



Honor killing law in India

Suminder Kaur

Research Scholar, Sri Guru Nanak Khalsa Law College, Ganganagar, Rajasthan, India

MGS University, Bikaner, Rajasthan, India

Abstract

This article aims at highlighting the legal provisions to tackle with the crime of honour killing. The introductory part gives a glimpse of what is honour killing and which acts are considered dishonourable by the family or community. Certain acts and behaviour of individuals could become reasons for him or her to be killed by his or her own family's especially male family members or the community. The next part illustrates various legal provisions in the Indian Constitution which can be used to put to stop these honour killings in the country. These laws can be used as a tool to put behind bars the khap panchayat members who give orders of killing individuals for the sake of so called honour. The next part explains the international provisions related to honour crimes to which India is signatory. The paper questions as to why despite all these provisions killings are rampant in the present times.

Keywords: crime, honour killing, law

Introduction

Honor killing can be defined as the homicide of the member of a family or social group by other members due to the belief of the perpetrators that the victim has brought dishonour upon the family or community. In most of the cases, honor killings are mostly directed against the women especially in the South Asian and Middle Eastern Islamic cultures. Sadly, this culture is prevalent in some parts of the Indian society too.

Mainly the method of honor killing is adopted when a girl goes against the wishes of her family and marries a guy who does not belong to her own community. In some of these cases, both the boy and the girl are killed either secretly by the family members and even openly claiming that the respective boy or girl have brought dishonour and disrespect to the family and to the society or community as a whole.

Each and every individual has the right to live his or her own life according to their own wishes. After attaining the age of 18 and 21 by the girl and the boy respectively, the family has no right to force them into marriage or any other act if they are unwilling to do so. If an individual be it a boy or a girl feels that he or she wants to marry according to their wishes, their parents should accept the wishes.

In fact, parents only desire to see their children happy and if the children are happy, the parents should let them do what they desire. But for a number of families, their status and position in the society is so much more important than their kids that they do not mind killing them or sacrificing them just to maintain their desired status. Only one question comes into the mind of all the people- Is the society more important than your children? When asked all will say that their children are more important. But in some of the cases the reality is totally different. These people who kill their children for the breach of so called code of conduct of their societies are actually only concerned about their status and position in the society.

Such people can be termed as criminals who are far more dangerous than the terrorists. Terrorists kill people who are unknown to them. But these people who support honour killing and are a part of it are heartless because only a heartless individual can kill someone they love and that too for a baseless reason.

The government of India has formulated laws against honour killing but still this inhuman practice exists. In my opinion people involved in honour killing should also be treated as criminals and should be punished as severely as possible. Even capital punishment should be offered to these individuals so that they realize that how painful death was to the person they killed.

I. Penalties under Indian Penal Code

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. The punishment for culpable homicide not amounting to murder is life imprisonment or imprisonment for upto 10 years and fine.

Section 307: Penalizes attempt to murder with imprisonment for upto 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. If it causes hurt, the person shall be imprisoned for upto 7 years or fined or 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.

Section 300: introduce “fifthly” clause to Section 300 of IPC which at present defines “murder” under four categories. The additional definition would make khap-dictated honour killings a distinct offence and make all those who participate in the decision liable to be tried for the main charge, that is murder, and liable maximum penalty, death.

Arguments favouring new law

Making the crime of honour killing a separate offence would help bring more clarity for law enforcement agencies.

One of the proposals is to amend the Indian Evidence Act to put the burden of proof on the accused. Thus, the khap panchayat or the family members would be responsible for proving their innocence.

There would be joint liability under the proposed new law. The khap panchayat or any group ordering honour killings and the person who carries out the killing would be jointly liable for punishment.

Presently there is no definition of Honour Killing/ crime or clarity. Since Honour Killings /Honour crimes are not separate crime and hence we don't have any data. Protection powers to the magistrate at the District level.

New law will provide mandate for special police cell in each district to provide protection to couples.

New law comes with institutional machinery and the required coordination of all stakeholders. It will also mandate the different state government and the Centre to work on sensitization of the law enforcement agencies. The new law will mandate social initiatives and awareness to curb such violence through social means.

Honour crimes should include all the crimes against women which are perpetrated by the community. There are many cases of women being branded witches, paraded naked, tortured in public which are very heinous offences of honour and hence need to be strengthened by a special law and to have stringent punishments. Having a special law can be deterrent.

Relaxation in the Special Marriages Act

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. Steps need to be taken to simplify the registration process.

Arguments against new law

The existing penalty for the offence of murder is sufficient if they are implemented strictly and effectively.

A new set of laws would not deter honour killings because the basic issue is social sanction for acts committed to curtail same gotra marriage, inter-caste marriage, inter-religion marriage.

Need for creating awareness among traditional communities through education. Holding khap panchayats collectively accountable can be detrimental to members who do not support such killing. Also, it could be misused for vindictive

agendas.

The Indian Evidence Act, 1872 makes provision to punish those who conceal facts, either before or at the time of, or after the alleged crime. Article 13 of the Act: Facts relevant when right or custom is in question -Where the question is as to existence of any right or custom, the following facts are relevant:

- a. Any transaction by which the right or custom in question was created, claimed modified, recognized, asserted or denied, or which was inconsistent with its existence;
- b. Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from. The Act is relevant to bring to justice those who become victim because of the verdicts issued by the khap panchayats.

II. Constitutional Provisions

The Constitution of India has ample provisions allowing an individual to exercise his/her choice independent of caste, religion or gender and protection from honour related crimes including honour killings.

Following are those Constitutional provisions that substantiate this:

Honour Killings are cases of homicide and murder which are grave crimes under the Indian Penal Code (IPC). Section 299 and 301 of the IPC, deals with culpable homicide not amounting to murder while Section 300, deals with murder. Honour killing amounts 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 khap panchayats or family members can also be booked under Section 302 of IPC for instigating suicide those who transgress the so called norms of the community.

Such killings also violates Articles 14, 15 (1) & (3), 17, 18, 19 and 21 of the Constitution of India.

Article 14 of the Indian Constitution guarantees to every person the right to equality before the law or the equal protection of the laws. Every person, whatever is his or her status or situation is subject to the jurisdiction of the ordinary courts.

This right to equality is thus documented as one of the fundamental features of the Indian Constitution. Honour Killings are thus hideously against this very Constitutional Right provided for the protection of Indian citizens. Honour killings are mainly directed towards women and thus give rise to gender violence.

Honour killings involve the murder of a particular person especially a woman and thus come under the ambit of Section 299 and Section 300 of the Indian Penal Code. It is also violation of Article 19 and Article 21 of the Constitution. Such brutal murders, under the garb of saving the honour of the family, are clearly against the Constitutional provisions enshrined in Article 21. Khap panchayats violate a person's fundamental right to life as they kill or instigate murder, in the name of honour. Every person has a right to live. The capital punishment is possible only when granted by law.

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.

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 killings because numerous incidents of honour killing 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.

The Protection of Women from Domestic Violence Act, 2005 provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –

- a. Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- b. Harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person

related to her to meet any unlawful demand for any dowry or other property or valuable security; or

- c. Has the effect of threatening the aggrieved person or any person related to the by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

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III. International Provisions

India is a signatory to the United Nations Convention on the Elimination of all forms of Discrimination against Women (CEDAW 1979) and has also ratified the convention. The provisions of CEDAW can be used to argue that the tradition and practice of punishing individuals for ill informed ideas of dishonouring the family, is essentially institutionalised discrimination against individuals and creates a legally binding obligation for India, as a State party to the convention, to take all measures to end all forms of the practice of honour killing and ensure that all discrimination against women in matters relating to marriage and family relations are eliminated, providing them with the equal right to enter into marriage and to freely choose a spouse and to enter into marriage with their free and full consent as enumerated in Article 16 of the Indian Constitution.

This means Honour Killings and Law in India ensuring that informal decision making bodies functioning on customary laws, such as khap panchayats, are refrained from enforcing their dictates, and intrusive with the right of individuals to choose their spouse.

Noting that the Universal Declaration of Human Rights, (UDHR 1948) affirms the principle of the inadmissibility of discrimination and inequity and proclaims that all individuals are born free and equal in dignity and rights and freedom set forth therein, devoid of distinction of any kind including distinction based on sex. Recalling that prejudice and discrimination against women violates the principle of equality of rights and respect of human dignity, is an obstacle to the participation of women in the political, social economic and cultural life and hampers the growth and prosperity of society and the family. All crimes of honour, including honour killing, are gross violations of the rights enumerated in the declaration.

Article 1 and 2 of the declaration state that “all human beings are born free and equal in dignity and rights,” and that “everyone is entitled to all the rights and freedoms set forth

in” the declaration irrespective of “sex”. Therefore as enumerated in the declaration’s Articles 3 and 5, women are entitled to enjoy the “right to life, liberty and security of person” and also the “right to be free from torture or cruel, inhuman and or degrading treatment”. Crimes of honour violate Article 3 and 5 when the purpose of the perpetrator is to inflict severe mental and physical pain on the women.

Under Article 12 of the International Convention on Economic, Social and Cultural Rights (ICESCR1976) State parties have to take all steps to ensure the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, is ensured. Crimes of honour that involve sexual violence and mental violence or physical or mental torture obstruct the right of women to enjoy the highest attainable standard of health. India, as a State party, is therefore legally obligated to ensure that individuals and victims of crimes of honour are able to avail this right.

While not legally binding on the State, the human rights standards enumerated in paragraph 232 of the Beijing Platform for Action (BPFA 1995) recognises that the “human rights of women include their right to have control over and decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence”.

The Beijing Platform for Action on Women’s Human Rights calls upon States to “take urgent action to combat and eliminate violence against women, which is a human rights violation resulting from harmful traditional or customary practices, cultural prejudices and extremism”. Crimes of honour may involve the violation or abuse of a number of human rights, which include the right to life, liberty and security of the person; the prohibition on torture or other cruel, inhuman, or humiliating treatment or punishment; the ban on slavery; the right to freedom from gender-based discrimination; the right to privacy; the right to marry; the right to be free from sexual abuse and exploitation; the obligation to amend customs that discriminate against women; and the right to an effective remedy.

All these mentioned above violate the Human Rights Act (1998). Honour Killings are a clear violation of human rights and States necessarily need to protect individuals from such violations. Two major UN documents call for the „elimination“ of honour killing. The concept of elimination appears in the Declaration on the Elimination of Violence against Women” (1993) and in „Working towards the Elimination of Crimes against Women Committed in the Name of Honour“ (2003). But the eradication of any such phenomenon like honour killing requires a serious intervention in the status quo. Equal gender relations have not yet been achieved and violence still exists in the name of honour. The whole system in itself is patriarchal and insensitive.

In the words of the UN Declaration on the Elimination of Violence against Women “Violence against women is a manifestation of historically unequal power relations between men and women, which have led to discrimination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with

men.”

However constitutional law and international provisions fail to tackle with this menace. It all fails to give justification as to why such a crime is rampant even in the contemporary times when there are abundant provisions for the protection of individuals. It is strange that even after the provisions of CEDAW and various human rights provisions to eliminate violence against women individuals continue to be the victims of murders in the name of honour.

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. 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."

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 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.

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 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.

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

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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.. Honour-killing in the name of tradition is a heinous crime in this age of the liberal-democratic ethos. It is sad but true that the Khap Panchayats have been supportive of these killings.

They have been forced to change their stand and criticise such acts only belatedly under the pressure of civil society. The patriarchal-feudal mind set wishes that it be followed in unswerving obedience –its writ has to run. No voice of dissent is to be allowed –custom and tradition is the shield for defence, it is the cloak that conceals the real mind set. The new wave of young blood, gradually becoming aware of its individual space, influenced as it is by the winds of change brought about by the democratic ethos and liberalisation, is learning to take its own decisions.

The right to vote at 18—why not the right to choose your own

partner at the legally prescribed age? and there lies the story of two mind sets pitted against each other in the backdrop of a society struggling to emerge from its earlier avatar. The individual's right at a legally prescribed age should be respected.

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