia.com/2022/05/25/how-continuous-caste-based-honour-killings-in-india-prove-that-mere-love-is-not-enough/>> accessed 16 April 2024

⁴ *Ibid*

honor over the life of the person. These norms are more valuable than individual rights and choices. The fear of social rejection and disgrace exerts pressure on families, pushing them towards honor killing to secure their reputation and maintain their standing within society. Honor killing is not only tolerated but also encouraged for the sake of preserving religious values. It is treated as a tool to preserve the community's purity and order. Whoever tries to pollute society has to pay for it.

Khap Panchayat: These are the self-appointed authorities on caste matters in the village. Their purpose is to provide their members with protection and settle disputes. These leaders have total authority over their caste community and are entrusted with maintaining honour.

Illiteracy is another factor that contributes to this practice. Such crimes are more widespread in rural areas than in urban areas because of the literacy rate. The root cause is the mentality of society so literacy and awareness become very important. The caste system and gotra system are enforced, which divides society and gives rise to such heinous crimes. Education can be a game-changing factor in eradicating this mentality, as it can help in reforming the mindset and mentality of people.

PROVISIONS IN INDIAN LAW

Various provisions under Indian law provide protection against the cruel practice of honour killing:

Fundamental and Constitutional Rights: It includes Art 14 (this article deals with the right to equality)⁵, Art 15(1) (it deals with the prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth), and art 15(3) (it deals with creating special provisions for women and children)⁶, art 17 (abolition of untouchability)⁷, art 19(1) (it deals with the freedom of speech and expression)⁸, and article 21 (it deals with the right to life and personal liberty)⁹.

⁵ Constitution of India 1950, art 14

⁶ Constitution of India 1950, art 15

⁷ Constitution of India 1950, art 17

⁸ Constitution of India 1950, art 19

⁹ Constitution of India 1950, art 21

Penalties Under the Indian Penal Code: The victims of honour killing can use these sections as a defense. They are as follows:

Sections 299–304:¹⁰ This section provides punishment for murder and culpable homicide not amounting to murder. The punishment for murder includes life imprisonment, death, and a fine, whereas the punishment for culpable homicide not amounting to murder is life imprisonment or imprisonment up to 10 years and a fine.

Section 307:¹¹ under this section, making threats to kill can lead to a maximum of 10 years of imprisonment, and in the case of injury, the sentence can increase to life imprisonment.

Section 308:¹² Attempting culpable homicide under this section results in 3 years imprisonment, a fine, or both. The punishment can extend up to 7 years, a fine, or both if the attempt causes harm or death.

Section 120A and 120B:¹³ Sections 120A and 120B prohibit and impose penalties on those who are involved in a criminal conspiracy.

Sections 107–116:¹⁴ section 107–116 imposes penalties on people for abetting murders, including murder and culpable homicide.

Sections 34 and 35:¹⁵ This section imposes a penalty on several-person criminal acts in support of common intention.

Schedule Caste and Schedule Tribes Act: This act was passed by the parliament of India to eliminate caste-based violence. The idea behind the act was to make it convenient for Dalits to integrate into mainstream Indian culture. The act includes various acts like outraging, attacking, offending, dishonoring the modesty of the sc/st women, assaulting and sexual harassment, etc. It also includes forcing sc/st to leave their house or village.

¹⁰ Indian Penal Code 1860, ss 299-304

¹¹ Indian Penal Code 1860, s 307

¹² Indian Penal Code 1860, s 308

¹³ Indian Penal Code 1860, ss 120A-120B

¹⁴ Indian Penal Code 1860, ss 107-116

¹⁵ Indian Penal Code 1860, ss 34-35

Indian Majority Act 1875: As per Section 3 of the Indian Majority Act, 1857, an individual in India achieves the age of majority at 18 years old, unless stated otherwise. The guardian age of the majority shifts to 21. This law is applicable when the Khap panchayat forcibly separates the couple who have attained the legal age, which goes against the act.

The Protection of Women from Domestic Violence Act 2005: It provides protection to women from any kind of abuse that takes place within the family or is related to it and determines that every act of domestic violence is unlawful.

The Special Marriage Act, 1954: The Special Marriage Act of 1954 was enforced to provide a special form of marriage to Indian citizens irrespective of the caste and religion they belong to. The act provides legal measures for the protection of people who want to marry outside their caste or religion.

SOME LANDMARK CASES RELATED TO HONOR KILLING

Manoj Babli Case:¹⁶ Babli Manoj is a well-known case of honor killing. Manoj and Babli were the victims; their angry families took them to the Khap panchayat for a decision. Khap panchayat said anyone who talked to the panchayat had to pay twenty-five thousand rupees. Khap panchayat decided against the victims because they were from a different caste and according to them, it was in society's best interest. It was also suspected of being involved in the murder of the victim to protect the honor of the family. Because Babli's grandfather was the leader of the khap, some of his family members were also included. The victims were kidnapped and killed. When the case went to the Karnal district court, five people were given life imprisonment for the murder, and the driver who helped in the kidnapping got seven years in jail.

Sujit Kumar and Ors v State of UP & Ors:¹⁷ Sujit Kumar and Rashmi were the victims in this case. Sujit Kumar is a jat by caste and Ms. Rashmi is tyagi by caste. Rashmi married Sujit Kumar, opposing her parent's desire. The marriage was held with their consent and under Arya Samaj's

¹⁶ *Smt. Chandrapati v State of Haryana & Ors* (2007) CrI 42311/2007

¹⁷ *Sujit Kumar And Ors v State of UP & Ors* AIR 2002 (NOC) 265 (All)

regulation. Rashmi's father filed an FIR alleging that Sujit Kumar persuaded his daughter, Ms. Rashmi, to go with him and they are both living in district Muzaffarnagar. However, ms Rashmi sent a letter confirming that she willingly married him. She also mentioned the threats given by her parents. The couple received death threats from the family because of their marriage. When the matter reached the court, the FIR, which was under 362/366, was quashed, and the victims proved that they were majors. The court concluded that an 18-year-old has the right to his/her interest under Section 3 of the Indian Majority Act of 1875.

*Smt. Laxmi Kachhwaha v State of Rajasthan (1999):*¹⁸ In this case, the Rajasthan High Court received a public interest litigation accusing the Khap panchayat of unlawful activities and infringement of human rights. The court mandated the state authorities to restrict the activities of the panchayat and ensure that they take legal action against them.

CONCLUSION

Honor killing is a traditional practice carried out to preserve the dignity of family in society. However, no culture, faith, or tradition can justify murder. The right to life is a right which cannot be seized by anyone. India being a democratic nation guarantees this right and treats law as supreme. The problem lies in the society, mindset, and rigid caste system which compels people to do such heinous crimes. There's an urgent need for more strict actions and laws to fight against this problem. Though this is a punishable offense in India as per the laws and sections discussed above, India still lacks a specific law. There is an urgent need for the proper regulation of the laws dealing with honor killing. There should be robust law enforcement efforts to investigate and prosecute honor killings and punish the perpetrators. Statues or provisions specifically related to honor killing are needed of the hour so that more valuable lives can be saved. Awareness, education, strict laws, and reforms in mindset and mentality can be helpful to combat this heinous crime.

¹⁸ *Smt. Laxmi Kachhwaha v The State & Ors* AIR 1999 RAJ 254