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Honour Killings in India

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ABSTRACT

This paper is focused on the concept of Honour Killing in India that what it actually is and the reason behind it. After the independence and the codification of Hindu personal laws a lot of things have changed in the field of marriage in Hindus and discrimination because of the caste. The Secularism was introduced as one of the basic principles of the Indian Constitution. But the discrimination done on the basis of caste is still present in the country and is the reason behind honor killing. The main objective of this paper is to elaborate the meaning, laws, present scenario of it in the country. Though there is no separate law for this but the provisions of IPC under which it is dealt by the judiciary are discussed. After this the arguments in favour and against of making separate law for honour killing are mentioned. The mindset of the people due to caste system is the reason behind it which is also elaborated here. Lastly, it ends with recommendations and conclusion.

Keywords- "Honour", "Caste", "Murder", "Separate Law".

I. INTRODUCTION

The caste system is a curse. After 73 years of independence the absurdity due to caste system has not changed in India. This has affected our society a lot. We have always seen people getting treated or treating others as per their caste. Though we are the fast growing economies in the world but this problem has always acted as a curse for our country. The equality is one the basic principle of the constitution and based on that we follow secularism in our country but the caste system is destroying the purity of secularism. There is nothing wrong in saying that we are the part 21st century but there are still some people who thinks that marrying within different caste, same gotra and against the wish of the family is a crime whose punishment is death. Most of the times it is about the marriage only but if the female member of the family is involved in any act which will bring dishonour to the family then the male members have given themselves the right to kill her even she got divorced, affected by sexual harassment or got raped, all of these are considered as her mistakes. They consider it as dishonour of the family. This act of killing is known as 'Honour Killing'. The main idea

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behind all this is that we should maintain relations with only those people who are of same caste. The act of honour killing is mostly performed in the rural areas of the country under the influence of the khap panchayat. The Supreme Court in 2011,² held, “We have in recent years heard of “Khap Panchayats” (known as “Katta Panchayats” in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out.” In case of *State of Maharashtra v. Eknath Kisan Kumbharkar*³ it was stated that the honour killing have become common in Haryana, Western Uttar Pradesh, Rajasthan. Most number of cases of the murder of young couples who marry or form any love connection against their family’s wish or consent are from these States only and the couples have to run for safety and protection to police. In earlier times it was considered that one should marry as per the wish of his/her parents only and that to within the same caste and different gotras but as the time changed all of these concepts were also fading away with the help of education and awareness but they never finished. Many a times the religions and customs are used to cover these cases. In India we still don’t have any separate law for dealing with cases of honour killing, the accused are punished under the IPC. The mindset of these people needs to be changed because killing any human for the sake of the honour is cruel.

There is nothing “honourable” in honour killing⁴. The development in this field is still pending though it is improving but a lot of efforts are required and the mindset of people needs an understanding. The courts in India⁵ have never avoided to take essential measures in this regard by exercising their inherent jurisdiction and issued various directions to the State and the police authorities for giving adequate protection to prevent honour killing.

II. CONCEPT OF HONOR KILLING

According to Human Rights Watch, the honour killing is ‘act of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonour upon the family by being romantically involved with or choosing to marry men outside their caste, class or religion.’

The Amnesty International 2001 explained the concept as ‘honour killing of a woman by a

² ArumugamServai v. State of T.N., 2011 6 SCC 405 (India).

³ Confirmation Case No.3 of 2017.

⁴ Writ Petition (Crl.) 208 of 2004.

⁵ Sujit Kumar v. State of UP, 2002 SCC OnLine 1326.

male relative not as an individual act of violence, but as a crime which is collective, planned, sociologically anticipated, and socially sanctioned by the family and community concerned. It also claims that the regime of honour is unforgiving; women are not given an opportunity to defend themselves. Their family members have no other socially acceptable substitute than to remove the stain on their honour by attacking them.⁶

The honour killing is explained in various manners but the objective behind every explanation was to prove that this is a heinous crime and cannot be left unpunished. This act is committed by the people for the sake of their honour. It is observed that the people who commit this heinous crime are under the impression that the prestige of their family is more important or we can say is more valuable than the life of a human being. In other words, it is simply a murder to clean the stain on the reputation of the family. Sometimes the women of the families are also involved in this crime but such cases are very few in numbers because in most of the cases the women are only the victim.

For understanding the concept of honour killing it is important to understand that what led to such mindset or what is the bone problem which is behind the honour killing.

In the country like India which is also one of the fast developing countries in the world, there are some crimes which should be addressed on priority basis. Here we pray to women as goddess and consider the girl as the honour and prestige of the family. But in some families, the male members consider it as their responsibility to protect the female members of their family and by protection here it means to make sure that she doesn't get involved in any romantic connection with any man who is not of the same caste, lower class or anyone against their wish. Not only romantic connections but if she gets a divorce from her husband even the abusive one then also it is considered as her mistake. If any of this happens they have given themselves the right to kill her for the sake of their honour and the worst part here is that they do it without any guilt.

It is observed that most of the cases of honour killings are due to the inter-caste marriage or marriage against the wish of the family. The main problem is the confusion between the concept of the sapindas and gotras in the mind of the people. For this purpose it is important to understand it in detail.

(A) SAPINDAS AND GOTRAS

The Sapinda relationship is defined in *Section 3 (f) of Hindu Marriage Act, 1955*. As per this section it extends to third generation of the mother and fifth of the father.

⁶Azad Kumar, Honour Killings; Global Perspective 11 (Saad Publications, Delhi, 2014).

According to section 3(f)(ii) if one person is a lineal ascendant of the other person as per the limits laid down by the section 3(f)(i) then they are under the sapindas relationship and are sapindas of each other.

The Gotra is a Sanskrit term which used by the people of Vedic times for explaining the lineages of the people. It is a clan assigned to each Hindu child at the time of his/her birth.

The Hindu Marriage Act, 1955 bars the marriage between the people who are sapindas of each other⁷ but the marriage of the people belonging to same gotra is legal.

Though the conservative khap panchayat has always been against this and consider the marriage between same gotra as a crime.

In the case of *Madhurao v. Raghavendraro*⁸ the Indian Judiciary dealt with this issue in 1945 even before the codification of Hindu personal laws. It involved Deshatha Brhmin and two-judged bench who on the basis of the leading expert's writings and wisdom of Hindu Scriptures passed their judgement that the marriage between same gotra is legal. This is considered as a landmark judgment by the Bombay High Court. Though a lot of objections have been raised by the khap panchayat to make the marriage between the same gotra illegal but this proposal was rejected by the judiciary.

So, with this it can be proved that the marriage between the same gotra is not invalid; the law only declare the marriage of the people who are sapindas of each other only as invalid. It is not a reason to kill.

III. HONOUR KILLING IN INDIAN LAW

In India, we don't have any separate law for the honour killing but we have other provisions of Indian Penal Code, 1860 under which the crime of honour killing can be dealt.

(A) SECTIONS 299-304

It deals with the punishment of murder and culpable homicide (not amounting to murder). So, as per this section the punishment of murder is life sentence or death and fine and the punishment for culpable homicide not amounting to murder is life imprisonment or imprisonment for up to 10 years and fine. The honour killing is a considered as murder under this section.

(B) SECTION 307

It deals with the punishment of attempt to murder which is imprisonment up to 10 years and

⁷Section 5(v) of Hindu Marriage Act 1955, No. 25, Acts of Parliament, 1955 (India).

⁸AIR 1946 BOM 377.

fine and if the person gets hurt then the penalty can be extended to life imprisonment. So, in case where the attempt to kill someone for the sake of honour fails and it is reported before that by the victim himself or any other person then it will fall under this section.

(C) SECTIONS 120A & B

It provides punishment for the people who are a party to any conspiracy which is criminal in nature. In case of honour killing, usually the khap panchayat or the family members of the victim fall under this category.

(D) SECTIONS 107-116

It provides the punishment for abetment of offences which also includes murder and culpable homicide. Here also most of the times the khap panchayat is considered as responsible for the abetment for the act of honour killing.

(E) SECTIONS 34 AND 35

It penalises act which is criminal in nature committed by a group of people together with common intention. In honour killing it is observed that a group of people is involved e.g., the family members or the rural people together commit this act.

In case of Manoj and Babli (2010), for the first time the life sentence was given to the accused of the honour killing, prior to this no one was punished with the life sentence. The victims in this case married each other and this was not acceptable to khap panchayat and their families because they were from different castes. The khap panchayat ordered to kill them.

There is no different law for honour killing as mentioned above. Also, we don't even have a written definition of it in our law. But this fact cannot be ignored that this crime of honour killing is not even reported many a times and this can be the reason behind less number of reported cases related to honour killing. It is very difficult to track these cases because most of the times the victims are dead and the rural people where they are committed mostly are involved in the crime or are afraid of the people who are behind it.

IV. NEED OF SEPARATE LAW

The cases of honour killings are not reported mostly by the people or by the state. Tracking these cases is also a very difficult task as mentioned above. If a separate law will be there for this honour killing then tracking of these cases will become easier.

The separate law will provide a crystal clear image of the offence of honour killing in eyes of

law enforcement agencies.

By making separate law here it means to recognise honour killing as a different offence. Till now the offence of honour killing is treated same as murder and the complete investigation and the process of punishment is also same.

In case of *Baghwan Dass v. State* (NCT of Delhi)⁹ held, “In our opinion honour killings, for whatever reason, come within the category of the rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilised behaviour. All persons who are planning to perpetrate “honour” killings should know that the gallows await them.”

The Supreme Court also emphasized that the compensation to the victim if alive otherwise to his family is very important¹⁰. There are many suggestions given in favour of making a separate law for honour killing:

- a. To amend the evidence act by putting the burden of proof on the accused in this case most of the time this burden will be on khap panchayat or the family members of the victims.
- b. The group ordering for honour killing will be under joint liability and punished accordingly.
- c. To provide a proper definition for honour killing.
- d. The magistrate at district level should be given protection powers to protect the couple or any person under the threat of honour killing if they get the chance to report it.
- e. To set up a special police cell for the protection of the couples.
- f. The government should spread awareness among people through social means.

(A) ARGUMENTS AGAINST THE SEPARATE LAW FOR HONOUR KILLING

A response was filed by the State of Jharkhand stating that the accused of the crime have been punished but the crime of honour killing requires combat attention. After this, an affidavit was filed by the NCT of Delhi stating that there is no separate record of Honour Killing cases with Delhi police and it was mentioned that by the time the affidavit was filed 11 cases were registered for the same and these are handled by District police and also there is special cell within Delhi Police for the case where internal security is in question so such

⁹(2011) 6 SCC 396.

¹⁰Vikas Yadav v. State of U.P., (2016) 9 SCC 541.

cases can be deal under that and there is no requirement of making any special different body for the cases of honour killing.¹¹

There are few points which are against the formation of a separate law for the honour killing.

- a. The existing penalties given under the Indian Penal Code are sufficient for dealing with the cases of honour killing.
- b. The main and the basic issue to be dealt here is the mindset of people under which the inter-caste marriage, marriage within same gotra is wrong hence the laws for honour killing won't provide any help.
- c. It is more important to create awareness among the rural people through education.
- d. Holding just one particular group of people accountable for the crime is wrong like khap panchayat in this case.

Now, after discussing all the points which are in favour of making a separate law and which are against it, it is very difficult to reach any conclusion but this fact cannot be ignored that in India very less number of cases are reported. If the reports National Crime Records Bureau (NCRB) are considered then very less number of cases will come in front but after actually visiting the field like some NGOs do, the situation is very bad.

For improving this problem of tracking of cases the government needs to make certain amends and those amends can be in the form of new or separate law for the honour killing or amendments in the existing provisions.

V. RECOMMENDATIONS

After doing the research I would to recommend few things which the government can impose to prevent honour killing:

- a. The concept of khap panchayat should be dissolved because it is considered as the main reason behind the honour killings in the rural areas.
- b. The education system of the country should include this topic in their curriculum and the being the part of 21st century the children should know the difference between gotra and sapinda. The awareness should be created through education.
- c. The police in the rural areas specially should be attentive regarding these matters and if they receive a complaint of even a simple threat from the family then the protection should be provided to them.
- d. A strict punishment should be there for such heinous crime.

¹¹Shakti Vahini v. Union of India WP (CIVIL) No. 231 OF 2010.

- e. The government should set a special committee for providing suggestions.

VI. CONCLUSION

From this study on Honour Killing I would like to conclude that the actual problem behind these killings is not with the laws, it is the mindset of people on which I have focused in my paper also. This is main thing on which the government has to work and the only possible way to treat it is by creating awareness and this can be done by bringing reforms in the education system as I have mentioned in the recommendations also. Once this myth of inequality is eradicated from the minds then no such killings will take place. No human being has given any right to kill another human as per the law of the country. Killing for the sake of honour is cruel and illegal in the eyes of the law. Also, the murder of an innocent is inhuman and it should be punished. By bringing small changes we can get free from this curse of honour killing.
