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# **A CRITICAL ANALYSIS OF HONOUR KILLING IN INDIA**

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## **Abstract**

Freedom of Choice is an Individual Right which is enshrined under Right to Life and Personal Liberty in Article 21. If it is Curbed or wrecked by societal pressure, then it no longer remains a Private Right. This oppression is asserted to protect the Integrity of Society and if any individual tarnishes it or is likely to do so then it results in impairment or death of that person. This article deals with the Concept of Honor Killing, its evolution, existence in Muslim Religion, factors responsible for the commission, need for a legal framework, Constitutional perspective and recent cases.

## **Introduction**

Law does not provide a definite definition for the term Honour Killing. Honour in general means 'Prestige, Respect or Esteem'. It is the duty of both men and women to preserve this but in a patriarchal society like ours, women are always termed as a '*Weaker Sex*'. Men are considered as an Asset while women as a liability. It is the responsibility of women alone to protect the honor and integrity of the Family while men rule them. The position of the person in society is decided by being born in a Family Heritage. Kinship, otherwise called blood relationships or relatives, form a major part of every family. In a Joint Family system, the decision of Karta rules over other coparceners. For example, in every family the grandfather is considered as the head of the family and his wife, sons, daughters, sons' wife, and their children form part of the coparceners. Even though the setup of Joint Family system is demolishing, when it comes to important decision like Marriage it is never associated with a single family but the whole clan gets involved in its decision making. Marriage is designated as a sacred ritual performed with the blessings of family and relatives and it will be considered a dishonor to the family if he doesn't follow these social norms. Arrange Marriage is the concept that has been followed by society for decades. Loving a person

before wedlock is considered a crime in many societies. Love Marriages to some extent can be accepted by few if they are within the same Jati or Social Status. But if it is a Inter Caste marriage or marrying a person of different social hierarchy then it results in heinous offence of Honour Killing or Shame Killing. Thus Honor killings, a devastating manifestation of deeply entrenched societal norms, continue to plague India, undermining its progress towards a more egalitarian and just society. The term "honor killing" refers to the brutal act of murdering a family member, typically a woman, perceived to have brought shame or dishonor to the family. Rooted in caste, religion, or traditional norms, these killings perpetuate a cycle of violence, injustice, and societal regression.

## History

The origin of Honour killing can be dated back to 17th Century where deadly punishments were given especially to Women. The Babylonian Code of Hammurabi in 1790 BC punished the unfaithful spouses by drowning them. In the Book of Genesis of Bible, it was stated that if a woman was found pregnant by sexual profligacy, then the child born out of such brothels will be burned to ashes. The History of Honour Killing in India can be traced from “*Ramayana*” where Surpankha married Vidyuth Julvey, an army chief under Gandharva Vivah in Kalikey and Ravana killed as he deemed it tarnishing his family reputation<sup>1</sup>.

The system of Social Stratification called as “*Chaturvarna System*” was introduced by Purushasukta of the Rig Veda which led to the formation of Caste system, the major reason for Honour Killing in India. The concept of Purity and Pollution was adhered to. Endogamy Marriage, that is marriage within the caste was accepted. Inter caste marriage like ‘Anuloma’ or ‘Hypergamous’ where superior caste men marry inferior caste women and ‘Protiloma’ or ‘Hypogamy’ where inferior caste men marry women of superior caste are forbidden. According to Manu Smriti Chapter 8 Shloka 366, death penalty will be imposed if the men from Shudra community ask for marrying a woman from Brahmin Community. Even though eminent social reformers like Jotirao Phule, Dr. Babasaheb Ambedkar and E.V.Ramasamy Periyar has fought about transformation with regards to allowing and accepting Inter Caste Marriage, the concept of caste is deeply rooted in our minds and social norms that it cannot be removed<sup>2</sup>.

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<sup>1</sup> Honour Killing in India: A Challenging Facet of Human Rights, Dr. Nitu Nawal, [Microsoft Word - 8 IJAMH-1116-NITU NAWAL-HONOUR KILLING \(researchtrend.net\)](#)

<sup>2</sup> Honour Killing in India, Chhavi Prasad [HONOUR-KILLING-IN-INDIA-by-Chhavi-Prasad.pdf \(burnishedlawjournal.in\)](#)

**Understanding the Prevalence:**

India has made significant progress in economic and educational advancements, but honor murders are still common in many areas of the nation, particularly in rural and traditional areas. Most of the victims are young women who choose partners against the desires of their families, marry outside of their caste or religion, or participate in activities that are considered socially inappropriate. Extreme steps are taken in the name of restoring honor since these activities are perceived as insults to the family's reputation.

**Honour Killing in Islamic Religion**

The existence of this practice is contrary with the Preaching of Islam. The crucial facet of belief as demonstrated in the verses of Quran states that the Wrongdoer must be penalized but not with death, equal punishment of Hundred Strips should be awarded for men and women and if the person repents for his mistake, then he must be forgiven but, in practicality Muslim people believe that the Penetrators should be hanged to death based on suspicion alone and before receiving any proper evidence<sup>3</sup>.

**Reasons for Honour Killing:**

- **Caste System:** The rule of Majority is the main root cause for existence of caste system in India. Caste attributes to the status of the person in the Society. The status of a person can be classified as Ascribed or Achieved. Ascribed Status is something that is prevalent from birth. No matter how much he has achieved his Ascribed status will never change and it will always define him.
- **Prevalence of Patriarchy:** Essentially to exhibit their dominance a group of men of a particular community accumulate to exhibit the outrageous act of Honour Killing. It is performed when there is opposition or disgrace to their prevailing dominant position.
- **Khap Panchayat:** It is a Non-state legal practice mostly prevalent in “Jat” community covering a major part of Delhi and other surrounding parts of Haryana, Western Uttra Pradesh and the adjacent areas. It emerged as a quasi-judicial body which pronounces grievous punishments based on traditional Customs and beliefs. They have unwritten laws, and their decisions are illegal, Unconstitutional and opposed to public morality. Some punishments include nullifying the marriage, declaring the married couple as

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<sup>3</sup> The Modern Face of Honor Killing: Factors, Legal Issues, and Policy Recommendations, Vitoshka Diana Y, Microsoft Word - 187248-text.native.1263068070.doc (escholarship.org)

Sapindas, permanently barring them from entering the village, coercing the girl to divorce her husband or death<sup>4</sup>.

- **Inter Caste Marriage:** Marriage is of two types, Endogamy and Exogamy. Endogamy is allowed, for instance, marriage within Jati and Exogamy is not accepted, for example, marriage within Gotra. If there is a wedlock out of love chosen by the person outside the tribe or clan then that results in Inter Caste Marriage which is unacceptable by parents, relatives and is prohibited.
- **Fear of Society:** If a woman is divorced or is a survivor of rape then along with her the whole family will be falsely accused and faced with humiliation. In such situation willingly or unwillingly to protect their rank and reputation in the society the women will be coerced to commit suicide or murdered by her own family members.
- **Homosexuality and Living Relationships:** Even though law doesn't prohibit love within same sex and living together without getting married, it is difficult for family and society to accept these cultures and it results in inundation of allegation and outrage from family<sup>5</sup>.

### Legal Framework in India:

India has recognized honour killings as heinous crimes deserving stringent punishment. However, the legal framework's effectiveness in addressing this issue remains questionable, primarily due to the lack of a specific law exclusively targeting honor killings.

## Constitutional Perspective

**The Constitution of India:** More than men, women are considered as main subjects for Honour Killing. The following are the provision protecting against such gender and caste violence -

- a. Article 14 (Equality before law and Equal protection in the eyes of Law)
- b. Article 15 (No discrimination based on religion, race, caste, sex and place of birth)
- c. Article 19 (a. Freedom of Speech and Expression)
- d. Article 21 (Right to life and Personal Liberty)

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<sup>4</sup> Honour Killing in North India, Neelam Kejriwal, [92\\_honor\\_killing\\_by\\_Neelam.pdf \(probono-india.in\)](#)

<sup>5</sup> Socio Legal Analysis on Honour Killing in India, Sarvesh Raizada, [Socio-legal-analysis-on-honour-killing-in-india.pdf \(lexforti.com\)](#)

These articles must be read in consultation with the Directive Principles of State Policy Article 39 clause a, which states that there must be equal opportunity for both men and women in having an adequate means of subsistence.

### **Acts that rule Honour killing:**

As specified earlier there is no specific laws, still the law that is existence in general can be used to deal with honor killing and they are:

#### **I. The India Penal Code, 1860:**

The Indian Penal Code (IPC) provides provisions to prosecute perpetrators of honour killings under existing laws. Sections 299 and 300 define murder and prescribe punishment, while Section 307 addresses attempted murder. However, proving honour as the sole motive can be challenging, making it difficult to bring the perpetrators to justice. The perpetrator can use the defense that he has acted under sudden incitement, and it was not foreseen or planned. To protect the interest of the aggrieved person the following laws are governed:

- Section 120A and 120B (Criminal Conspiracy and its Punishment also read with Section 34 and 35 existence of Common Knowledge or Intention)
- Section 299 (Culpable Homicide not amounting to Murder) and Section 304 (Punishment)
- Section 300 (Culpable Homicide amounting to Murder) and Section 302 (Punishment)
- Section 307 (Attempt to commit murder)

**II. The Indian majority Act, 1857:** Under Section 3 of the said act, a person attains the age of majority after completion of 18 years and in case of guardian appointed by court the age of majority is 21 years. But in practicality even after attaining the age of majority the young men and women are forced to be separated and married to persons of their respective clan by institutions like Khap Panchayats.

**III. Hindu Marriage Act, 1955 and Special Marriage Act, 1956:** Section 5 of the Hindu Marriage act forbids marriage within Sapindas or other degrees of prohibited relationships, but it does not prevent an individual to marry a person outside caste or of his own choice. The registration of these Inter Caste marriages is governed by the Special Marriage Act.

**IV. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:**

This act was enacted mainly to protect Dalits and Adivasi people from Assault, Dishonor, Sexual harassment of women and ousting a person from society in case his family, relative, village or society deems the act of Inter caste marriage or marriage outside their social hierarchy to be disgraceful<sup>6</sup>.

**V. The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill:**

The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill, introduced in 2011<sup>7</sup>, aimed to address honour killings directly. The bill proposed severe penalties, including the death penalty in extreme cases. However, the bill has not been enacted into law, leaving a legislative vacuum in dealing specifically with honour killings.

Though there is no discrete legal provision governing Honour Killing in India and as we are using other laws, the government has also taken various steps specifically for honour killing and they are:

1. At present, The Rajasthan Legislative Assembly has passed a bill in 2019 on “*Prohibition of Interference with the Freedom of Matrimonial Alliances in the Name of Honour and Tradition*” which is pending for Governor’s ascent<sup>8</sup>.
2. The history of this issue was first addressed in Rajya Sabha in 2009 where members proposed a need for a distinct law to protect the affected persons from crimes related to Honour.
3. The landmark decision on March 2010 in the case of Manoj and Babli led to the recommendation of the “*The Indian Penal Code and certain other Amendment Bill*” by Law Ministry. It highlighted the execution of the person who caused dishonor to the family without considering the harassment faced or tolerated by that person.
4. The Legal aid of All India Democratic Women's Association (AIDWA) in August 2010 created a bill covering all the neglected rights like assault and battery faced by the aggrieved person in addition with murder which was not previously addressed in the

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<sup>6</sup> Addressing ‘Honour Killing’ in India: The Need for New Legislation, Avanti Deshpande, [Addressing ‘Honour Killings’ in India: The Need for New Legislation | OHRH \(ox.ac.uk\)](#)

<sup>7</sup> <http://164.100.47.4/billtexts/lsbilltexts/asintroduced/89LS.pdf>

<sup>8</sup> Indian Legal Framework on Honour Killing, Dr Aarti Mohan Kalnawat, [Microsoft Word - Article SLS Nag \(slnagpur.edu.in\)](#)

proposed bill.

5. The Law Commission of India in its 242<sup>nd</sup> Report, proposed another version of this bill on “*Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011*” which emphasized restriction and ban on Unlawful Assemblies like Khap Panchayat. Until a formal law was enacted, in March 2018 Supreme Court issued preventive measures to prevent the crimes related to Honour.

### **Role of Judiciary:**

The judiciary is essential in interpreting the law, completing any gaps, and guaranteeing justice when it is quiet on a particular issue. In order to fill in the gaps, judges use judicial interpretation, drawing on previous rulings, statutes, and legislative purpose. They could evaluate competing interests, take fair relief into account, and suggest conditions. The court's flexible decision-making ensures that the law is still applicable in the face of societal shifts and advances the continuous growth of legal concepts. In essence, the judiciary serves as a guardian of justice, stepping in to provide clarity and fairness when statutory laws fall short. Same way in the case of honour killing the court has played a vital role.

- In *Manoj Babli case, 27 May 2011*<sup>9</sup> the court of Karnal District for the first time considered Honour killing as a heinous crime by punishing five perpetrators with life sentence and stated that Khap Panchayat does not have the authority to murder a married couple even though they believe that eloping and marrying a person of different caste is disgrace to the honor of the family<sup>10</sup>.
- In a *2017 case*<sup>11</sup>, the court held that individual's right to choose is embedded under Article 19 of the Constitution and is not expected to capitulate to ‘*Categorized Honour*’ or ‘*Combined thinking*’.
- In a *2010 case*<sup>12</sup>, the court held that the right to dignity cannot be exercised in its complete fairness if it's separated from the Individual's freedom to choose. So, an individual's choice should not be stalled unless there is express or implied limitation imposed by law<sup>13</sup>.
- In *Shakti Vahini v. Union of India*, in this case the court issued some guidelines which are as follows, the police must prepare list of places where Khap Panchayat is still in

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<sup>9</sup> Smt. Chandrapati v. State of Haryana and Others

<sup>10</sup> Honour Killing in India, R. Preethi, Dr. A. Sreelatha, [146.pdf \(acadpubl.eu\)](#)

<sup>11</sup> Asha Ranjan v. State of Bihar, (2017) 4 SCC 397

<sup>12</sup> State of U.P. v. Krishna Master, (2010) 12 SCC 324

<sup>13</sup> Shakti Vahini v. Union of India, Ritika Sharma, [Shakti Vahini v. Union of India - Indian Legal Solution](#)

existence, the Secretary of Home Department must provide immediate police protection in case of likelihood of such incidents. If the Police officer finds out that a Khap Panchayat is likely to form in a particular locality, then he must actively intimate to his superior officers. Despite adhering to these measures if the police officers are unable to curb the assembly of Khap Panchayat then an order must be issued under Section 144 of the Code of Criminal Procedure to prevent the same. A preliminary enquiry to be conducted by the Additional Superintendent of Police while providing immediate assistance to the victims and recording their details. Upon receiving the enquiry report an FIR under Section 151 of the Code of Criminal Procedure should be filed against the perpetrators who are coercing the couple and any negligence on the part of Police Officers will be considered as misconduct for which the department will be liable<sup>14</sup>.

- In *Lata Singh v. State of Uttar Pradesh*, the court held that Right to Marry a person of his own choice is a freedom incorporated under Article 21 of the Constitution' It further validated Inter Caste Marriage<sup>15</sup>.
- In *Bhagwan Dass v. State (NCT) of Delhi*, the court held that Honour Killing does not involve any honor and are barbaric cold-blooded murder practiced by feudal society. It should be considered as a rarest of the rarest case and the perpetrators should be penalized with death penalty.
- In *B. Dilipkumar v. The Secretary to Government*, the court administered every district to construct a special cell for dealing with cases relating to crimes on Honor. It further added to keep a watch on the active cases, solve the issues by addressing them immediately, alerting the magistrate by framing a charge sheet, trying to solve the issue by mediating and reserving a special fund for immediate assistance.
- In *Udumalpet Honour Killing Case*, Sankar aged 22 of a Dalit community eloped and married kowsalya aged 19 year of Thevar a dominant community. The father of the daughter, unable to bear this disgrace, murdered Sankar. The court acquitted the accused on the basis that the prosecution failed to prove the charge of conspiracy beyond a reasonable doubt<sup>16</sup>.
- The *Love Jihad Controversy*, which can be traced back to 2009 where religious groups like Vishva Hindu Parishad and the Shri Ram Sena in Kerala forced women of Hindu

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<sup>14</sup> [Shakti Vahini v. Union of India » Law Faculty](#)

<sup>15</sup> Case Summary: *Lata Singh v. State of Uttar Pradesh*, 2006, Arya Sharma, [inter-caste marriage Case Summary Lata Singh V. State of UP LawLex.Org](#)

<sup>16</sup> [UDUMALPET HONOUR KILLING CASE – A STRICT INTERPRETATION OF CRPC OR A GROSS MISCARRIAGE OF JUSTICE? \(iralr.in\)](#)

origin to convert to Islam if they want to marry a men of that religion. In 2020, a Muslim man in Faridabad gunned down a Hindu woman outside college campus as she refused to accept his marriage proposal<sup>17</sup>. Apart from these there are various instance where women of Hindu origin are lured or abducted and forced to convert into Muslim religion for the sake of getting married. *The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance* was passed in 2020 which prevents conversion from one religion to another as felonious for the purpose of getting married. It has been termed by many Muslims as discriminatory law even though this ordinance does not prevent legitimate and willful conversion by woman<sup>18</sup>.

### **Problems and Rebuttals:**

There are several obstacles in the way of putting current legislation into practice. The judicial procedure is hampered by societal pressures, witness intimidation, and victims' and their families' unwillingness to come forward. Attempts to counteract this threat are complicated in many communities by the strongly embedded patriarchal and caste-based institutions.

Opponents contend that it is essential to have a thorough and unambiguous legislation against honor murders. A statute like that may define the term clearly, outline the penalties, and set up safeguards for witnesses and victims. Furthermore, in order to alter people's perceptions and refute the idea that honor killings are permissible, it is imperative to implement successful awareness campaigns and community engagement initiatives.

### **An Appeal for Wide-Reaching Legal Reforms:**

India is facing a growing need for significant legislative reforms as it struggles to address the ongoing issue of honor murders. Although these offenses are technically covered by current legislation, there are still implementation-related practical issues. This legal gap might be filled by a specific statute that forbids honor murders, providing a more sophisticated and focused strategy to address this societal threat.

A legislation of this kind need to define honor murders precisely, impose harsh penalties, and set up procedures to safeguard witnesses and victims. It may be possible to create fast-track tribunals

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<sup>17</sup> [pdf \(epw.in\)](#)

<sup>18</sup> Analysis of the Uttra Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, Rahul Kaul and Siddhartha Srivastava, [Microsoft Word - 15. Siddharath Srivastava.docx \(ili.ac.in\)](#)

or specialized courts to streamline the legal system and guarantee prompt justice.

In addition, the government has to give priority to information programs that question cultural norms and refute the false belief that honor killings are permissible. Education initiatives should be put in place to support respect for personal preferences, tolerance, and gender equality.

## **Conclusion**

Honor killing are still a serious social problem in India that need immediate attention and extensive legislative changes. Although such offenses are technically covered by the current legal framework, there are still implementation-related practical issues. Strong awareness efforts combined with a specific law against honor murders can help break down the systems that support this kind of violence. India has to address this issue head-on in order to provide justice and protection for all of its residents if it is to live up to its aspirations of becoming a progressive and inclusive country. Although the road to ending honor killings is a difficult one, advancements may be made if the public, civic society, and legal authorities work together. Even though innumerable cases are witnessed and prosecuted by the court regularly, there is no proper statutory law for protecting the Victims and the judgments are laid down based on precedents. It is the duty of the Legislature to enact a separate law or bring an amendment in Indian Penal Code regarding the same. A separate forum or commission must be set up in each village and illegal institutions like Khap Panchayat to be stamped out. It is the duty of the state to administer the working of commissions and monitor the activities of the Police officials.