

HONOUR KILLING : THE SOCIO – LEGAL PERSPECTIVE AND JUDICIAL APPROACH

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ABSTRACT

The shocking incidents of honour killing often take place in several parts of the country, particularly, in Haryana, West Uttar Pradesh and Rajasthan, in which persons who co-operate or perform inter-caste or inter-religious marriage or marriage in same *gotra* (clan) are killed by their relatives. Sometimes, this kind of incidents take place on the dictats of the *Khap Panchayats* (community or caste council). The act of honour killing is condemned as brutal, barbaric or inhuman by the public at large and by judiciary. Yet, it is prevalent as a tradition. This study deals with various aspects of the problem.

SOCIAL PERSPECTIVE

In an incident of honour killing in Rohtak district of Haryana, Nidhi Barak and Dharmendra Barak, who had been in relationship for almost three years, were lynched by the family of Nidhi for honour in the month of September 2013. When the couple went missing to get married, Nidhi's family got in touch with them and persuaded them to return after assuring them that they would not be harmed. But, when they returned, they were brutally killed by Nidhi's family. Nidhi's family then rushed to cremate her body which was recovered half-burnt by the police and dumped the mutilated body of Dharmendra in front of his house¹.

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¹ *The Hindu*, September 20, 2013 at 3.

It is supposed that the brutal death of Nidhi and Dharmendra was caused under the influence of *Khap Panchayats* which have issued diktats against marriages within same *gotra*, same village or even *bhaichara* (brotherhood) what they call. There have been numerous cases where couples defying the *Khap* diktats had to pay with their lives².

Within days of killing of Nidhi and Dharmendra, two *panchayats* in the belt imposed a dress code for woman and appointed men to watch the activities of college girls who violate the code. It was argued by the *panchayats* that such restrictions would curb the rising rate of honour killing and the stand taken was justified as a women covered from head to toe in loose fitting clothes does not attract male eye³.

An interesting fact about the State of Haryana is that the State has one of the lowest sex ratios (821 in the 0-6 age group). Female foeticide is rampant and the situation is so bad that wives are being brought from far off States. But, the *Khap Panchayats* never called a *Maha Panchayat* (congregation of *Khap Panchayats* from neighbouring States) to pass a resolution against female foeticide. It is worth to mention here that after the judgement of Additional Session Court at Karnal in March 2010 in “Manoj-Babli honour killing case,” in which five accused were awarded death sentence, a congregation of *Khap Panchayats* representing the Jat neighbourhood from Haryana, Uttar Pradesh and Rajasthan was called at Kurukshetra in April 2010 and it was decided that *panchayats* would now fight for legal status to legitimately maintain the social order⁴.

However, later on, in a significant move, the *Sarv Jatiya Khap Mahapanchayat* (all caste's council) in Haryana in January 2015 took a pledge to oppose honour killing and prevent dowry in the State⁵.

² *Ibid.*

³ *The Hindu*, October 19, 2013 at front page.

⁴ Jagmati Sangwan “Khap Panchayat: Singns of desperations?” published in *The Hindu*, May 8, 2010 at editorial page.

⁵ *The Hindu*, January 19, 2015 at 3.

The honour killing is justified on the ground that inter-caste or inter-religious marriage or marriage within same *gotra* is against the honour or pride of the family or caste.

The origin of caste system is in all probability racial. It is said that the caste originated when a white race, the Aryans, coming from the north-western direction, conquered the dark coloured races inhabiting in India at that time, probably 5000 or so years ago. It may be controversial whether Aryans came from outside India or India was their original home from where a section of them migrated to Europe. Overall, Indian history bears out the view that almost all invasions and immigrations took place from outside India. The caste system is called the *Varna Vyavastha* in Hindi and the word *Varna* in Sanskrit means colour (of the skin). This also indicates towards the racial origin of the caste system⁶.

The caste system, though originated in race, subsequently developed into feudal occupational division of labour. In feudal society, apart from agriculture, the handicraft industry also developed. In feudal period, the only way to learn a craft was to sit with one's father from childhood and learn the craft by seeing how he worked with some tips from him. At that time, one had no choice with respect to one's profession. Thus, a son of a carpenter became carpenter, the son of a blacksmith became a blacksmith and so on. In this way, carpenter, blacksmith, potter, all became castes⁷.

The caste system was a social institution corresponding to the handicraft industry. Now, the handicraft industry has largely been replaced by mill industry which no longer bothers about the caste of a worker employee and only requires his or her technical skills. The technical skills are taught in technical institutes and engineering colleges. In this way, the caste system is destroyed and, thus, has become totally outmoded. It is now being artificially propped up by some vested interests, for example, vote bank politics⁸. Hence, a treatment on the basis of caste is irrational and inhumane.

⁶ Markandey Katju "Looking back on the caste system" published in *The Hindu*, January 8, 2009 at editorial page.

⁷ Markandey Katju "why the caste system is on its last legs" published in *The Hindu*, January 9, 2009 at editorial page.

⁸ *ibid.*

So far as question of prohibition on inter-caste marriage is concerned, it is permissible under the Hindu Marriage Act, 1955, as is clear from the opening words of Section 5 of the Act⁹. Inter-religious marriage can be performed under the Special Marriage Act, 1954.

Intra-clan marriage (marriage within same *gotra*) is prohibited on the ground that the male and female of the same clan (*gotra*) are treated as brother and sister. A strong belief is that a couple belonging to same *gotra* are the descendents of the same ancestral origin and, thus, they have the relation of brother and sister.

In India, the clan (*gotra*) has its origin not in the birth of people but derives from the *guru* they followed. For example, the families belonging to the Bharadwaj *gotra* are the followers of Maharshi Bharadwaj. But, it does not necessarily mean that all its members belong to the same family. Different families in the same caste might have followed Maharshi Bharadwaj, hence, they acquired the name of Bharadwaj *gotra*¹⁰. Moreover, we can see the name of the same *gotra* in different castes. For example, Bharadwaj *gotra* can be found in Brahmins as well as in Vishwakarmas¹¹.

Intra-clan marriages were banned not because of brother-sister relationship, but, to augment society of their ilk. For example, if marriages are allowed within the Bharadwaj *gotra*, its followers will become limited. If a bride is picked up from another *gotra*, she will become a new member of the followers of Bharadwaj, thereby, increasing the number of the followers of that *gotra*¹².

Thus, it is clear from the aforesaid discussion that the families bearing the same *gotra* are not necessarily the descendents of the same origin. Hence, it cannot be said that a male and female from the families of same *gotra* have the relation of brother and sister.

⁹ Section 5: Condition for a Hindu Marriage- "A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled,"

¹⁰ M.V. Anjaneyalu "People of the same gotra do not necessarily have the same origin" published in *the Hindu*, July 14, 2010 at 12.

¹¹ *Ibid.*

¹² *Ibid.*

The marriage between the parties to it within the degrees of prohibited relationship (given in Section 2(g)) and marriage between *Sapindas* (given in Section 2(f)) are only prohibited under Section 5 (iv) and (v) of the Hindus Marriage Act, 1955. A marriage solemnized in contravention of these provisions is void and it can be nullified only on the petition of either party to marriage under Section 11 of the said Act. Clearly, marriage within same *gotra* is not prohibited under the law.

LEGAL POSITION

Honour killing is treated as a case of murder under criminal law. There is no independent law on the honour killing. The political parties are reluctant to pass a law to eradicate the evil of honour killing. But, it is matter of pleasure that the Law Commission has taken serious step in this regard. Drafted by it, the Commission headed by Justice P. Venkatarama Reddy proposed a legislation-“The Endangerment of Life and Liberty (Protection Prosecution and Other Measures) Act, 2011”- to curb this evil¹³.

The idea behind the provisions in draft legislation is that there must be a threshold bar on congregation or assembly for discussing and condemning the conduct of young persons in marrying as per their choice even they belong to same *gotra* or different castes or communities. *Panchayats* or village elders have no right to interfere with the life and liberty of such young couples and they cannot create a situation in which such couples are placed in a hostile environment in the village or locality concerned¹⁴.

Under the proposed law, the act of endangerment of life and liberty shall mean and include any manner of acts of threat, encouragement, commending, exhorting and creating an environment whereby loss of life and liberty is imminent or threatened. It shall also include (a) enforcement of measures such as social boycott, deprivation of the means of livelihood, denial of facilities and services which are otherwise generally available to the people of the locality concerned and (b)

¹³ *The Hindu*, June 8, 2011 at front page.

¹⁴ *Ibid*.

directly or indirectly compelling the persons concerned to leave or abandon their home-stead in the locality¹⁵.

To prevent the congregation of *panchyats* for issuing diktats, the proposed law provides: ... it shall be unlawful for any group of persons to gather, assemble or congregate with the ... intention to deliberate, declare on, or condemn any marriage or relationship such as marriage between two persons of majority age in the locality concerned on the basis that such conduct or relationship has dishonoured the caste or community or religion of all or some of the persons forming part of the assembly or the family or the people of the locality concerned¹⁶.

The law proposes punishment of imprisonment for a period of not less than three years but extendable up to five years and a fine of Rs. 30,000 for those present in the unlawful assembly of aforesaid nature. It also proposes for civil sanctions as follows: “Any person or persons instrumental in gathering of such an assembly or who takes an active part in the execution of the assembly, shall also be subjected to civil sections *viz*, they will not be eligible to contest any election to any local authority and will be treated as disqualified candidates¹⁷.”

According to All-India Democratic Women’s Association (AIDWA), the State of Haryana, which has recorded dozens of honour killing, has done nothing to curb the crime. The AIDWA has demanded a separate legislation against honour killings¹⁸.

A memorandum with over one lakh signatures along with a draft legislation was submitted by the AIDWA to the Union Law Minister a few months ago. However, the draft was not tabled in Parliament owing to opposition by Haryana government and pressures from *Khaps*¹⁹.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *The Hindu*, September 20, 2013 at 3.

¹⁹ *Ibid.*

JUDICIAL APPROACH

A Haryana Court (Karnal Additional District and Sessions Court of Justice Vani Gopal Sharma) awarded on the 30th March 2010 the death penalty to five persons and life sentence to one for murdering a couple (Manoj-Babli) on the diktats of *Khap Panchayat*, because they married against societal norms in 2007. All five persons who were awarded death sentence were relatives of Babli. The person awarded with life sentence was leader of the *Khap Panchayat*. He escaped from death penalty because he intentionally disappeared during the killing²⁰. The Court also ordered the action against the police for laxity and directed the S.P. to take necessary action²¹.

In this case, Manoj, who ran an electronic shop at Kaithal, eloped with Babli in May 2007 and married in a temple. The relatives of the girl dragged the couple out of Karnal bound bus in June 2007 and murdered them. Their bodies were found in a canal with their hands and legs tied²².

On a petition filed by an NGO Shakti Vahini, a Vacation Bench of the Supreme Court comprising Justice R.M. Lodha and A.K. Patnaik issued a notice on the 21st June 2010 to the Centre and some States (Haryana, Punjab, Uttar Pradesh, Jharkhand, Himachal Pradesh, Rajasthan and Madhya Pradesh) to explain the steps taken to prevent honour killing at the national level and in the respective States²³.

It was alleged in the petition that the State governments had failed to take action to curb such feudal tendencies of killing couples and individuals for the sake of honour. The petitioner had noted that the pressure was often so intense that some couples resorted to suicide, while most of the couples were being killed, publicly humiliated and being declared as brothers and sisters, with some having to face social ostracisation²⁴.

About the law enforcement agencies, the petitioner observed that it was caught in the midst of a lack of political will to act against such feudal forces, as these forces represented vote banks²⁵.

²⁰ *The Hindu*, March 31, 2010 at front page.

²¹ *Ibid.*

²² *Ibid.*

²³ *The Hindu*, June 22, 2010 at front page.

²⁴ *Ibid.*

²⁵ *Ibid.*

The Supreme Court in *State of Uttar Pradesh v. Krishna Master and others* awarded rigorous imprisonment for life and a fine of Rs. 25,000 each to respondents for murdering six persons and wiping almost the whole family on flimsy ground of honour saving of the family. Although, the Court considered it within the rarest of rare cases deserving death penalty, as was held by the trial court. But, the Court justified the sentence of life imprisonment on the ground that the incident had roughly taken place before 20 years and the High Court had acquitted the respondents and nothing adverse against any of the respondents was reported to the Court after the acquittal²⁶.

In this case, in the midnight of August 10-11, 1991, respondents-Krishna Master, Ram Sevak and Kishore-killed six persons of a family-Guljari, his wife Ramwati and sons Rakesh, Umesh and Dharmendra, because Guljari and his wife co-operated in elopement of a couple – Sontara, the daughter of Krishna and Amar Singh who wanted to marry Sontara against the will of her father²⁷. The Additional District Judge Farrukhabad awarded death penalty to all three respondents on February 20, 2001 in the case, while the Allahabad High Court acquitted them on April 12, 2002²⁸.

A Bench of the Supreme Court comprising Justice Ashok Bhan and Markandey Katju observed on inter-caste marriage in *Lata Singh v. State of Uttar Pradesh and others* as follows:

The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation.... Hence, inter-caste marriages are... in the national interest, as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women, who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severally punished. This is a free and democratic country, and ones a person becomes a major, he or she can marry whomsoever he/she likes²⁹.

²⁶ AIR 2010 Supreme Court 3071 at 3088-3089 para 19.

²⁷ *Id* at 3074-75 paras 2 and 3.

²⁸ *Id* at 3074 para 1.

²⁹ (2006) 5 SCC 475 at 480 para 17.

Limiting the right of parents or guardians over their wards with respect to such marriage, the Court observed as under:

If the parents of boy or girl do not approve of such inter-caste or inter-religious marriage, the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence....³⁰

The Court also issued directives to administration/police authorities throughout the country to assure security to the persons who perform inter-caste or inter-religious marriage against harassment, threats or violence by anyone, and to take stern action against such persons³¹. It was further reiterated in case of *Arumugam Servai v. State of Tamil Nadu*³².

About the honour killing, the Court observed as follows: “There is nothing honourable in such killing, and in fact, they are nothing but barbaric and shameful acts of murder committed by brutal feudal minded persons who deserve hash punishment. Only in this way can we stamp out such acts of barbarism.”³³

The aforesaid observation about honour killing was further reiterated by the Court in *Arumugam Servai v. State of Tamil Nadu*³⁴ and *Bhagwan Dass v. State (NCT) Delhi*³⁵ also.

About the punishment for honour killing, the Bench of Justice Markandey Katju and Gyan Sudha Misra observed in *Bhagwan Dass* Case as under:

In our opinion, honour killings, for whatever reason, come within the category of rarest of the rare cases deserving death punishment. It is time to stamp out these barbaric feudal practices

³⁰ *Ibid.*

³¹ *Ibid.*

³² AIR 2011 Supreme Court 1859 at 1863 para 17.

³³ *Supra* note 29 at 480 para 18.

³⁴ *Supra* note 32 at 1863 para 16.

³⁵ AIR 2011 Supreme Court 1863 at 1868-69 para 8 (viii).

which are a slur on our nation. It is necessary as a deterrent for such outrageous, uncivilized behavior³⁶.

The Court also ordered to send a copy of the judgement to the Registrar Generals/Registrars of all the High Courts to circulate the same to all judges of the High Court, Sessions/Additional Sessions Judges and State government for strict compliance³⁷. The same was also ordered in *Anumugam* case³⁸.

In *Bhagwan Dass* Case, the appellant was very annoyed with his daughter who had left her husband and was living with her uncle. This infuriated the appellant, as he thought this conduct of his daughter had dishonored his family, and hence, he strangled her with an electric wire. The trial court convicted the appellant and the same was upheld by the High Court³⁹.

About *Khap Panchayats*, the Court in *Arumugam* case held that *Khap Panchayats* often decreed or encouraged honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion who wished to get married or had been married, and interfered with personal lives of people. Hence, the Court declared them wholly illegal deserving to be ruthlessly stamped out⁴⁰.

In view of the strictures passed by the Supreme Court in *Bhagwan Dass* case, the courts are bound to award only death penalty in the cases of honour killing, as law declared by the Supreme Court is binding on all courts within the territory of India under Article 141 of the Constitution of India.

In an honour killing case of Uttar Pradesh, ten persons accused of the murdering three persons including a girl and her paramour were sentenced to death by the trial court (Additional Sessions

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Supra* note 32 at 1863 para 19.

³⁹ *Supra* note 35 at 1864-65 para 4.

⁴⁰ *Supra* note 32 at 1863 para 16.

and Special Court of Justice R.B. Sharma) in Etah in Uttar Pradesh after the judgement of the Supreme Court in *Bhagwan Dass* case⁴¹.

In this case, in an incident of November 13-14, 2008, Rameshpal Singh, Udaypal Singh and Vidya were first beaten and then shot from point blank range by the relatives of the girl in Bikhatra village under Jalesar police station area in Etah district. The incident was fall out of an alleged affair between Vidya and Udaypal Singh who eloped in October 2008. The couple along with Udaypal's brother Rameshpal Singh were caught by the girl's relatives after some days in Balukhera village and were subsequently killed⁴².

After the ruling of *Bhagwan Dass* case, in another case of honour killing, five members of family were sentenced to death by Sessions Court of Delhi on the 5th October 2012 for the June 2010 honour killing of a young couple belonging to different castes. The couple-Yogesh, a Datit and Asha-were planning to get married when they were mercilessly beaten up and electrocuted⁴³.

CONCLUDING OBSERVATIONS AND SUGGESTIONS

The word "honour" literally means good personal character, strong sense of what is morally right, reputation for greatness or good behaviour. In essence, it relates to a sense of pride, respect and dignity attached to the very existence of a social being. Clearly, the barbaric, brutal killings, atrocities, violence or inhuman behaviour in the name of honour is a curse to civilized society and has taken the form of a serious social evil.

The judiciary has seriously taken it into account and done whatever it could do. But, it is matter of serious concern that no legislation could be passed to eradicate the problem due to reluctance of political parties.

The traditions are evolved out of the ways of life and so, they have to change with the changing ways of life. The tradition of *Sati (Sati Pratha)* was once a social norm for faithfulness of wife

⁴¹ *The Hindu*, June 9, 2011 at 3.

⁴² *Ibid.*

⁴³ *The Hindu*, October 6, 2012 at front page.

towards husband and every virtuous woman was supposed to voluntarily burn alive on the funeral pyre of her husband. But today, it is an offence punishable under the law.

Today, we are living in the age of Science and Technology which require reasonableness in every walk of life. The Constitution of India has imposed certain Fundamental Duties on every citizen of India under Article 51A. One of the duties under Article 51A (h) is to develop the scientific temper, humanism and spirit of inquiry and reform.

In order to eradicate the problem of honour killing, I submit that:

- (1) A law on the line of “The Commission of Sati (Prevention) Act, 1987” should be passed keeping in view the Draft legislation of Law Commission.
- (2) The provision for death penalty should be made for the persons involved in the act of honour killing directly or indirectly.
- (3) The provision of rigorous imprisonment extendable from ten years to life according to gravity of the act should be made for the persons involved in the atrocities other than honour killing.
- (4) The burden of proof should be on the accused that he or she was not involved in the act of honour killing or other atrocities.
- (5) The case should be tried by a fast track or special court.
- (6) There should be a special duty on the administration to prevent the act of honour killing and other atrocities to couples.

After all, howsoever excellent and effective a law may be, it cannot serve its purpose and the social evil cannot successfully be eradicated unless and until it is implemented properly and awareness comes into society and mentality of the people is changed.