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WHEN CASTE SUPERSEDES CONSTITUTION: THE GRIM REALITY OF HONOUR CRIMES IN INDIA

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Introduction

It is a grim paradox in the sociology of Indians that the word 'honour' itself, which is concomitantly associated with dignity and integrity in all civilized beings, has become a prefix to the most brutish forms of homicide. A country that prides itself on being a democracy, with a written charter, 'Honour Killings' are a badge of shame that reminds us that our social contract is at odds with its hierarchy.

In the contemporary legal situation, there is a paradigm shift in the discourse on honour crimes. With the coming into force of the Bharatiya Nyaya Sanhita, (2023), and the Bharatiya Nagarik Suraksha Sanhita, 2023, there has been a transformation in the legal machinery. But one wonders whether this new legislation presents a sharper sword to uproot the patriarchal foundations of honour crimes or whether it presents old wine in a new vessel.

The Constitutional Betrayal

To understand the gravity of honour crimes, one has to look beyond the criminal act. It is not just a violation of the penal code but a direct attack on Constitutional Morality.

Article 21 of the Constitution of India, guarantees the Constitutionally protected right to life and personal liberty. The Apex Court has interpreted the word "life" and included within its ambit the right to live with dignity and right to choose a life partner. Article 19(1)(a)¹ protects the freedom of expression, which inherently covers the expression of love and marital choice. In the country's vast hinterland, where Khap Panchayats hold sway, and increasingly in urban locations where caste pride survives, these constitutional guarantees give way to community "laws." The family that kills a daughter for marrying outside her caste or in same gotra is in effect proclaiming that their "honour" is greater than the Constitution of India.

¹ The Constitution of India, 1949

The Statutory Shift: Interpreting Section 103(2) BNS

The prosecutors have, historically, been dealing with a substantial challenge since the Indian Penal Code does not define an "honour killing case." Even though such cases were heard on the general provision of Section 302² (Murder), defendants were able to plead "sudden and grave provocation" to get them reduced to "culpable homicide not amounting to murder."

The Bharatiya Nyaya Sanhita (BNS), 2023, although not formulating a separate 'Honour Killing Act,' has come up with a clause which might alter the course of honour killing trials.

Section 103(2) of the BNS states:

"When a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground, each member of such group shall be punished with death or with imprisonment for life..."

Though commonly referred to as the "Mob Lynching" provision, this particular section is a game-changer for honour crimes. Honour killing is seldom committed by one individual; these are group conspiracies planned by the father, brothers, uncles, and elder members of the communities. The mention of "caste" and "community" as a reason for a group murder eliminates the confusion regarding individual liability in a group situation and prescribes the highest sentence to the accused, thus depriving them of the "social sanctions" defence.

The Judicial Fortress: *Shakti Vahini* as the Torchbearer

The legislature has always been quite reluctant to make the law on the subject itself, so there has been a need for the judiciary to emerge as the principal law-maker, given the Law Commission's 242nd Report.

The *locus classicus* in this regard is **Shakti Vahini vs. Union of India (2018)**. It was in this historic verdict that a three-judge bench headed by former Chief Justice of India Dipak Misra formulated 'Preventive, Remedial, and Punitive' actions which have now hold the force of law.³

² The Indian Penal Code, 1860

³ [Shakti Vahini v. Union of India \(2018\) 7 SCC 192](#)

The Court's directives were clear:

1. **Prevention:** Police must identify districts with a history of honour crimes and gather intelligence on *Khap* gatherings.
2. **Protection:** The establishment of "Safe Houses" for runaway couples is mandatory.
3. **Accountability:** Police officers who fail to act on complaints from threatened couples can be held criminally and departmentally liable.

This approach brought the burden of punishment from the killer to protecting the victim. In today's context, every judicial assessment of honor crimes must take into consideration whether the local body is following the guidelines of Shakti Vahini.

Procedural Safeguards in the BNSS Era

Substantive law establishes the crime, but procedural law is the bearer of justice. The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 brings about legalities that are greatly beneficial to victims of honour crimes who are usually on the run.

1. **The Statutory Mandate of Zero FIR (Section 173 BNSS):**
In honour crimes, the victims usually escape to another jurisdiction to avoid violence. In the past, police stations usually did not register FIRs on the ground of territorial jurisdiction. The BNSS has-standardized the Zero FIR by making it mandatory that information has to be entered irrespective of the location of the crime committed. In the matter of a couple escaping from Haryana to Delhi, it is a lifeline for them.
2. **Witness Protection (Section 398 BNSS):**
The Achilles' heel of honour killing trials is the hostility of witnesses. Since the witnesses are usually relatives of the accused, they often turn hostile under pressure. Section 398 BNSS casts an obligation upon the state governments to prepare a Witness Protection Scheme. If used efficaciously, this would prevent the evidential collapse that occurs in such cases.

The "Rarest of Rare" Doctrine

The judicial approach to punishment has also become more stringent. In the case of *Bhagwan Das v. State (NCT of Delhi)* (2011), the Supreme Court held that honour killing falls under the "Rarest of Rare" category.⁴

⁴ *Bhagwan Das v. State (NCT of Delhi)* (2011) 6 SCC 396

The rationale is sociological: Honor killing is not for property or as an aftermath of a personal feud, but rather with the intention of eradicating a human being for the salvation of "reputation." The Court found it to be an depraved act that undermines the very foundation of a civilized society, for which the death penalty is necessary as a deterrent.

Conclusion: The Road Ahead

While the BNS and BNSS provide better tools, the lack of a dedicated law is a major lacuna. A specific law is also necessary, similar to the **Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances Bill**, that could identify what is 'honour' and perhaps include reverse burden of proof on the accused family.

However, law is only good if law enforcers are effective as well. In order for these laws to be fully implemented, law enforcers must rid themselves of patriarchal bias in favor of these couples to be considered not "runaways" but as citizens exercising their rights under the law. As we move into this new era of the legal world, the message is clear: "There is no 'honour' in killing. It is murder, pure and simple. And under the new regime of the BNS, it is a murder that demands the severest capability of the state to punish.

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