

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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KILLING IN THE NAME OF HONOUR: AN ANALYSIS OF ROLE OF JUDICIARY¹

AUTHORED BY - SHRIYA JAIN & MRIDU JAIN

ABSTRACT

Person preference is inextricably linked to dignity, since dignity cannot be imagined in the absence of choice. The same is bound by the principle of statutory restriction, except in the absence of such limitation, no one, that is, no one, shall be able to conflict with the fulfilment of the said option. It would be exceedingly difficult to think about dignity in its sanctified completeness if one's ability to express one's own preference was limited. When two adults marry willingly, they chose their path; they complete their relationship; they agree it is their intention and that they have the moral right to do so. Not only in today's culture, but even in the new political structure, the idea of honour killing has a large following. Honour killings are a pervasive, violent, and hotly debated human rights problem in India and elsewhere. This paper thus seeks to analyse the concept of violence in the name honour, its causes and its legal aspects.

KEYWORDS: Honour Killing, Dignity, Marriage, Violence

1.1. INTRODUCTION

Honour killing is the most barbaric tradition in society, in which the nation would destroy the opponent if there is even the slightest intention to threaten the social order. In certain parts of the world, insult, embarrassment, and ridicule are prevalent notions or concepts, as well as common real-life experiences. The growing instances of brutal killings of innocent youths in the name of family or clan honour in India is causing concern among liberal minded citizens, religious, political, and foreign and national institutions. In reality, using the term honour to describe such a dishonourable act is deplorable in and of itself. Those who take pride in those killings should be embarrassed of their acts rather than proud of them. Honour killing is described as the assassination or forced suicide of a person by a family or clan member based on a suspicion or assumption that the individual has betrayed his or her reputation or virtue,

¹ Shriya Jain & Mridu Jain (students at Vivekananda Institute of Professional Studies , GGSIPU)

thus tarnishing or blemishing the family's honour. In families or cultures where honour killings are common, individuals often use the concepts of honour and guilt to judge their own behaviour as well as that of their peers. Humanity's most precious spiritual attribute is honour. It is deeply ingrained in the creature's nature. Humans have a long history of defending their honour, even at the expense of their lives. It's a kingdom made up of blood relatives. Defilement of honour is known as the most egregious social offence, and its elimination becomes a mutual and spiritual obligation of close friends.

1.2. RESEARCH METHODOLOGY

1.2.1. REVIEW OF LITERATURE

The following study content was analysed in order to objectively review the research work on honour killings in order to arrive at specific ideas and remedies. The researcher examined the following books, journals, papers, and judgments during his study. Here are a couple that have been mentioned:

In his novel, Rao Arif Ali Khan, the author goes into great depth about honour killings, including their origins, history, and legislative and judicial perspectives. The author has since sought to introduce numerous remedies in order to avoid such cries in society.

The editors of Honour Killing and Violence have addressed different aspects of honour and honour killing. The book discussed honour killing violence from a family perspective, as well as distinguishing between ordinary violence and honour-based violence.

M.S. Rana describes the idea of honour as the most precious spiritual characteristic of humanity and how its protection, even at the expense of life, has been reigning among human beings since the dawn of time in her article "Honour Killings were not Caste, Religion Specific."

M. Rashid addressed the meaning and idea of honour killings in his article, "Honour Killing: A Threat to Progressive Society". In addition, he noted that honour killing occurs when family members murder another family member who has brought shame and ridicule to the family, and that it is still prevalent in many parts of India.²

²M. Rashid "Honour Killing: A Threat to Progressive Society"

1.2.2. HYPOTHESIS

honour killings not only pose a significant threat to a progressive society, but they also undermine the justice system's pillars, which, if they crumble, would obliterate the society's entire social fabric. The need of the hour is to take action against the horror of honour killing before the consequences become too serious. Working hypothesis have been formulated based on the study of literature, which say that:

1. The existence of a dogmatic value system dominant in society is the primary force behind honour killing.
2. The issue of honour killing can be successfully addressed by improving the current social and legal enforcement mechanisms.

1.2.3. OBJECTIVE

In this paper, an effort is made to investigate different problems and dimensions relevant to honour killings in India, as well as a brief review of reasons responsible for a spike in the number of cases of honour killings. An effort was made to investigate the rules and legal provisions regulating honour killings, as well as to propose yardsticks for eradicating this evil from Indian society.

1.2.4. RESEARCH PROBLEM

Following are the research problems on which this paper is based:

1. What are the views of judiciary and how various statues and legislations deal with this issue?
2. Was this issue a tradition and is it still prevalent in modern India?

2. CONCEPTUAL STUDY

2.1. HONOUR

2.1.1. MEANING

The definition of honour, which values an individual's intrinsic worth, can be seen in a number of cultural contexts around the world. Honour has several distinct interpretations and is interpreted differently by different classes of people³. In classical Latin, the words "honour, honos, honoris" connote reputation, reverence, reverence, and integrity, and are synonymous with the presence of public dignities and positions, as well as awards, ornaments, and apparels

³ Unni Wikam, In Honour of Fadime, Murder and Shame¹⁴ (The University of Chicago Press, London, 2008).

that grant these attributes. They elevate their holder above the rest of society or culture.⁴ Many cultural and social influences have contributed to its steady shift in interpretations, and in India, the concept is often examined through the prism of caste rigidity.

2.1.2. HONOUR AND SOCIETY

The honour is conferred upon society's elites, who traditionally include landlords and uneducated individuals. They are willing to go to any length to maintain the honour. They pass judgement and determine the fates of the weak and oppressed. As defined by conservative family ideologies, such a moral code describes honour in terms of women's given sexual and parental roles⁵. Although the exact definitions of honour vary, they all depend on the social requirement for holders, bestowers, and viewers of honour. Dishonour and disgraceful perspectives also emerge in the historically positioned self and in time and culture-specific frameworks.⁶ As a consequence, what an honour represents to a culture can be viewed in a number of ways. However, the meaning is often made by a dominant class.

2.2. HONOUR KILLING

2.2.1. MEANING AND CONCEPT

Honour killing is more like a ritual and culture than a religious practise.

Though faith has been used to excuse honour killings in the past. Honour killing is a heinous crime. Carried out to restore soiled family honour, loyalty, chastity, or to restore soiled family honour, respect, chastity, or to restore soiled family honour, respect, honour tarnished, or the honour in question as a consequence, murder is a form of crime. It cleanses the defiled culture with the deviant member's semen. In order to restore sanctity, social traditions often require the execution of the offender. The more violent the murder, the more completely the family's honour is restored. As a result, people are often strangled, knifed, or hacked to death. Violence has the effect of enhancing the purity that is to be conferred. 'Honour killing,' also known as 'customary killing,' is the death of a family or clan member by one or more family members, with the killers, or the group at large, thinking that the perpetrator has brought disgrace to the family's honour. It is a crime that derives from a person's history, race, or ethnicity. It's also possible to term it a spiritual tradition. In societies where "honour" killings occur and women

⁴ Recep Dogan "Is Honor Killing a Muslim Phenomenon? Textual Interpretations and Cultural Representations", *Journal of Muslim Minority Affairs* 423-440 at 424,

⁵ Report of Special Rapporteur on "Violence Against Women, Its Causes and Consequences"

⁶ Carolyn Strange, "Adjusting the Lens of Honour Based Violence; Perspectives from Euro American History", in Aisha K. Gill, Carolyn Strange et.al. (eds), *Honour Killing*

are seen as responsible for protecting a family's "honour," the conceptions of male rank and family status are particularly important. If a woman or girl is convicted or suspected of engaging in conduct that may jeopardize a man's or family's standing, she could face vicious retribution from her families, which often ends in violent death.

2.2.2. HISTORY AND BACKGROUND

It has been recorded in ancient Indian history that invasions had terrible repercussions for women. To protect the clan's purity and chastity, the concept of honour killing is deeply ingrained. Women were frequently encountered, and instead of being taken prisoner by the enemy, they choose to end their own lives. If their man folk were lost in combat during the Medieval period, the women of Rajasthan royalty set themselves ablaze. Rather than being the servants of the enemies, they desired to remain chaste and noble. Johor was the name given to this practise. There are many cases of male family members murdering their female family members in order to flee an enemy. Number Female infanticide has also been linked to honour killings. During the division of the country, the practise of honour killing was widespread. Around 1947 and 1950, a large number of women were murdered in order to save family honour. Under the partition, several instances of forced marriages occurred, in which women from the partitioned land were forced to marry citizens from the partitioned land. Then came the tradition of hunting, in which married women who had been coerced to marry someone from another nation were tracked down and murdered as they returned home to protect the family honour.

3. LEGAL FRAMEWORK

3.1. STATUTORY PERSPECTIVE

The horrible crime of honour murders in India is neither specifically covered by any laws, nor are there any penalties that may be applied. Honour killings in India are prosecuted under the terms of the Indian Penal Code, 1860. Honour killings are classified as grave offences and fall into the categories of homicide and murder. The act of honour killing is governed by different provisions of the Indian Penal Code, 1860. The following are some of the most relevant sections of the IPC: Section 300– This section addresses murder; culpable homicide is called murder if it is committed with the intent to kill. So, if an individual is killed because he has harmed the family's honour, the people who killed him can be charged under section 300 of the IPC, because they committed the act on purpose. Sections 299-304 – These sections punish someone who commits murder or culpable homicide not the amounting to murder. The

sentence for murder in these parts is life in jail, with or without a fine, or both. Section 307: Attempts at murder are addressed here. Where the accused attempts to murder anyone but the victim is spared due to any act, the accused will be charged under section 307 of the IPC, 1860. Apart from these main parts, the Indian Penal Code contains a number of other penalties. Sections 120A and 120B of the Criminal Code provide for penalties for criminal conspiracy. Sections 107 to 116 also allow abetment of the above-mentioned crimes, such as murder and culpable homicide that does not amount to murder, punishable.

3.2. JUDICIAL PERSPECTIVE

The judiciary is an integral aspect of the political process, and its role in the development of a democratic society is difficult to grasp. The judiciary's position is not limited to practising justice; it also serves as an intermediary and protector of the people's rights. The judiciary has the right of judicial review, which requires it to validate or invalidate statutes that are in dispute with constitutional provisions. In a country like India, the position of the judiciary becomes much more important.

In a historic judgement, the Karnal District Court ordered the execution of the five suspects in the Manoj & Babli 'honour killing' case⁷, in March 2010, while granting a life sentence to the khap (local caste-based council) head who commanded the killings of Manoj Banwala (23) and Babli Banwala (19), who eloped and married and later were killed. The case was the first in India to convict khap panchayats and to result in the death penalty in an honour killing case. It was praised as a "landmark judgement" by Indian legal professionals and the media. Additionally, hardly many honour killing cases end up in court, and this is the first time the groom's family has filed a complaint in an honour killing.

In the case of Lata Singh Vs State of Uttar Pradesh⁸ and Others, a Supreme Court bench led by Justice Markandey Katju said, "Honour killings are nothing but barbaric cold-blooded murder, and no honour is involved in such killings, inter-caste and inter-religious marriages should be encouraged to strengthen the social fabric of society".

In India, honour killings are still common. Two recent case laws in this area are listed below.

⁷ Criminal Appeal No.479-DB of 2010

⁸ (2006) 5 SCC 475

In the case of *Shakti Vahini v. Union of India*⁹, an NGO by the name of Shakti Vahini filed a writ petition to create procedures to avoid honour killings. In its decision, the Court claimed that any Panchayat cannot prohibit two people from entering into a marital partnership, and that such conduct would be rendered unlawful and immoral. In addition, the Court established rules to prohibit such activities from occurring in the future, as well as remedial action.

Furthermore, in the case of *State of Maharashtra v. Eknath Kisan Kumbharkar*¹⁰, a girl was killed because she had arranged a love marriage against her parents' wishes. In this case, the Court ruled that 'honour killings' that occur around the world are not 'honourable.' It can only be defined as brutality perpetrated by those with feudal minds who are attempting to prove their worth. Such actions warrant no leniency and are treated with the utmost severity by this Court. The suspects of such offences will face the death penalty if they are found guilty.

3.3. CONSTITUTIONAL PERSPECTIVE

Apart from the provisions of the Indian Penal Code, 1860, the Indian Constitution also grants a number of rights to its residents, which may be challenged in the Honourable courts if they are violated. Honour killings are violative of various Articles 14, 15(1) and (3), 17, 18, 19, and 21 of the Constitution. Article 14 – This article declares that everyone is equal and that no one shall be discriminated against on the grounds of their race, faith, or national origin.

Articles 15(1) and 15(3) state that no one shall be barred on the grounds of caste, creed, ethnicity, sex, or any other element. Article 21– According to this article, everyone has the right to life, which requires the right to live a dignified life.

4. CRITICAL ANALYSIS

Making the act of honour killing a distinct offence will hopefully provide greater transparency for law enforcement authorities. There is currently no description or clarity for Honour Killing/crime. We don't have any evidence on honour killings or honour offences so they aren't considered distinct crimes. All offences against women committed by the group should be known as honour crimes. There have been many instances of women being called witches, paraded nude, and humiliated in public, all of which are heinous acts of bravery that warrant a

⁹ AIR 2018 SC 1601

¹⁰ Special Leave to Appeal (Crl.) No(s). 251/2020

specific legislation and strict penalties. A special legislation may act as a deterrent. If two people wish to marry for reasons of their own free will, they are free to do so. The family, society, or Panchayat have no right to denounce the relationship in order to object to and condemn the behaviour of young people of marriageable age. If the spouses are from the same gotra or from different castes or cultures, their preference cannot be affected. The socio-cultural phenomena in India are a complex structure. The rigid caste system, combined with an unwavering belief in purity, has resulted in rigid social systems. The legislation should take into account the different complexities, cultural traditions, and social norms in order to establish an effective framework for ending honour killing.

5. CONCLUSION

Abuse has long been at the forefront of humanity's evolution. In human culture, there has always been a deep power struggle. The male is taught to be violent against the poorer parts of society, particularly in patriarchal societies. A culture Efforts to eliminate abuse have been successful, but there is much further work to be done. Few people recognize the enormity of the honour killing ideology's influence.

While honour as a moral reason for killing is in line with the mentality of certain groups, this incentive cannot be applied to whole communities, as many individuals from the same state do not follow that belief system. Human accountability is not diminished by the lack of societal values and traditions, even in the few cases when there is substantial individual psychopathology. Understanding the individual, family, group, cultural, and social factors at play in honour killings is important. A person has their own freedom to enjoy a life of liberty and the right to marry, which creates a negative image for society and individuals. Hopefully, this paper will lead to a better understanding of the complicated mechanisms at stake in cases of honour killings, allowing future plans to be stopped.

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