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# No Honour for the Homosexuals: Exploring Honour Killing Against the LGBTQ Community in India

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## ABSTRACT

*Section 377 of the Indian Penal Code 1860, which criminalised homosexuality, was struck down by the Supreme Court of India in 2018, which opened up new relationship possibilities for those who had been forced prior to hide their sexual orientation. However, the deep rooted hatred and prejudice against the LGBTQ community within the society, prevented many from being true to themselves even after their rights were recognised. Amidst this social evolution, there were a few brave souls who decided to embrace their sexuality and unfortunately faced backlash not just from the public but also from their own families. In fact, in 2019, just a few months after the landmark judgment, a Kolkata based gay couple were forced to leave home as they were threatened of honour killing by their relatives and neighbours. Interestingly, most of the definitions of honour killing refers to killing of a woman who has brought shame to the family by the family members, making it seem like only a gender based crime although it is shown to affect different sexualities too. It is pertinent to note that horrors of honour killing are not a novel concept in India where religion, caste and patriarchal ideas have deep roots, but this bizarre method of socially accepted punishment have started to extend its claws towards ideas of sexuality and gender identity. This paper thus concentrates on the concept of honour killing as against the LGBTQ community in India in the historic and present perspective and tries to formulate a suitable solution for addressing this emerging social issue.*

**Keywords:** Honour killing, LGBTQ, Sexuality, Gender Based Violence.

## I. INTRODUCTION

The concepts of 'sexual orientation' and 'gender identity' were seldom discussed at the international level prior to UN interference. In fact, it was only in 2011, the United Nations adopted a general resolution to address the rights of the LGBT community.<sup>2</sup> The report of the High Commissioner, as a result of the UN resolution, portrayed the LGBT community in a dire

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<sup>2</sup> UN Human Rights Council, *Human rights, sexual orientation and gender identity*, Res 17/19, UN Doc A/HRC/RES/17/19 (14 July, 2011).

situation with high levels of discrimination in all sectors of life.<sup>3</sup>

Across the globe, homosexuality has always been a sore subject amongst the public especially in societies that give prime importance to the concept of 'family'. It is thus unsurprising to see a lack of recognition of the LGBT community in a country like India where there are patriarchal values and rigid personal laws. However, it is pertinent to note that law prohibiting homosexuality was introduced in India under the colonial rule through the enactment of Indian Penal Code of 1860. Interestingly, homosexuality was decriminalized in the UK by the Sexual Offenses Act 1967 and same-sex marriage got legal recognition under the Marriage (Same Sex Couples) Act 2013. Unfortunately, this development was amiss in India. In 2018, homosexuality was finally decriminalized in India through the case *Navtej Singh Johar v. Union of India*<sup>4</sup> although this was not succeeded by their right to marry. Recently, the Supreme Court while dealing with the issue of granting same-sex marriage upheld the cultural and societal values of India to be a reason for denying right to marry to the LGBT community.

In a society where being part of the LGBT spectrum is seen as shameful, it is pertinent to provide protection to the affected group, lack of which can even result in publically accepted crimes including murder or rape. India, being a stringently caste-driven society, has always been witness to various killings done in the name of protecting the family name or religious piety. Recently, this bizarre method of socially accepted punishment have started to extend its claws towards ideas of sexuality and gender identity; the trend being rampant especially after the decriminalization of homosexuality which was seen by many as the start of society's destruction.

Due to lack of rights to this affected community, it is the need of the hour to identify the effect of honour killing as against the LGBTQ community in India in the present perspective and formulate a suitable solution for addressing this emerging social issue.

## II. EVOLUTION OF ANTI-LGBT THOUGHT IN INDIA

It is interesting to note, ancient India showed a surprising level of tolerance towards homosexuality. Pattanaik, in fact, identifies various ancient sources supporting homosexuality which includes Hindu temples and sacred books. He provides examples from Southern India where Hindu temples portray images that are considered by the present public as unnatural. This includes images of men in embrace and women showcasing love for one another. As they are

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<sup>3</sup> United Nations Human Rights Office of the High Commissioner, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (United Nations Human Rights Office of the High Commissioner, 2012).

<sup>4</sup> *Navtej Singh Johar v. Union of India*, A.I.R. 2018 S.C. 4321.

made part of sacred places, the significance of such relationships in that era cannot be undermined.<sup>5</sup> In Kamasutra, a book that speaks about sexual pleasures, sexual relationships between men have been given due coverage.<sup>6</sup> Such ancient texts speak volumes of the acceptance of homosexuality by the then society.

However, a few texts such as *Manusmriti*, written by Sage Manu between 200 BC and 200 AD, provides for punishments in case of homosexual acts. Laws enshrined in *Manusmriti* were discriminatory in nature with punishments being different for men and women engaging in homosexual acts with women being subjected to harsher penalties.<sup>7</sup> Nevertheless, looking into the Hindu religious texts, such as *Mahabharatha* and *Ramayana*, high tolerance of the LGBT community can be identified which the Supreme Court also observed in *NALSA v Union of India*.<sup>8</sup> Between the enactment of Manu's laws and the establishment of British East India Company in 1612, there is little information regarding homosexuality and laws regulating them in pre-colonial India.<sup>9</sup>

With the establishment of East India Company, England slowly started gaining power in India with India becoming a colony under the rule of the British Crown. During this time, The Buggery Act 1533 had made homosexual acts in England illegal. Prior to British influence, Indian society, however, was surprisingly tolerant towards individuals that identified themselves as 'hijras' which is a community category recognized under the transgender umbrella.<sup>10</sup>

In the 19<sup>th</sup> century, major legal reformation took place in Britain which also affected the laws in their overseas colonies. As a result, in India, in 1833, the Indian Law Commission (ILC) was established and the draft penal code was finally passed in 1860.<sup>11</sup> The newly implemented Penal Code of 1860 stood completely independent of Indian customs and traditions and was based on the British Royal Commission's 1843 draft code.<sup>12</sup> The British secular law was largely

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<sup>5</sup> Devdutt Pattanaik, *Did homosexuality exist in ancient India?*, DEVDUTT (June 30, 2009), <https://devdutt.com/did-homosexuality-exist-in-ancient-india/#:~:text=An%20overview%20of%20temple%20imagery,did%20exist%20in%20ancient%20India>.

<sup>6</sup> Manoj Mitta, *Ancient India didn't think homosexuality was against nature*, TOI (June 27, 2009 00:18 AM), <https://timesofindia.indiatimes.com/india/ancient-india-didnt-think-homosexuality-was-against-nature/articleshow/4708206.cms>.

<sup>7</sup> Prabhaskar K Dutta, *Homosexuality in ancient India: 10 instances*, India Today (July 10, 2018 18:40 PM), <https://www.indiatoday.in/india/story/10-instances-of-homosexuality-among-lgbts-in-ancient-india-1281446-2018-07-10>.

<sup>8</sup> *NALSA v. Union of India* A.I.R. 2014 S.C. 1863.

<sup>9</sup> Basuli Deb, *Manusmriti, Macaulay's 1860 Penal Code, Neoliberal India and Queer Cinematic Subjectivities*, 35(3) SAR 167 (2014).

<sup>10</sup> *NALSA v. Union of India*, A.I.R. 2014 S.C. 1863.

<sup>11</sup> Basuli Deb, *Manusmriti, Macaulay's 1860 Penal Code, Neoliberal India and Queer Cinematic Subjectivities*, 35(3) SAR 167 (2014).

<sup>12</sup> *Id.*

influenced by the Bible and European ecclesiastical law which considered homosexuality as a sin in general; the same was reflected in the Indian Penal Code.

The anti-gay law continued to be in existence in India even after the country gained independence in 1947. Section 377 was a result of the enactment of Buggery Act 1533 and the Criminal Law Amendment Act 1885 in England. Although the law changed in England with the recommendation of the Wolfenden Committee in 1957 and the implementation of the same in 1967, the same was unfortunately not reflected in the Indian legal system.

Section 377 criminalized homosexuality along with oral sex and bestiality. Although most of the sodomy cases registered under this provision dealt with non-consensual acts, Section 377 prevented LGBT couples from having sexual relations even within private walls. More than the prohibition of having relationships, this Section stripped down the LGBT community's right to live with dignity; free from all sorts of discrimination. They were ostracized from the society and were forced into illegal activities such as prostitution as a mean for living.<sup>13</sup> Section 377 of the Indian Penal Code 1860, which criminalized homosexuality, was finally struck down by the Supreme Court of India in 2018,<sup>14</sup> which opened up new relationship possibilities for those who had been forced prior to hide their sexual orientation. However, this did not prevent discrimination and honour killing of the individuals belonging to the LGBT community due to the deep rooted belief of heterosexuality and 'only two genders'.

### III. CONCEPT OF HONOUR KILLING

Honour killing is a complex concept that gains different definitions from time to time according to the changing ideologies of the society. The basic ingredient of honour killing however can be identified as the feeling of shame or tarnished reputation. In India, honour killing can be seen to have a correlation to the concepts of family and family standing in the society. As a patriarchal society, India has always considered family as an absolute institution and has given it prime decision making authority to shape the societal norms.<sup>15</sup> The general conception of families consisting of a father, mother and children points to the implied expectation of the society to heterosexual relations. It is this widely accepted principle that caused the Indian government to use family and integrated values as the reason for not permitting same-sex marriage.<sup>16</sup>

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<sup>13</sup>Vishnu Gopinath, *How We Got Here: A Brief History of LGBT Rights and Laws in India*, THE QUINT (Sept. 06, 2022, 12:39 PM), <https://www.thequint.com/explainers/lgbt-queer-rights-india-section-377-homosexuality-history#read-more>.

<sup>14</sup> Navtej Singh Johar v. Union of India, A.I.R. 2018 S.C. 4321.

<sup>15</sup> K.L. SHARMA, *INDIAN SOCIAL STRUCTURE AND CHANGE* 150 (Rawat Publications, 2007).

<sup>16</sup> Krishnadas Rajagopal, *At the heart of the same-sex marriage court battle is partners' right to protect their*

It is necessary to note that the Indian Constitution guarantees right to life and right to live with human dignity under Article 21. Thus, every citizen has the right to live with honour and has the right to be protected against any danger against his/her life. The Supreme Court has in fact guaranteed the freedom to choose a life partner under Article 21 and Article 14 of the Constitution.<sup>17</sup> In 2006, it was observed by the Supreme Court that violence was being used against couples undergoing inter-caste marriages and this was identified as a gross violation of the law; acts that need to be severely punished.<sup>18</sup>

The concept of dishonour or shame is different to different persons. In India, rigid caste systems and over emphasis of personal laws have cultivated a culture of honour killing relating to noncompliance to religious rules. As stated before, family is considered as the basic structure for identifying social values and this unit along with blind beliefs have caused relatives and neighbors to take (deemed to be) justice into their own hands. The astounding part of these actions is that no remorse is felt by the perpetrator, rather pride and joy in eradicating a bad seed is shared amongst the group.

Some of the major reasons for honour killing include inter-caste marriages, pre-marital relationship, choosing one's own spouse, live-in relationship and homosexuality.<sup>19</sup> A decade back, the Human Rights Watch had commented on the responsibility of the Indian Government to promote and create awareness regarding the right of persons of legal age to get married to their partner of choice without fear for their life.<sup>20</sup> Although, they didn't explicitly include the LGBT community, the recent Supreme Court decision not permitting same-sex marriage portrays the concern raised regarding one's right to choose. It is pertinent to note that choice has always been a subject of debate in the Indian socio-legal domain. In a country like India, where family and religion are given prime importance, individuals are likely to face resistance against their desire for independence.

#### IV. HONOUR KILLING AND THE LGBT COMMUNITY IN INDIA

The deep rooted hatred and prejudice against the LGBTQ community within the society, prevented many from being true to themselves even after their rights were recognized. Amidst this social evolution, there were a few brave souls who decided to embrace their sexuality and

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*families*, The Hindu (Oct. 17, 2023 10:00 AM), <https://www.thehindu.com/news/national/same-sex-marriage-supreme-court-verdict-partners-right-to-protect-families/article67429309.ece>.

<sup>17</sup> Shakti Vahini v. Union of India (2018) 7 S.C.C. 192.

<sup>18</sup> Lata Singh v. State of UP (2006) 5 S.C.C. 475 (India).

<sup>19</sup> Widonlule Newme, *Honour Killings in India*, 5 J.E.T.I.R. 333, 335 (2018).

<sup>20</sup> Human Rights Watch, *India: Prosecute Rampant 'Honor' Killings*, HRW (July 18, 2010 4:56 PM), <https://www.hrw.org/news/2010/07/18/india-prosecute-rampant-honor-killings>.

unfortunately faced backlash not just from the public but also from their own families. In fact, in 2019, just a few months after the landmark judgment, a Kolkata based gay couple were forced to leave home as they were threatened of honour killing by their relatives and neighbors.<sup>21</sup>

This pattern of discrimination and targeting can also be seen amongst the transgender community. In *NALSA v Union of India*,<sup>22</sup> the Court mentions the story of how in the Hindu Epic Ramayana, hijras i.e., transgenders supported Lord Rama while being forced to go into exile. The hijras as a result is said to have received the power to bless people on occasions which is still in practice in India.<sup>23</sup> Examples such as these shows the tolerance of Hinduism to LGBT behavior unlike the claim made by the government that such acts are against Indian ethics and morality.

As a result of 2014 judgment, The Transgender Persons (Protection of Rights) Act 2019 was implemented by the legislature to protect the rights of the transgender persons including their right against discrimination.<sup>24</sup> Transgender rights with regard to marriage, adoption and inheritance have not been covered under the Act perhaps due to the controversial atmosphere with regard to religions and human rights in India. It is also interesting to note that similar suggestion was not made by the Supreme Court in their judgment; rather dealt only with the need for anti-discrimination laws.<sup>25</sup> Lack of these basic human rights are in fact a violation of the fundamental rights so provided under the Indian Constitution.

It is pertinent to understand the present legal and social background of the LGBT community to identify the reasons for crime against this vulnerable group. The terrifying situation surrounding honour killing is its acceptability by the public. If the family or religion is considered to be affected, then it is considered justified in killing the ones causing the so called shame. With regard to LGBT community, the major problem arises from the fact that being a part of the community in itself is a reason for causing harm to the person. Most of the honour killings in India, as seen before, is in relation to marital rights. Individuals enjoying good family environment might suddenly face backlash and outrage from their relatives for choosing to enter into an alliance that might attack the family's reputation. Unlike situations relating to inter-caste marriage and pre-marital affairs that emerge as an issue only when the act is committed, persons belonging to the LGBT community are targeted the moment they express their desire to be part

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<sup>21</sup> Kamalendu Bhadra, *Kolkata: Parents threaten to kill gay couple, drive them out*, TOI (Nov. 21, 2019 06:53 AM), <https://timesofindia.indiatimes.com/city/kolkata/parents-threaten-to-kill-gay-couple-drive-them-out/articleshow/72150985.cms>.

<sup>22</sup> *NALSA v. Union of India* A.I.R. 2014 S.C. 1863.

<sup>23</sup> *Id.*

<sup>24</sup> Transgender Persons (Protection of Rights) Act, 2019, Act No. 40, Acts of Parliament, 2019 (India).

<sup>25</sup> *NALSA v. Union of India*, A.I.R. 2014 S.C. 1863.

of the spectrum. Family torture, public discrimination, sexual assault and murder are some of the many forms of violence they face.

The only way to gain a possible upper hand to this issue is to recognize rights of the LGBT community. A necessary step which ought to have been taken by the Supreme Court was the recognition of same-sex marriages. Marriage results in recognition of other rights such as adoption and inheritance. Denial of one person's right to marry is denial of their basic fundamental rights. The public outcry against the 2018 judgment shows the misconception amongst people as to homosexuality and gender identities being matters of social negatives.

### **(A) Statutory Provisions**

The Constitution of India guarantees all the citizens fundamental rights that are necessary for sustaining a peaceful life. Right to equality, Right against discrimination and Right to life are few basic rights guaranteed to all.<sup>26</sup> Similarly, under IPC, punishment for culpable homicide and murder reiterate one's right to be protected from bodily harm.<sup>27</sup>

In 2022, 'Freedom of Marriage and Association and Prohibition of Crimes in the Name of Honour Bill' was passed in the Lok Sabha to prevent honour killing relating to inter-caste and inter-religious marriage.<sup>28</sup> This Act if it comes into effect will not only provide remedy for honour killing in general, but will also address the so called taboo topics of gender identity and sexual orientation. It provides for the interpretation of gender and sexuality in such a way that the LGBT community is also addressed and protected. For instance, Section 2(k) of the Bill states that gender identity refers to self-identification as man, woman, *transgender or any other identified category*. Similarly, Section 2(l), which provides definition of sexual orientation, states sexuality includes *homosexuality and bisexuality*.

It is interesting to note that this Bill, unlike the court's decision over LGBT community's right to marry, addresses individuals' right to marry irrespective of gender identity. This is a remarkable leap in the spectrum of LGBT rights as it shows the Indian legislature's begrudging acceptance of the fact that this community is widely ostracized and is in dire need of protection beyond basic human rights.

## **V. THE WAY FORWARD**

Barely a few cases are ever registered with regard to hate crime or honour killing of persons

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<sup>26</sup> INDIA CONST.

<sup>27</sup> The Bharatiya Nyaya Sanhita, 2023, Act No. 45, Acts of Parliament, 2023 (India).

<sup>28</sup> Srishti Prakash, *Honor Killing of Homosexuals*, LEGAL SERVICE INDIA, <https://www.legalserviceindia.com/legal/article-11344-honour-killing-of-homosexuals.html>.



belonging to the LGBT community. This does not necessarily mean no such incidents are taking place, rather it is proof of the public acknowledgment or cover ups initiated. In order to prevent honour killing in general, the legislature has to bring in strict laws prohibiting honour killings. This should not however only relate to killings of women as seen usually but also should include all vulnerable groups as recognized by the law. One such way they can accomplish this is by bringing into effect the 2022 Bill addressing freedom to marry and prevention of honour killing. Although, it might not completely curb the underlying societal stigma and ongoing discriminatory practices, it will still provide a better redressal mechanism to the LGBT community who currently does not have any legislative backups to protect them against hate crimes.

Along with this, recognition of rights need to be ascertained. Right to marry and other individual rights need to be guaranteed to the community to give them the social support they currently lack. Most of the persons suffer in silence due to non-availability of solutions. Police brutality is one of the most feared result by them due to which most of the cases go unrecorded. Steps need to be taken to create awareness amongst the police as to how to handle cases involving the LGBT community. Stigma and conservative views amongst the public cause general non-acceptance of the LGBT community. For this, both Central and State governments need to conduct social awareness campaigns to dissolve the negative opinions present amongst the general public.

## **VI. CONCLUSION**

Rome was not built in a day. Similar to how Section 377 of the Indian Penal Code was finally decriminalized after almost 70 years, other rights of the LGBT community will slowly but surely also be recognized. In the meantime, however, governments, judiciary as well as the executory bodies should try to mitigate the violence and discrimination caused to the community through well thought of action plans. Honour killing is deemed to be an almost acceptable method for coercing people to follow arbitrary values that are considered fit by the Indian society. India, being a country widely governed by religious and patriarchal principles, often faces criticism from the international community for its rampant caste-based and gender-based violence cases. Honour killing is a societal menace which is affecting the Indian community as a whole and it is as such necessary to implement a law addressing this age old criminal act.

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