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Honour Killing: A Question of Silence?

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ABSTRACT

“The time will come when mankind will be humane to every creature that breathes”

A woman can be harassed by individuals within her family for multiple of reasons, including rejecting to enter into a forced arranged marriage, being a victim of sexual harassment, or seeking a divorce from her husband. There is some evidence that homosexuality can also be perceived as grounds for honor killing by relatives. The United Nations estimate for the number of honour killings in the world is 5000 per year. Many women's groups in the Middle East and Southwest Asia suspect that more than 20,000 women are honour killed in the world each year. Now what does “honour killing” mean? An honour killings the murder of a member (male/female) of a family or social group by other members, due to the belief of the perpetrators that the victim has brought humiliation upon the family or the social group. The perceived disgrace is normally the outcome of actions such as dressing in a manner that is unacceptable to the family or the community, wanting to terminate or prevent an arranged marriage or yearning to marry by their own choice, or engaging in heterosexual acts outside marriage. In this article, an attempt is made to analyse the meaning, nature and reality about honour killing and the role Khap Panchayat system in India, plays in the practice of the aforementioned social evil. Further it makes some suggestions for appropriate solutions through lawmaking. The social legislation is not just the outcome of simple welfare considerations, but rather a key instrument in the process of development. However, in order to ground social legislation more firmly within development strategy it is necessary to be aware of the political contexts within which policies are developed and evolved. As the Indian Constitution promises equal protection of laws to all citizens², by implication, then we should not only have just laws, but also see that they are justly administered and implemented.

Keywords: honour killing, Khap Panchayat, gotras, legislation.

I. INTRODUCTION

Honour related violence is a global phenomenon, and is prevalent in almost all corners of the world, including countries like Iraq, Iran, Turkey, United Kingdom, Italy, Pakistan, etc.² ‘Honour Killing’ is a term that has been prevalent in India, especially the Northern India, for all

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² Warraich, S.A., Honour killings and the law in Pakistan, in Welchman, L. and Housain, S.(eds.), (2005).

the wrong reasons. It has been defined as, “the traditional practice in some countries of killing a family member who is believed to have brought shame on the family.”³ Today, the term loosely means the incidents of harassment or violence that a young couple faces, from either their own family or from the community, mainly due to the fact that their marriage has brought down the honour of either the family, or the community, or both. These mainly include instances of inter-caste and inter-religious marriages. These instances of inter-caste marriages show us that it is not an impossible thing in India for different castes to live in harmony amongst themselves; however, we still see that caste is still a matter of honour and pride for a good number of people in India and thus, these honour killings are taking place.

Our country’s forefathers like Mahatma Gandhi and Dr. B.R. Ambedkar advocated that we distance ourselves from this rigid caste system that has been prevalent in our country since more than a millennia. However still, even in the 21st century, Caste system and discrimination based thereon takes place. When it comes to caste, for a lot of people, the Constitution does not matter, the legislations do not matter and neither does the judiciary’s decisions. And it is the pseudo authoritarian elements, such as the KhapPanchayats that play a major role in this as well.

II. HONOUR KILLING IN INDIA: KHAP PANCHAYATS

The Khap Panchayats have a long history in the Indian dispute settlement and governing area. Before the time when an effective judiciary was set up in India, village courts such as the Khap Panchayats were responsible for reaching of an amicable solution between two parties and settle the dispute. However, after the introduction of an effective judiciary and with increase in sensitization of the masses regarding it, the Khap Panchayats had slowly lost their relevance.⁴

These institutions began to play a bigger political role only in the post-colonial period, with many candidates being fielded for different political positions.⁵ But more so, in the recent times, they are known for some of their notorious and draconian decisions against those who, according to them, are breaking the tradition and culture.

The motive governing these Khaps is that different societies have different customs according to which a male or a female cannot have marriage with another male or female of other caste. They follow the rule of endogamy. Most people think that caste system is a static rigid feature of Hindu society and it cannot change. This kind of thinking gives strength to the system of

³ Merriam-Webster, Definition of Honour Killings, <<https://www.merriam-webster.com/dictionary/honour%killings>>

⁴ SAARC Journal of Human Resource Development 2011

⁵ Ranbir Singh, The Need to Tame the Khappanchayats, *Economic and political Weekly*, Vol.45, No. 21, 22-5-2010

Khap Panchayats in the Indian society.

In recent years, the news has seen a lot of Khap Panchayats, and mostly for the wrong reasons. Khap Panchayats, especially in the States of Haryana and Uttar Pradesh, have on several instances, taken law into their own hands and passed such absurd orders or directions, which cannot be, and should not be tolerated, in any civilized nation, least of all India.

Honour killing is given structure by the biased rules of the Khap system, which takes away their lives with barbaric actions. People are not allowed to marry in same gotra from the same village who live in a Khap. The justification behind it, the Khap system argues that people belonging to same gotra are believed to be from the same clan or family lineage and thus are related through blood. But there is great paradox involved here. A recent study commissioned by NCW, which was conducted by NGO Shakti Vahini revealed that 72% of the 326 cases of honour crimes were in fact inter-caste marriages, while same gotra marriages were only 3 percent. In authenticity, honour killing is the consequence of a conflict between tradition and modernization. One such barbaric incident was in the year 2004, in Bhawanipur Village in Moradabad, Uttar Pradesh, when a 20-year-old Chetan eloped with Pinky, the daughter of an influential Yadav family. The boy belonged to the barber caste. The Tevatia Khap ordered that while the couple should be traced, Sia Dulari, Chetan's mother, should be raped turn-after-turn by the members of Yadav family, since her son had dishonoured the Yadavs and later she was burned alive. The Police knew about it but did nothing. Only after activists intervened were some arrests made but everyone was later released on bail.⁶ The Khap Panchayats over the country have passed a number of such orders without any action being taken against them.

According to data compiled by the Punjab Police, 34 honour killings were reported in the state between 2008 and 2010: 10 in 2008, 20 in 2009, and four in 2010. Haryana is also notorious for incidents of honour killing, mainly in the upper caste of society, among rajputs and jaats. Bhagalpur in the eastern Indian state of Bihar has also been notorious for honour killings. Recent cases include a 16-year-old girl, Imrana, from Bhojpur who was set on fire inside her house in a case of what the police called 'moral vigilantism'. The victim had screamed for help for about 20 minutes before neighbours arrived, only to find her smouldering body. She was admitted to a local hospital, where she later died from her injuries. In May 2008, Jayvirsingh Bhadodiya shot his daughter Vandana Bhadodiya and struck her on the head with an axe. In June 2010 some incidents were reported even from Delhi.

Recently one more pronouncement issued by the Khap Panchayat of Uttar Pradesh village which

⁶ Tarun Sehrawat, A Taliban of Our Very Own, Tehelka Magazine, Vol.6, Issue 32, 15-8-2009

further malign already degraded image of Khap Panchayats. According to the pronouncement, women who are below 40 years of age should make minimal use of mobiles and were also banned from love marriage. It created waves of shock and unrest throughout the country.

The untrammelled power that these institutions wield, without any disapproval by the people who live in such communities, and with a shocking inaction, by the police as well as the State and Central Governments is what is alarming in a country in which rule of law is said to be practiced.

III. THE SUPREME COURT'S VIEWS ON THE MATTER

With the Governments practically ignoring such law and order lapses, it is again the courts that come to the rescue and save this nation's law and order, without any political motive. The Supreme Court of India has been very critical of the Khap Panchayat, and of the Central and State Governments for their failure to stop the Khaps from harassing adults who have legally married another adult of their choice, irrespective of the caste, class or religion. The Supreme Court is of the opinion and rightly observed, that it is nobody else's choice but the parties who are marrying, of whom they should or should not marry.

The Supreme Court ridiculed those who advocate for honour killings, or those who harass such couple who indulge in inter-caste marriages in *Vikas Yadav v. State of U.P.*⁷ in the following words:

One may feel "My honour is my life" but that does not mean sustaining one's honour at the cost of another. Freedom, independence, constitutional identity, individual choice and thought of a woman, be a wife or sister or daughter or mother cannot be allowed to be curtailed definitely not by application of physical force or threat or mental cruelty in the name of his self-assumed honour. That apart, neither the family members nor the members of the collective has any right to assault the boy chosen by the girl. Her individual choice is her self-respect and creating dent in it is destroying her honour. And to impose so-called brotherly or fatherly honor or class honor by eliminating her choice is a crime of extreme brutality more so, when it is done under a guise. It is a vice, condemnable and deplorable perception of "honour", comparable to medieval obsessive assertions.

Furthermore, the Court has also emphasized on the point that when it is an adult who married into another caste, then even the parents cannot do anything, other than that, they have no power to harass the couple or to physically assault them. The Court in *Lata Singh v. State of U.P.*⁸

⁷ (2016) 9 SCC 541, 592

⁸ (2006) 5 SCC 475, 480

directed as under:

“...This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approved 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 daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct 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 anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits 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.”

We sometimes hear of “honour killings” of such persons who undergo inter-caste or inter-religious marriage out of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism. Thus the Supreme Court has in very unambiguous terms deemed the acts of such people who are against the inter-caste marriages, illegal and unlawful.

IV. THE 242ND LAW COMMISSION REPORT

The 242nd Law Commission Report in August 2012 to the Government of India on “Prevention of Interference with the Freedom of Matrimonial Alliances (in the Name of Honour and Tradition): A Suggested Legal Framework.”⁹, it is noted that as far as India is concerned, honour killings are mostly reported in the States of Haryana, Punjab, Rajasthan and Uttar Pradesh, with some incidents in Bihar, Delhi and Tamil Nadu as well.

In addition to slamming the ones who interfere with the marriage of adults, a number of recommendations had been suggested by the Law Commission. These recommendations also included the bringing out of “Prohibition of Interference with the Freedom of Matrimonial Alliances Bill”¹⁰, to prevent further intervention of others in the marriage of two adults. However, the Bill has not been brought out in Parliament as of yet.

⁹ Government of India, The 242nd Law Commission Report, August 2012, <http://lawcommissionofindia.nic.in/reports/report242.pdf>.

¹⁰ Id.

V. A WAY FORWARD

The correct legal position related to two individuals who are governed by the Hindu Personal laws in India, is that if conditions of a valid marriage under section 5 of the Hindu Marriage Act, 1955 are satisfied, then there is no bar on marriage. The Supreme Court recently noted while hearing an eight year old PIL against the Khap Panchayats that, “The Khap Panchayat as a collective body cannot summon adult girls or boys on their choice of marriage. Whenever there is a collective attack on girls and boys who have attained majority, it is absolutely illegal.”¹¹ The Supreme Court has held in a plethora of judgments that when two adults marry, according to their own free will, then nobody, be it the Khap Panchayats or even their own parents can do anything about it. They do not have the right to summon them, harass them or physically assault them. Doing so would be grossly wrong and illegal. In India, the legal age of marriage is 18 and 21 for women and men respectively. For the purposes of marriage, the parties are considered adults when they reach the abovementioned ages. Thus, when two adults decide to do something of their own free will, and are not doing anything illegal in the process, then no one, not even the Courts have the right to interfere with their decision. The Supreme Court reiterated the same thing in the ongoing case of *Shafin Jahan v. Asokan K.M.*¹² that when an adult has married out of his own will, no one has the right to contest that marriage.

However, it is upsetting to note that in spite of such encouraging developments, this foul social practice has not been checked capably. The law has failed immensely in controlling such a social evil. Therefore, it is high time that the Khap Panchayats must be controlled by the State and the Central Government, especially in the cases of inter-caste or inter-religious marriages, and the societies be further sensitized regarding these matters. It is important to address the factors, which may prevent a victim from looking for help. The factors are:

- Lack of social and legal awareness
- Feelings of guilt and shame
- Protectiveness towards family or community
- Low self-esteem
- Low self confidence
- Negative opinion of the police and other agencies

¹¹ <http://www.livelaw.in/khap-panchayats-cant-question-adults-choice-marriage-sc/>

¹² <http://www.livelaw.in/hadiya-case-cant-question-legitimacy-adult-womans-choice-marriage-observes-sc/>.

- Fear of poor confidentiality
- Fear of losing children
- Fear of worsening the situation
- Linguistic problems
- Lack of counseling guidance cells

In the end through this article, I would like to point out, that only if collective efforts are initiated at both micro and macro levels of the society, i.e. if the judiciary, the administrative forces, the police and other formal as well as informal social institutions work cooperatively we will surely reach to a solution. Caste Panchayats have played an influential role in the past. Their terror will continue unless they are banned from the Indian society if we want an everlasting solution to honour killing. Voices would have to be raised to bring the matter into immediate attention so that a rigorous action is taken. Value based education at both school and higher level is necessary to bring about a change in people's mindset. Education must aim to provide holistic virtues that will create honest citizens. They would cooperate and live harmoniously rather than harming each other. Higher education is a powerful weapon in uniting people from all walks of life. In the 21st Century, there should be no place for such shameful and barbaric acts that are carried out by some pseudo social groups in the name of caste, class or religion. Further media can play a major role in bringing intense issues to light and can help in bringing about a lot of social awareness.

The culprits must be punished harshly in order to inhibit cultural practices that are offensive and defy human dignity. Honour killing in other words can be termed as a cold-blooded murder, which is completely against human rights. Immediate action with proper direction is a need of the hour!
