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Honour Killing or honouring the killers: Distorted Facets of Law

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Abstract

Offences committed against women are taking distorted shapes day by day making innocent lives more and more miserable. These offences are endlessand more shameful if committed by her own family members in the name of 'honour killing' just for the sake of preserving the so called honour of the family. These traditional violent practices are nothing but crime that has been committed against women in certain communities and societies for so long that they are considered part of accepted practice. These atrocious practices prevalent in the society in one form or the other, are a slur on the nation and all public policy initiatives should be to wipe out these heinous crimes. These crimes are nothing but 'cold blooded murders' and the perpetrators of these crimes should be given the maximum punishment. The article makes a probe on the issues involved in 'honour based crimes' which poses serious questions like why legislative provisions are allowing either partial or complete defense to the perpetrators of the crime? Whose honour is exactly at issue? Whether these crimes do not amount to violation of human rights? Is this not a 'cold blooded murder'? Whether the Constitution gives a fundamental right to individuals to make their own choice in marriage? Who is going to enforce their prohibition and how? and strongly recommends for need of a stringent law that punishes not only those who are murderers, but also those who stand as mute spectators and are directly or indirectly involved with the murder.

Keywords: All India Reporter (AIR), Article (Art), Amnesty International (AI), Central Bureau of Investigation (CBI), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Human Rights Watch (HRW), Indian Penal Code (IPC), Non Governmental Organisation (NGO), Supreme Court Case (SCC), Section (Sec), United Nations (UN), United Nations Development Fund for Women (UNIFEM), United Nations Population Fund (UNPF), World Health Organisation (WHO).

1. Introduction

Over the last three decades, the extent of violence inflicted against women around the world has taken various forms—ranging from domestic violence to sexual violence, forced marriages to honour killings, forced abortion to female genital mutilation etc. There is no end to these crimes and every new day, the nature of crime is taking anomalous shapes distorting the lives of innocent women enhancing the atrocities against them which have engulfed them in the clutches of horrific darkness and fear emanating from this darkness. Suppression and subjugation of woman by man himself who carries with him the misconception that 'she is the one who belongs to him and have full control over her' has in turn resulted in legal notions of adultery, seduction and enticement. Fathers, brothers or male members by exercising their male dominance do not lose any chance of retrieving their daughters or sisters from the male partner she chose to spend her entire life with. This even crosses the limits when innocent lives are shattered when their male partners are charged with kidnapping, abduction, and also inducing their daughter to compel them into marriage. In most of the cases, such a situation leads to the brutal murder of the couple wherein, they go unreported with the police and local authorities turning a blind eye to what they presume and believe as an acceptable form of traditional justice by their families seeking to protect which they see as their 'honour.' There are no official figures on honour killings, though many studies and research have suggested that in India, many of the victims are tortured, burned, stoned or strangled every year in the northern states of Haryana, Punjab and Uttar Pradesh. These atrocious practices prevalent in the society in one form or the other are a slur on the nation and all public policy initiatives should be to wipe out these heinous crimes. Unfortunately, the present provisions in law are not enough to deal with 'honour' killings. The gravity of the offence calls for the need to have an in depth understanding and to probe on the issues involved in 'honour based crimes' which poses serious questions like why legislative provisions are allowing either partial or complete

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defense to the perpetrators of the crime? Whose honour is exactly at issue? Whether these crimes do not amount to violation of human rights? Is this not a 'cold blooded murder'? Whether the Constitution gives a fundamental right to individual to make their own choice in marriage? Who is going to enforce their prohibition and how?

Definition and Gravity of the offence

To look into the gravity of the offence, one has to understand the possible definition for 'honour killing'. "Honour killings" of women can be defined as acts of murder in which "a woman is killed for her actual or perceived immoral behaviour" However, the words 'honour killings' and 'honour crimes' are used loosely to describe the incidents of violence and harassment caused to young couple intending to marry or having married against the wishes of the community or family members. Many experts object to calling the murders "honour killing". They are nothing but 'cold blooded murder'. Some prefer to call the murders so called

'Honour killings', 'femicide' or 'shame killings'. Human Rights Watch defines "honour killing" as

Acts of vengeance, usually death, committed by male family members against female family members, who are held to have brought dishonour upon the family. A woman can be targeted by (individuals within) her family for a variety of reasons, including: refusing to enter into an arranged marriage, being the victim of sexual assault, seeking a divorce-even from an abusive husband- or (allegedly) committing adultery. The mere perception that a woman has behaved in a way that "dishonours" her family is sufficient to trigger an attack on her life. ^[1]

The crime is necessarily an evil that is haunting many societies and the most common factors attached to this crime is the belief that the victim has involved herself in a relationship that is disapproved by their relatives, had sex outside marriage, became victim of rape, engaged in homosexual relations etc. ^[2] Amnesty International notes that The regime of honour is unforgiving: women on whom suspicion has fallen are not given an opportunity to defend themselves, and family members have no socially acceptable alternative but to remove the stain on their honour by attacking the woman. ^[3]

The gravity of the offence is measured by the very fact that so many honour killings are never reported ^[4] and because International organisations are discouraged from keeping statistics on such politically sensitive practices, no one knows how many honour killings occur each year. The United Nations Population Fund's (UNPF) commonly quoted estimate up to 5,000 women per year is thought to be a gross under count. The figure is closer to 20,000 a year worldwide. ^[5] Honour killing has been reported in more than two dozen nations, but primarily occur in South Asia and the Middle East. In recent years they have spread to immigrant communities in Western countries, including France, Germany, Sweden, US, UK. The murders which often go unpunished, have occurred in at least 26 countries- nine of them western countries with large immigrant communities, including United States, Canada, United Kingdom and Germany.

Role of United Nations to combat violation of Human Rights of Innocent Victims

In many countries the laws protect the murderers and legitimise the murder which is nothing but violation of

human rights of innocent victims. In Syria, the Penal Code grants immunity or a greatly reduced sentence to a man who kills a female. ^[6] In Morocco Article 418 of the Penal Code states "Murder, injury and beating are excusable if they are committed by a husband on his wife as well as the accomplice at the moment in which he surprises them in the act of adultery ^[7]. " Jordan's Art. 340 of the Penal code states ^[8], he who discovers his wife or one of his female relatives committing adultery and kills, wounds or injures one of them, is exempted from any penalty ^[9]. Iranian Criminal code states ^[10], if a father or his male ancestors-kill their children, they will not be prosecuted for murder. In Kuwait, he who surprises his wife in the act of adultery ...or surprises his daughter, mother or sister in the act of sexual intercourse with a man and immediately kills her ...shall be punished for not more than 3 years of imprisonment. ^[11] In Haiti, a husband who immediately murders his wife after discovering her in committing adultery is to be pardoned. ^[12] Similar laws to a great extent existed throughout Latin America, Africa and Asia. In two Latin American countries like Colombia and Brazil, until 1980 in Colombia, a husband could legally kill his wife for committing adultery and in Brazil until 1991, wife killings were considered non-criminal 'honour killings'. ^[13] When it comes to prosecution, the punishments often are lax. In Pakistan most of the crimes go unpunished either because no complaint was ever filed by relatives of the victims or because the police refused to file a complaint even in cases where murderers reportedly surrendered themselves to police, no action was taken against them. ^[14] Many scholars say that the crime is totally un-Islamic and has nothing to do with the religion. ^[15] Since 1945, United Nations (UN) has taken enormous efforts to combat the crime by creating awareness and urging states to have tougher laws to punish the perpetrators. In 1979 UN General Assembly adopted the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and honour killings violate rights that CEDAW¹⁶ guarantees to all women, including the right to freely choose a spouse and equality in marriage. In 1992, CEDAW Committee adopted General Recommendation 19 which says governments may be responsible for citizen's private acts such as so called honour crimes if the States fail to act with due diligence to prevent violations of rights, or to investigate and punish acts of violence. In 1994, the UN Commission on Human Rights appointed a Special Rapporteur on violence against women who gathered testimony on honour killings in several reports. Resolution 57/179 adopted by the General Assembly in 2003 and Resolution 59/165 adopted in 2005 on 'Working towards the elimination of crimes against women committed in the name of honour', called for the nations to "investigate thoroughly, prosecute effectively and document cases of crimes against women committed in the name of honour and punish the perpetrators. Both call upon Member States to increase awareness raising about the responsibility of men to promote gender equality and support the work of civil society on this issue and strengthen cooperation with inter-governmental and non-governmental organisations and encourage the media to raise awareness on the issue. Thus it is the responsibility of each sovereign state to enforce international human rights law and international legal instruments like CEDAW. India being a party to the Convention is under an obligation to protect the innocent lives from honour crimes.

Steps taken by India

In India honour killings are most prevalent in Northern parts of India and they are homicide and murder which are serious crimes under Indian Penal Code. It also amounts to violation of rights ensue under Articles 14, 15(1) (3), 19, 21 and 39 (f) of the Constitution. In many instances, 'khap panchayats^[17]' or caste councils order the killings for marrying against their wishes. Young couples must always be free to make their own choice in marriage and the family and community have no right to regulate sexuality. In 2009 a reference was made to the Law Commission by the Ministry of Law and Justice to examine various aspects relating to honour killings. The Government authorities of the States where incidents often occur were addressed to furnish the information. The Director in the Ministry of Home Affairs in 2010 also requested the State governments to furnish necessary information to the Commission. However, there was no response but from the newspaper reports and other sources it was obvious that the crimes occur in those states and the caste councils or panchayats popularly known as 'khap panchayats' tried to adopt the chosen course of 'moral vigilantism' and enforce their diktats by assuming to themselves the role of social or community guardians. The penal law lacks direct application to the illegal acts of such caste assemblies. It is also to be noted that the Hindu Marriage Act does not prohibit sagotra or inter-caste marriages as most of the khap panchayats took law to their hands by pronouncing on the invalidity of sagotra and inter-caste marriages. In *Arumugam Servai v. State of Tamil Nadu*^[18] SC strongly condemned the practice of khap panchayats. In another case *Lata Singh v. State of U.P.*^[19] SC gave direction to the effect that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. There were some proposals also for making amendments to Sec. 300 IPC by including honour killing as murder shifting the burden of proof to the accused. Considering the runaway marriages, in *Manish Singh v. State Government of N.C.T and Ors.*,^[20] court quashed an FIR under Sec. 363 IPC where a girl of 17 years on the verge of maturity had accompanied the boy of her own choice without any kind of enticement or force from any one. In *Seema v. Ashwani Kumar*^[21] an interim direction was issued by the apex court to all the State governments and Union territories to issue orders/executive instructions authorising officials to keep record of marriages so that the same may be placed as evidence in matrimonial proceedings until a suitable legislation is framed.^[22] Rejection of the government's proposal to amend Sec. 300 the Law Commission has drafted the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill 2011 designed to constitute special offences against such assemblies in addition to other offences under the Indian Penal Code.^[23]

Conclusion

Though the Supreme Court has observed that 'honour' killings should be treated as the "rarest of rare crime and those perpetrating it should be sent to the gallows", the killings have not got the attention they deserve. Be it lack of

political will or the fear of a backlash from the communities which have granted it sanctity, Haryana and other states are opposed to the idea of legislation to deal with this menace. The Central government had initiated steps to bring about a separate law on 'honour' killings, but it was shelved after a number of states failed to give a feedback, indicative of the disinterest in the subject. Resultantly, all the law provides for is to book the perpetrator of the crime for murder while the others get away. In a civilised society, Rule of Law must prevail and there should be only one source of authority ie, the state and no other institution, either customary or traditional should be allowed to take the law in their own hands. There is need for governmental interventions and those who are directly or indirectly favoring these practices have to be stopped and prosecuted as ordinary civilians. What is required is a stringent law that punishes not only those who murder, but also those who stand as mute spectators and are directly or indirectly involved with the murder.^[24] Till the law is enacted judiciary by exercising the weapon of judicial activism can help to uphold Rule of Law. Judgment in Aarushi Murder Case is a reflection in this direction wherein, on November 2013, a special CBI court^[25] held the parents guilty for the two murders. This equally imposes an obligation on the police, the executive arm of the state to play an active role. The role of NGOs is also important in this regard and a duty is also cast upon the civil society to organise counselling programmes through media, legal service bodies etc., and to create awareness and educate the community that sagotra marriages are not opposed to law, 'sadachar' or even medical science and also to raise voice against these evil practices.

References

1. Human Rights Watch (HRW) (2001). Item 12 - Integration of the human rights of women and the gender perspective: Violence against Women and "Honour" Crimes.[Online: web] Accessed 15th March 2014 URL: <http://www.hrw.org/news/2001/04/05/item-12-integration-human-rights-women-and-gender-perspective-violence-againstwomen>
2. Such violent crimes are normally directed against women. Men also become targets of attack by members of family of a woman with whom they are perceived to have an 'inappropriate relationship'.
3. Amnesty International (AI) (2001), Broken bodies, shattered minds; torture and ill treatment of women, March 6, 2001
4. Many honour killings are passed off as suicides, accidents and disappearances.
5. United Nations Development Fund for Women (UNIFEM) (2007), Fact and Figures on Harmful Traditional Practices, URL: www.unifem.org/gender_issues/violence_against_women/facts_figures.php?page=4
6. In Syria, Art. 548 of the Penal Code which limited sentences for honour killings to one year, was replaced recently with a law that mandated a minimum sentence of two years.
7. Nazir, Sameena and Leigh Tomppert,(eds.), *Women's Rights in the Middle East and North Africa: Citizenship and Justice*, (Rowman & Littlefield, 2005)
8. Women are granted equality under the Jordanian Constitution, but at the same time they are denied legal

competence under some discriminatory laws in Jordan's Penal Code. They are Articles 340 and Art. 98. Efforts to reform Jordan's Honour killing laws have repeatedly failed

9. Art. 98 provides for a reduced sentence if the crime was committed in extreme rage.
10. Art. 220 is a clear violation of the Constitution and the principle of legality.
11. Art. 153 of the Penal Code 16/1960. In most cases, women are treated equally under Kuwait's Penal Code and Criminal Laws. All perpetrators of murder, rape, or violence against women are subject to severe penalties such as life imprisonment or execution. However, in case of Honour Killings, the penalties are reduced for men.
12. Article 269 of Penal Code. However, a wife who kills her husband upon discovering him in the act of adultery is not excused.
13. "Violence Against Women: Issue of Honour Killing", [Online: web] Accessed 28 January, 2015, URL: www.legalseviceindia.com/article/1243-Violence-against-women-Issue-Of-Honour-killing.html
14. "Honour Killings: Can murders of women and Girls be stopped?" [Online: web] Accessed 30 January, 2015 URL: www2.ohchr.org/English/bodies/chr/docs/62chr/ecn4-2006-53-Add2.doc
15. Honour killings are common not only among Muslims but also among Hindus, Christians, Jews, Sikhs, Druze, Yazidis and even among nonbelievers.
16. The treaty came into force in 1981 and has been ratified by most of the States except United States.
17. Khap panchayat is the union of a few villagers who have emerged as quasi-judicial bodies that pronounce harsh punishments based on age old custom and tradition.
18. (2011)6 SCC 405
19. (2006) 5 SCC 475
20. AIR 2006 Delhi 37, 126 (2006) DLT28.
21. (2005) 4 SCC 443
22. It was observed in the said judgment that though registration of marriage cannot be a proof of valid marriage per se and would not be the determinative factor relating to the validity of the marriage, yet it has a great evidentiary value in family matters.
23. Government of India Law Commission of India Report No.242 August 2012
24. NGOs (All India Democratic Women's Association) drafted a new legislation with one lakh signatories to it and the same was submitted to the Home Minister. However, no steps were taken so far.
25. The Special judge Shyam Lal convicted the couple for murder, destruction of evidence, misleading the probe and filing wrong FIR and on 26 November 2013, they were sentenced to life imprisonment for the twin murders. Nupur Talwar v CBI & Anr.