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Scrutinizing the Right to Love as a Human Right in Light of Honour Killings and Casteism in India

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ABSTRACT

Fundamentally, the Right to Love has not been explicitly mentioned in any of the documents concerning Human Rights. However, it is presumed to be a fundamental right that is envisaged under the guise of different headings in various documents. For instance, Article 16 of the UDHR mentions that grown men and women have the right to marry and start a family, without anyone trying to stop them because of their race, country, or religion. Even though the Article does not expressly mention the word 'love,' the same can be interpreted to come under the purview of the Right to Love as it comes as a prerequisite for any two adults for proceeding with a marriage. Overall, this article delves into the concept of the right to love as a fundamental human right by proving the existence of such a right via conventions, legislations, constitutions, and judicial precedence. Further, honour killings in India have been a major concern over ages and is prevalent to this date. Even as recent as 2018, the Supreme Court has issued directions against honour killing which is considered to be a gross violation of the right to love and the right to marriage. This article seeks to contribute to the understanding of the right to love as a fundamental human right and shed light on the conservative nature of households because of the caste system as a driving force behind honour killings, and analyse the judicial precedents on the matter. Ultimately, the findings of this article can inform discussions on human rights, social justice, and the eradication of honour killings in India.

Keywords: *Right to Love, Honour Killings, Human Rights, Marriage, Caste, Religion.*

I. INTRODUCTION

The Right to Love encompasses the freedom and personal liberty to select one's life partner without any form of oppression because of socioeconomic strata-based discrimination which includes casteism and religion-based discrimination. Firstly, the international conventions pertaining to human rights do not expressly recognise the freedom to love as a fundamental human right. Hence, it is imperative to analyse on whether the right to love qualifies as a

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fundamental human right before analysing the deeper issues of honour killings and casteism in the article.

II. THE INTERDEPENDENCE OF THE RIGHT TO LOVE AND THE RIGHT TO MARRIAGE AS FUNDAMENTAL HUMAN RIGHTS AND THEIR ROLE IN SOCIETY

The right to marry and start a family is expressly recognised in several human rights treaties, and the idea of "family" and "marriage" is widely acknowledged as a fundamental unit of society. At this juncture, it can be inferred that the right to love and the right to marriage are closely intertwined in several ways. Fundamentally, the right to love includes the freedom for people to engage in intimate relationships and to display their sexuality and affection without worrying about any kind of prejudice, violence, or retaliation. On the other hand, the right to marry acknowledges the freedom of people to formally bind their relationships as well as make use of the advantages and benefits in law and society that arise through marriage. In many countries, the right to marry anyone one chooses without regard to any caste or religion-based discrimination, gender, or sexual orientation is linked to the right to love.

(a) International Conventions encompassing the Right to Marry

Various international human rights conventions encompass the right to marry. Under Article 16² of the UDHR, it has been stated that *"men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family."* Article 23³ of the ICCPR also acknowledges the right to marry, stating that *"the right of men and women of marriageable age to marry and to found a family shall be recognized."* Furthermore, CEDAW mandates that the state parties take all necessary steps to end discrimination against women in all matters relating to marriage. This right to freely choose a spouse and to enter into a marriage only with their free and informed consent is recognised in Article 16⁴ of CEDAW. In addition, several other charters, including Article 18 of the African Charter of Human and Peoples' Rights⁵ and Article 17 of the American Convention on Human Rights⁶, recognise the right to marriage as a fundamental human right. Further, the right to marry is also protected under the

² Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 16.

³ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1966), art. 23.

⁴ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, art. 16.

⁵ African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art. 18.

⁶ American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, art. 17.

IESCR⁷, ICRMW⁸, ACHR⁹, CERD¹⁰, CRPD¹¹, and the European Convention on Human Rights¹².

(b) Recognition and Protection of the Right to Love, Marriage and Live-In Relationships in India

Unlike various international conventions, the right to marry is not expressly acknowledged as a fundamental or constitutional right in the Indian Constitution. Within the Indian context, Article 21 which covers the Right to Life can be interpreted to encompass the Right to Love as well. From time to time, the Indian courts have held that the right to marry a person of his/her own choice and will is an integral part of Article 21 of the Indian Constitution.¹³ Many couples choose to live together instead of being married, which is likewise protected by fundamental human rights in most nations, albeit the degree of protection may differ according to the specific legislations of each country. In India, this right to love, marriage or even to indulge in live – in relationships have been recognised through judicial precedents.

The Supreme Court ruled in *S. Khushboo v. Kanniammal*¹⁴ that live-in partnerships are permitted and that it is legal for two majors to live together. It also came to the conclusion that a live-in relationship was covered by the "Right to Life" provision of Article 21 of the Constitution.¹⁵ In addition to this, the Supreme Court has also ruled in a later case that live-in partners will be regarded as legally married.¹⁶

Additionally, the Supreme Court of India held in the case of *S.P.S. Balasubramanyam v. Suruttayan Andalli Padayachi & Ors*¹⁷ that if a man and a woman live together for a number of years, there is a presumption under Section 114 of the Evidence Act¹⁸ that they are married, and hence, it can be inferred that the right to marry includes live-in relationships as well, and every

⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR): Article 10. See ICESCR, opened for signature Dec. 19, 1966, 993 U.N.T.S. 3.

⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW): Article 12. See ICRMW, opened for signature Dec. 18, 1990, 2220 U.N.T.S. 3.

⁹ American Convention on Human Rights (ACHR): Article 17. See ACHR, opened for signature Nov. 22, 1969, 1144 U.N.T.S. 123.

¹⁰ Convention on the Elimination of All Forms of Racial Discrimination (CERD): Article 5(d)(iv). See CERD, opened for signature Dec. 21, 1965, 660 U.N.T.S. 195.

¹¹ Convention on the Rights of Persons with Disabilities (CRPD): Article 23. See CRPD, opened for signature Mar. 30, 2007, 2515 U.N.T.S. 3.

¹² European Convention on Human Rights (ECHR): Article 12. See ECHR, opened for signature Nov. 4, 1950, 213 U.N.T.S. 221.

¹³ *Sana Rashid alias Pammi v. State of Jharkhand*, Writ Petition No. 482 of 2022 (High Ct. Jharkhand 2022).

¹⁴ *S. Khushboo v. Kanniammal.*, (2010) 5 SCC 600.

¹⁵ *Id.*

¹⁶ *Dhannulal v. Ganeshram.*, (2015) 12 SCC 301.

¹⁷ *S.P.S. Balasubramanyam v. Suruttayan Andalli Padayachi & Ors.*, AIR 1992 SC 756.

¹⁸ Evidence Act, 1872, § 114, No. 1, Acts of Parliament, 1872 (India).

couple is to be granted the right to peacefully live under whatever circumstances they choose to, as long as it is fully consented.

(c) Intersection of the Right to Love and the Right to Marry

Ever since the inception of the UDHR, relationships have been recognised as being crucial to society and the state. As a result, the nature of people and their need for social relationships leads to the concept to marriage that fundamentally arises because of a component named love.¹⁹ The rights that protect relationships and marriages do not specifically identify or define love since it has several meanings. Though it is not legally acknowledged as a fundamental human right, the right to love intersects the right to marry, and many scholars are of the view that the right to love is included in the more general right to personal liberty and freedom.²⁰ When it comes to love, there must be no restrictions placed like those based on caste, creed, race, religion, or gender. Hence, to reject individuals of their right to marry the person of their choice deprives them of the status and dignity of being citizens of a democratic nation like India. The article further sheds light on the judicial interpretation of the right to love in light of honour killings with reference to casteism in India in the subsequent chapters.

III. CASTEISM, HONOUR KILLINGS, AND THE ROLE OF KHAP PANCHAYATS IN INDIA

In India, a social structure known as casteism is founded on a hierarchy that divides individuals into several social classes. Generally, people are born into a caste and cannot break from the shackles until their death. The caste system of India has a long history and is rooted profoundly. There is a kind of prejudice and discrimination to the groups lower in the hierarchy of castes and sub castes that goes along with the caste system in India. It can manifest itself in a variety of ways, including violence.

The most prevalent form of violence as a result of the caste system in India are Honour Killings, which are also caused due to inter religious marriages in some cases. Despite initiatives to abolish the caste system and advance equality, casteism is still a major problem in India. To define honour killing in simple terms, it is the act of murdering a person by family members or the community for perceived wrongdoings of cultural standards. The act of marrying someone who belongs to a different caste or religion is perceived to be a wrongdoing of cultural standard in this case. The intention to uphold the honour of a particular community and to ensure caste purity are common driving forces for honour killings. The caste system promotes a strong

¹⁹ Fareda Banda and John Eekelaar, 'International Conceptions of the Family' (2017) 66 ICLQ 833, 835.

²⁰ Vageshwari Deswal, *Right to Love: A Jurisprudential Analysis*, Times of India (Feb. 14, 2022, 9:00 PM), <https://timesofindia.indiatimes.com/blogs/legally-speaking/right-to-love-a-jurisprudential-analysis/>

feeling of identity and commitment within the caste. When a member of the community breaks caste norms, it is frequently interpreted as an assault on the identity and honour of the whole community. People who marry outside their caste or have connections with persons from other castes are sometimes perceived as betraying their family and community since caste purity is embedded strongly in Indian society. This betrayal might be perceived as a danger to the family's social status, prestige and respectability.

Extreme acts of violence such as honour killings result from this. Every now and then, a number of honour killing cases make the national news, where either the man or the woman, or in some cases, both, are killed by their families, or other members of the community because they enter into an inter-caste marriage. The brutality that social conservatism creates in response to the expression of the right to love and the freedom of choice in choosing one's partner is the root of honour killing.²¹

Khap Panchayats, which are made up of men from the same caste have historically played a significant role in settling conflicts within the community. They have a history for supporting and sometimes carrying out honour killings. The panchayats have occasionally ordered the killing of people who they believe have transgressed the reputation of the caste, notably through inter-caste marriages or relationships.²² As a result of these unlawful killings, these councils are not recognised by the law, and the Supreme Court of India has ruled that none of their decisions are enforceable.²³ Despite these efforts, there are still Khap Panchayats that occasionally engage in honour killings. For the government, the honour killing issue continues to be a major obstacle in the fight for abolition of caste-based prejudice.

A plethora of unreported cases are prevalent keeping aside the statistical data regarding honour killings that have been recorded by the National Crime Bureau. However, in the statistics procured, there has been a steep decrease in the amount of honour killings over the years. This is in result of the measures taken by the courts in recent times to curb the same. Throughout the country, there were up to 145 instances of honour killing between 2017 and 2019.²⁴ However, according to figures from the National Crime Bureau for 2020, there were only a total of 25

²¹ Ashutosh Sharma, *Love in the Crosshairs: Honour Killings Still Continue in India*, Outlook India, (June. 19, 2022, 9:00 PM), <https://www.outlookindia.com/magazine/story/india-news-love-in-the-crosshairs-honour-killings-still-continue-in-india/305349>

²² *Id.*

²³ Laxmi Kahhhwaha v. The State of Rajasthan., (2017) 6 SCC 917.

²⁴ Avanti Deshpande, *Addressing Honour Killings in India: The Need for New Legislation*, Oxford Human Rights Hub, (June. 14, 2023, 9:00 PM), <https://ohrh.law.ox.ac.uk/addressing-honour-killings-in-india-the-need-for-new-legislation/>

occurrences of honour murders across India.²⁵

IV. LANDMARK JUDGMENTS AND LEGAL INTERVENTIONS AGAINST HONOUR KILLINGS IN INDIA

From time to time, the Supreme Court has passed several landmark judgements against the practice of honour killings that are caste and religion based in nature. In the case of *Shafin Jahan v. Asokan K.M.*²⁶, the Supreme Court has emphasised that how a person chooses to live her life is completely a matter of her choice, upholding The Right to Love and The Right to pick a partner of one's own free will. It also observed that the High Court had stepped into forbidden territory by determining whether the petitioner's companion was a suitable candidate for marriage. Even as recent as 2022, the Jharkhand High Court ruled that Article 21 of the Indian Constitution grants the right to marry a partner of one's choosing.²⁷ In short, it has been established by judicial interpretation that recognizing private choices do not need social acceptance, thereby affirming a person of his/ her Right to Love.

In the case of *Lata Singh v. State of Uttar Pradesh*²⁸, the Supreme Court supported the right of the petitioner to marry a person of their choice and denounced honour killings as heinous acts of murder that are performed by communities deeply entrenched in the caste fabric of the country. Another notable case in India that addresses caste-based discrimination and violence against women is *Laxmi Kahhhwaha vs. The State of Rajasthan*²⁹, where a Dalit woman was brutally beaten and killed in the case by members of the upper-caste community. In this case, the caste-based discrimination and killings were deemed to constitute human rights violations, according to the Rajasthan High Court. The case is noteworthy because it shows how widespread caste-based violence and prejudice are in India and how urgently strong legal and social measures are required to address them.

There is a plethora of cases in which the Supreme Court has issued stringent punishment to the accused. The couple was killed by members of the woman's family who belonged to a different caste, in the case of *Arumugam Servai vs. State of Tamil Nadu*³⁰. The accused received a life sentence after being found guilty of murder.

²⁵ Krati Purvar, *Aayushi Chaudhary Honour Killing Case Highlights The Horrors Of Castiest Patriarchy*, Herzindagi, (June. 14, 2023, 9:00 PM), <https://www.herzindagi.com/society-culture/aayushi-chaudhary-honour-killing-case-highlights-the-horrors-of-castiest-patriarchy-article-214593>

²⁶ *Shafin Jahan v. Asokan K.M. and Ors.*, (2018) 16 SCC 368.

²⁷ *Sana Rashid alias Pammi v. The State of Jharkhand and Ors*

²⁸ *Lata Singh v. State of Uttar Pradesh.*, (2006) 5 SCC 475.

²⁹ *Id.* at 23.

³⁰ *Arumugam Servai v. State of Tamil Nadu.*, (2011) 6 SCC 405.

A young couple who had eloped and married against the desires of their families was murdered by the woman's family, who belonged to a higher caste, in the Manoj-Babli Case³¹. The case brought the subject of honour murders to public prominence, and the defendants received life sentences. These cases established the concept that caste-based honour murders are against the law and are a fundamental violation of human rights.

In the case of *Shakti Vahini v. Union of India*³², it was upheld by the Supreme Court that once more that two consenting adults do not require the approval of their families or communities in order to get married. It also ruled that Khap Panchayats cannot annul marriages between two consenting people.

Even in Tamil Nadu, the concept of Honour Killings is much prevalent even in recent times, in the ongoing cases of Gokulraj Rajasekaran³³ and Divya Ilavarasan³⁴. Several Dalit organisations called for justice for the victims after these murders triggered massive protests across the State.

The court has determined that honour killing interferes with a person's liberty and deprives them of the right to choose their spouse in the case of *Kartar Singh v. the State of Punjab*³⁵. The Delhi High Court has also affirmed in the case of *Bhagwan Dass v. State (NCT of Delhi)*³⁶ that honour killings are a harsh and inhumane practise that has no place in a society that values humanity. These landmark judgements are significant turning points in the battle against India's honour killings. They emphasise the requirement for robust legislative safeguards to uphold the rights of people at risk of such violence and to advance social justice and equality.

V. CONCLUSION

In the case of *Shakti Vahini v. Union of India*³⁷, it was suggested that the legislature pass a statute on the prevalent issue of honour killing in its ruling. When it comes to the punishment for honour killings, the judiciary relies on the already existing Indian Penal Code and the Code of Criminal Procedure. The current measures for protecting spouses from honour killing under the provision of murder in the Indian Penal Code³⁸ are insufficient and that a separate legislation is necessary. There are certain legislations which also provide protection for the people lower down the caste hierarchy. Members of scheduled castes and tribes who experience violence including honour killings, are given legal protection under The Scheduled Castes and Scheduled

³¹ *Smt. Chandrapati v. State of Haryana and Ors.*, (2010) 9 SCC 1.

³² *Shakti Vahini v. Union of India.*, (2018) 7 SCC 192.

³³ *State of Tamil Nadu v. S. Kowsalya.*, (2018) 11 SCC 742.

³⁴ *S. Vanniyar v. K. Sugumar.*, (2016) 7 SCC 386.

³⁵ *Kartar Singh v. the State of Punjab.*, AIR 1994 SC 1.

³⁶ *Bhagwan Dass v. State (NCT of Delhi).*, (2011) 11 SCC 205.

³⁷ *Id.* at 32.

³⁸ Indian Penal Code, 1860, § 302, No. 45, Acts of Parliament, 1860 (India).

Tribes (Prevention of Atrocities) Act, 1989³⁹.

A new piece of legislation for honour killings would enable a more focused method of combating the same. It would define the crime of an honour killing and establish concrete punishments for the accused. It would serve as a deterrent to people who may otherwise consider conducting an honour killing. People would be discouraged from committing such crimes if they knew they would face harsh punishment and that the offence was clearly defined. It would offer victims more protection and guarantee that their legal rights are upheld.

All said and done, it is imperative the people engaged in honour killings for their caste are often well aware of the consequences and are still dismissive about the same as caste pride comes before the law as per the conservative ideology of a deeply caste rooted household. Casteism, which is deep rooted in our culture, precedes every law and order for caste fanatics. No amount of legislation is going to cause a significant impact in the curbing of honour killings as the caste fanatics follow an ideology of extremism. It is even more important to spread awareness among communities to not indulge in such practices. A separate legislation also paves way for the same as it would help raise awareness about honour killings and the need to address this issue. It would offer a forum for discussion and debate and aid in raising public awareness of the problem. The issue of honour killings needs to be addressed by eradicating the roots of the system i.e., casteism, and only when awareness against the same is made will the hierarchical separation leading to honour killings would end as well. Further, a separate legislation would also provide for the protection of couples, unlike the existing laws that predominantly addresses on the punishment to be given to the accused.

³⁹ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33, Acts of Parliament, 1989 (India).

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