

KILLING IN THE NAME OF HONOUR: A BLATANT VIOLATION OF HUMAN RIGHTS

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INTRODUCTION

In the words of B.R Ambedkar “Political tyranny is nothing compared to social tyranny and a reformer, who defies society, is a much more courageous man than a politician who defies government.” Most of these ‘social tyrants’ lose their life in the name of honour, tradition and culture. The concept of honour is powerful because it exists beyond reason and beyond analysis.² It is used as a pretext to the most atrocious crimes. In a patriarchal society, it is a woman who is said to be the bearer of honour for her father, husband, brother or any other man who claims her to be his responsibility. This perception is so well entrenched that any attempt by women to assert their rights is seen as an attack on the cultural norms of the community and is strongly countered.³ Therefore, it is the women who become victims to such customary killings. A man can also be a victim of honour killings by members of the family of a woman with whom he is perceived to have an inappropriate relationship.⁴ Honour killing includes any kind of abusive behaviour, torture, mutilation, rape, and forced marriage, keeping confined within the house and even committing murder with intention to preserve and protect the family honour.⁵

Human Rights watch stated that, “Honour crimes are acts of violence, usually murder, committed by male family members against female members, who are held to have brought

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² Radhika Coomaraswamy, *Integration of the Human Rights of Women and the Gender Perspective*, United Nations Economic and Social Council (January 31, 2002), available at www.refworld.org/pdfid/3d6ce3cc0.pdf (Last accessed on 27/07/2016)

³ Association for Advocacy and Legal Initiatives, *Baseline Report: Rights of Women in Relation to Marriage in India*, Available at www.aalilegal.org/wp-content/uploads/2016/01/Publications_BaselineReport-RightsOfWomen.pdf. (Last accessed on 27/07/2016)

⁴ *Teen Lovers killed in India Honour Killing* (June 7, 2016), Available at www.liveleak.com/view?i=eeb_1221748350. (Last accessed on 27/07/2016)

⁵ *National and International Perspective to Prevent Honour Killing* (June 7, 2016), Available at http://ir.inflibnet.ac.in:8080/jspui/bitstream/10603/89946/13/13_chapter%20-v.pdf (Last accessed on 27/07/2016)

dishonour upon the family. Mostly women can be targeted by her family for various reasons, including, refusal to enter into an arranged marriage, being a victim of a 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”.⁶

“Honour killings can also be described as extra-judicial punishment of a female relative for assumed sexual and marriage offences”.⁷

Another interpretation to honour killings is that it is not a means to control sexual power or behaviour, instead, it is the issue of fertility, or reproductive power as in a patrilineal society the men of the family, clan, or tribe seek control of the reproductive power whereas women are considered a factory for making men.⁸

Sometimes these victims face such serious threats from their families that they commit suicide. A forced suicide may be a substitute for an honour killing where the family members in order to avoid punishment do not directly kill the victim themselves, but force him or her to commit suicide.⁹ Sometimes minors are selected by the families as the killers so that the killer could get favourable legal outcome.¹⁰

These killings are of a collective nature where the whole family or tribe or village or a village caste council plans the crime to control the behaviour of women and maintain the social status of the family in the community. The perpetrators often don't face negative stigma within their communities, because their behaviour is seen as justified.¹¹

⁶ *Violence against women and Honour Crimes* (December 3, 2010), www.hrw.org/press/2001-04/un-oral12-0405.html.

⁷ Amnesty International (1999), *Pakistan: Honour Killings of Girls and Women*, Available at www.amnesty.org/en/library. (Last accessed on 27/07/2016)

⁸ Suzanne Ruggi, *Commodifying Honour in Female Sexuality: Honour Killings in Palestine*, Middle East Research and Information Project (February 8, 2008), <https://www.jstor.org/stable/3012473>.

⁹ *UNICEF Turkey: Protective Environment for Children; Honour Crimes and Forced Suicides*, Available at <http://unicef.org.tr/en/content/detail/74/honour-crimes-and-forced-suicides-2.html>. (Last accessed on 27/07/2016)

¹⁰ Ahmed Maher, *Many Jordan teenagers 'support honour killings* Available at <http://bbc.co.uk/news/world-middle-east-22992365>. (Last accessed on 27/07/2016)

¹¹ *Introduction - Preliminary Examination of so-called Honour Killings in Canada* Available at www.Justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/hk-ch/pi.html. (Last accessed on 27/07/2016)

STATISTICS

The report “Working towards the elimination of crimes against women committed in the name of honour”¹² which is about violent cultural practices in the family towards women indicates that honour killings have been reported in Jordan, Lebanon, Morocco, Pakistan, United Arab Republic, Turkey, Yemen and other Persian Gulf countries along with western countries such as France, Germany and U.K. where it takes place mostly within migrant communities. Apart from these countries honour killings are prevalent in Bangladesh, Brazil, Ecuador, India, Israel, Italy, Morocco, Sweden, Turkey and Uganda.¹³ Every year approximately 5000 women are abused and even killed by their own family due to the only reason that they defamed their family’s dignity.

There is no official figure on "honour" killings in India because they often go unreported or are passed off as suicide or natural deaths by the family members involved. A reason of not being reported could be that these crimes are still not separately recognised by Indian law. As per All India Democratic Women’s Association (AIDWA) the number of honour killings is approximately nine hundred in Punjab, Haryana and Uttar Pradesh, whereas rest of the country adds to the number by another three hundred.¹⁴ There are no estimates of other injuries, unlawful confinement, or forced marriages suffered by women and girls, or by couples, in the name of "honour."¹⁵ Many cases go unreported, with police and local politicians as they see it as an acceptable form of traditional justice by families seeking to protect what they see as their honour.¹⁶ Honour Killing is the problem of both rural and urban areas.

¹² *Working towards the elimination of crimes against women committed in the name of honour* (September, 2002), Available at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/985168f508ee799fc1256c52002ae5a9/\\$FILE/N0246790.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/985168f508ee799fc1256c52002ae5a9/$FILE/N0246790.pdf) .(Last accessed on 27/07/2016)

¹³ Law Commission of India (August 22, 2012), 242nd report on *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework*, Available at <http://lawcommissionofindia.nic.in/reports/report242.pdf>. (Last accessed on 27/07/2016)

¹⁴ *Introduction*, Available at http://ir.inflibnet.ac.in:8080/jspui/bitstream/10603/89946/9/09_chapter%20-%20i.pdf (Last accessed on 27/07/2016)

¹⁵ Patralekha Chatterjee, *When 'honour' kills*, *The Asian Age* (September 27, 2013), Available at <https://shaktivahini.wordpress.com/2013/09/27/when-honour-kills/>. (Last accessed on 27/07/2016)

¹⁶ *Five condemned to death for India 'honour' killing*, *AFP News* (October 5, 2012), Available at <https://honourcrimes.wordpress.com/>. (Last accessed on 27/07/2016)

REASONS

The causes that lead to honour killings are the reasons that are alleged to bring dishonour to the family. Refusal of an arranged marriage, dressing up in an unacceptable manner, live-in relationships, desire of the woman to seek divorce, rumours about her character and allegation of pre-marital or extra-marital sex, marriage by choice, pregnancy not related with legally married husband, rape and homosexuality are some common reasons for honour killings.

Hindi writer and former academician, Dr Subha, puts honour killings down to one reason alone —property. “Ours is a patriarchal society where a daughter is simply to be married off and forgotten. As progress is making inroads into this closed society and boys and girls are opening up to the many possibilities before them, the so-called traditionalists’ fear the youth will assert itself. If married in the same village, or to a boy of their choice, the society feels it is allowing elements of democratisation to take seed. This means the end of khaps. They fear a backlash in the form of girls seeking property and other rights. ‘Gotra’ rows, pressure building and whimsical pronouncements are the armour against openness,” she insists, adding the recent diktats asking girls not to wear jeans or carry mobiles or even venture out of homes alone are an attempt to keep a hold on people.¹⁷ The Hindu Succession act that was amended in 2005 gave inheritance rights to daughters. This has created insecurity in the community because if the daughter marries outside the caste, her husband could claim the right to his wife’s claim, which will not be the case in arranged marriages due to social pressure.

Lack of education among women makes them unaware of their rights and they are unable to protect themselves. On the other hand increase in literacy rates among women can also lead to honour crimes as it is perceived as a challenge to patriarchy.

The reason for an increase in honour killing is the fear of losing the caste status through which men gain many benefits. This fear makes them commit this heinous crime. The other reason is the mentality of people that has not changed as patriarchy and rigid caste system attain the utmost position in the society. Also, formal governance and official judicial system has not been able to reach the rural areas and as a result, this practice continues though it

¹⁷ Gitanjali Gayatri, *Till ‘Honour’ Do Them Part*, The Tribune (September 30, 2013), Available at www.tribuneindia.com/2013/.../kal.html (Last accessed on 27/07/2016)

should have been removed by now.¹⁸ Another reason could be the fear of caste mobility and interaction due to inter-caste marriages.

HONOUR KILLINGS AS A VIOLATION OF HUMAN RIGHTS

Human rights are possessed by every person irrespective of his or her nationality, race, sex, religion etc. without any discrimination.¹⁹ Hence they are the issues of international law (since they are independent of nationality) and cannot be limited to the jurisdiction of any state. They are fundamental and inalienable rights which are essential for human life. Killing people only because they do not want to comply with certain customs of a culture definitely qualifies as a blatant violation of human rights. These people are stripped off their rights as a human, tortured or even killed without any legal reason or ‘procedure established by law’²⁰. Human right means “human rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international Covenants and enforceable by courts in India”²¹. In order to preserve family honour the family members commit violence against the victim. It is a clearly violation of human rights.

Article 1 and Article 2 of the Universal Declaration of Human Rights, 1948, state that “all human beings are born free and equal in dignity and rights,”²² and that “everyone is entitled to all the rights and freedoms set forth in”²³ the declaration irrespective of “sex”. Article 1 and 2 are violated by honour crimes because it is mostly the women who are stripped off their rights. Article 3 states that everyone has the right to life, liberty and security. Article 5 gives the “right to be free from torture or cruel, inhuman and or degrading treatment”.²⁴ Crimes of

¹⁸ Pranab Kumar Rana & Bhabani Prasad Mishra, *Honour Killings- A gross violation of Human Rights and its Challenges*, 2 I.J.H.S.S.I. 24-29, 25 (2013), [http://www.ijhssi.org/papers/v2\(6\)/Version-2/E0262024029.pdf](http://www.ijhssi.org/papers/v2(6)/Version-2/E0262024029.pdf).

¹⁹ *National and International Perspective to Prevent Honour Killing* (June 7, 2016), Available at http://ir.inflibnet.ac.in:8080/jspui/bitstream/10603/89946/13/13_chapter%20-v.pdf. (Last accessed on 27/07/2016)

²⁰ Indian Constitution Art. 1.

²¹ Human Rights Act, 1993 § 2(d).

²² The Universal Declaration of Human Rights, 1948 Art. 1.

²³ *Id* at Art. 2.

²⁴ *Id* at Art. 5.

honour violate Article 3 and 5 when the purpose of the perpetrator is to inflict severe mental and physical pain on the women.²⁵ Article 7 and Article 26 of the Declaration elucidate equality of all before law as well as equal protection of law for all. The law prohibits any discrimination and guarantees all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 16 talks about choice of marriage given to men and women of full age without any limitation due to race, nationality or religion. They are entitled to equal rights as to marriage and dissolution. Marriage shall be entered into only with the free and full consent of the attending spouses. The family is the natural and fundamental group, unit of society and is entitled to protection by society and State.²⁶ Honour killings are thus a violation of these four articles as people are not given a choice in marriage, are discriminated on the basis of caste and are deprived of life and liberty.

Honour killings threaten a woman's right to physical integrity²⁷, privacy and sexual autonomy. Women's right to security is threatened by the fact that the government (who does not want to blatantly oppose the widely-approved cultural practice of honour killings²⁸) has not sponsored a shelter for women who flee from their homelands because of the threat of honour crimes.²⁹

“Killing in the name of honour amounts to utter rejection of ‘egalitarianism’ - a corner stone of India's Constitution and testifies how the values of ‘feudalism’ and ‘patriarchy’ are rooted in our social systems and structures. Honour killings are rooted in anachronistic, antiquated attitudes and false promises.”³⁰ The Indian constitution under Article 21 gives the

²⁵ Puneet Kaur Grewal, *Honour Killings and Law in India*, 5 J.H.S.S. 28-31, 30 (2012), Available at <http://iosrjournals.org/iosr-jhss/papers/Vol5-issue6/F0562831.pdf?id=5903>. (Last accessed on 27/07/2016)

²⁶ The Universal Declaration of Human Rights, 1948 Art. 16.

²⁷ Human Rights Watch 2004, *Honouring the Killers*, Human Rights Watch (November 27, 2012) Available at www.hrw.org/node/12141/section/1. (Last accessed on 27/07/2016)

²⁸ *Id.*

²⁹ *Human Rights* (November, 2008), Available at <http://sites.tufts.edu/anth27h/human-rights/>. (Last accessed on 27/07/2016)

³⁰ Pranab Kumar Rana & Bhabani Prasad Mishra, *Honour Killings- A gross violation of Human Rights and its Challenges*, 2 I.J.H.S.S.I. 24-29, 25 (2013), Available at [www.ijhssi.org/papers/v2\(6\)/Version-2/E0262024029.pdf](http://www.ijhssi.org/papers/v2(6)/Version-2/E0262024029.pdf). (Last accessed on 27/07/2016)

fundamental right to life with dignity which is violated by honour killings. Article 19 of the Constitution is also violated as the victims are denied their right to mobility. They are denied of the right to choice, right to decision making, right to equality of opportunity and right to education or employment.³¹

“Crimes of honour may involve the violation or abuse of a number of human rights, which include the right to life, liberty and security of the person; the prohibition on torture or other cruel, inhuman, or humiliating treatment or punishment; the ban on slavery; the right to freedom from gender-based discrimination; the right to privacy; the right to marry; the right to be free from sexual abuse and exploitation; the obligation to amend customs that discriminate against women; and the right to an effective remedy. All these mentioned above violate the Human Rights Act (1998). Honour Killings are a clear violation of human rights and States necessarily need to protect individuals from such violations.”³²

KANGAROO COURTS

These Kangaroo Courts popularly known as Khap Panchayats or ‘shalishi adalat’ (in West Bengal) are a ‘mockery of mediation’³³ or self-proclaimed institution of ‘justice’ or protectors of ‘morals’ usually formed on the basis of caste. The Caste councils try to adopt the chosen course of ‘moral vigilantism’ and enforce their diktats by assuming to themselves the role of social or community guardians. They are not a legal entity yet they continue to function like one due to the support of the politicians who espouse the cause of caste politics in order to convert the caste into a vote bank. This becomes a reason to the fact that politician in these areas do not protest against honour killings.

“These courts are whimsical in dishing out sentences...It all depends on the financial and social status of the accused, the mood of the elders of the village who are members of the shalishi court and their relationship with the accused or his or her family. If a woman from a well-to-do and influential household is accused of an extra-marital relationship, chances are

³¹ Association for Advocacy and Legal Initiatives, *Baseline Report: Rights of Women in Relation to Marriage in India* (June 4, 2016), Available at www.aalilegal.org/wp-content/uploads/2016/01/Publications_BaselineReport-RightsOfWomen.pdf. (Last accessed on 27/07/2016)

³² Puneet Kaur Grewal, *Honour Killings and Law in India*, 5 J.H.S.S. 28-31, 30 (2012), Available at <http://iosrjournals.org/iosr-jhss/papers/Vol5-issue6/F0562831.pdf?id=5903>. (Last accessed on 27/07/2016)

³³ Jaideep Mazumdar, *The Injustice of Justice*, Times of India (January 26, 2014), Available at <http://m.timesofindia.com/home/sunday-times/deep-focus/The-injustice-of-justice/articleshow/29385084.cms>. (Last accessed on 27/07/2016)

she would be let off with a warning and a fine. But the same ‘offence’ by a woman of a poor family would attract a much stiffer sentence. The death sentences imposed by the ‘shalishi adalats’ are usually executed in utmost secrecy and the whole village takes an ‘omerta’ or oath of silence, thus foiling any effort by the law enforcement machinery to bring members of such kangaroo courts to justice³⁴ The support of the community to such courts, who due to their patriarchal prejudice and assumed notions of morality give unconscionable punishments to the victims, is so great that the defaulters go unpunished. The largest numbers of ‘edicts’ against women are issued by these caste panchayats that pose a challenge both to the parliamentary processes and judicial structures.³⁵

Khap Panchayats issue edicts condemning couples for marrying outside their caste or religion and condemn marriages within a kinship group (*gotra*), considered incestuous even though there is no biological connection. To enforce these decrees and break up such relationships, family members have threatened couples, filed false cases of abduction, and killed spouses to protect the family honour.³⁶

INTERNATIONAL RESPONSE TO HONOUR KILLINGS

Other than the Universal Declaration of Human Rights, 1948 there are several other treaties and conventions formed to curb honour killings. In 1979, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) was adopted by the United Nation General Assembly in order to protect women rights. India is a signatory and has also ratified the convention. “The provisions of CEDAW can be used to argue that the tradition and practice of punishing individuals for ill-informed ideas of dishonouring the family, is essentially institutionalised discrimination against individuals and creates a legally binding obligation for state parties to take all measures to end all forms of the practice of honour killing and ensure that all discrimination against women in matters relating to marriage and family relations are eliminated, providing them with the equal right to enter into marriage and

³⁴ *Id.*

³⁵ *AIDWA Holds National Convention Against 'Honour Killings'*, (January 18, 2007), Available at <http://aidwaonline.org/reports-struggles/whose-honour>. (Last accessed on 27/07/2016)

³⁶ *India: Prosecute Rampant 'Honor' Killings* (July 18, 2010), Available at www.hrw.org/news/2010/07/18/india-prosecute-rampant-honor-killings. (Last accessed on 27/07/2016)

to freely choose a spouse and to enter into marriage with their free and full consent as enumerated in Article 16 of the Indian Constitution. This means ensuring that informal decision making bodies functioning on customary laws, such as khap panchayats, are refrained from enforcing their dictates, and intrusive with the right of individuals to choose their spouse.”³⁷

Article 4 of the Declaration on the Elimination of Violence against Women, 1993 states "States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination".³⁸

Article 12 of the International Convention on Economic, Social and Cultural Rights (ICESCR 1976) states that State parties have to take all steps to ensure the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health” Honour Crimes violate this as physical, mental and sexual violence obstruct the achievement of good health. India, is a State party, therefore it is obliged to provide the highest attainable standard of health.

The Beijing Platform for Action (BPFA 1995) on Human Rights of women urges the States to “take urgent action to combat and eliminate violence against women, which is a human rights violation resulting from harmful traditional or customary practices, cultural prejudices and extremism”.³⁹

Elimination of Crimes against Women Committed in the name Of Honour, 2003 aims to eradicate honour crimes which are rooted in the patriarchal society.⁴⁰

India is a member of International Convention on Civil and Political Rights (ICCPR) which provides all citizens equal rights irrespective of sex, race, caste, religion, language, etc. It also provides that no one should be subjected to arbitrary or unlawful interference with his

³⁷ Puneet Kaur Grewal, *Honour Killings and Law in India*, 5 J.H.S.S. 28-31, 30 (2012), Available at <http://iosrjournals.org/iosr-jhss/papers/Vol5-issue6/F0562831.pdf?id=5903>. (Last accessed on 27/07/2016)

³⁸ Declaration on the Elimination of Violence against Women, 1993 Art. 4.

³⁹ Puneet Kaur Grewal, *Honour Killings and Law in India*, 5 J.H.S.S. 28-31, 30 (2012), Available at <http://iosrjournals.org/iosr-jhss/papers/Vol5-issue6/F0562831.pdf?id=5903>. (Last accessed on 27/07/2016)

⁴⁰ *Working towards the elimination of crimes against women committed in the name of honour* (September, 2002), Available at [www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/985168f508ee799fc1256c52002ae5a9/\\$FILE/N0246790.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/985168f508ee799fc1256c52002ae5a9/$FILE/N0246790.pdf) . (Last accessed on 27/07/2016)

privacy, family, home or correspondence. Everyone has the right to the protection of the law against such interference or attacks⁴¹. It recognises that, every human being has the inherent right to life which should be protected by law. Even though these international provisions are well equipped to eradicate honour crimes in the modern time, it is still rampant in many parts of the world.

NATIONAL RESPONSE TO HONOUR KILLINGS

In India, there is no specific law that deals exclusively with honour crimes and the brutal actions of the caste councils like khap panchayats. Honour killings sometimes invoke the provisions of the Indian Penal Code, 1860 (IPC). These cases fall under the category of culpable homicide or murder under sections 299-300 of IPC. The perpetrators can be punished under these sections of the code. An attempt to commit this crime would fall under sections 307 or 308 of IPC. Section 120A and B would help penalizes the khap panchayats as well as any other person who is a party to this criminal conspiracy, whereas sections 107-116 would punish perpetrators for abetment of offences including murder and culpable homicide of these victims of honour. Section 34 and 35 would punish criminal acts, done by several persons like khap panchayats along with other caste members in the society and family members of the victim, in furtherance of common intention. Honour killings might also fall under section 354 of IPC which deals with criminal force intended to outrage the modesty of a woman.

Honour killings also violates Articles 14, 15 (1), 15 (3), 17, 18, 19 and 21 of the Constitution of India. These killings violate the right to equality before law and equal protection of law as these are mostly based on the lines of caste and judgements to kill the victims are given by councils that do not hold any legal authority. It is also infringe the right against discrimination as these killing are mostly directed towards women. These women are not allowed to openly express their opinions about marriage due to the fear of family honour. Also, the right to association of these women is infringed along with other rights. The victims are deprived of their right to life, right to privacy and right to livelihood. Since these are fundamental rights a writ can be passed, by the Supreme Court (article 32 of the Constitution) or the High Court (article 226 of the Constitution), on their violation.

⁴¹ International Convention on Civil and Political Rights, 1966 Art. 17.

Giving the youth the right to choose their partner is undesirable as it may lead to inter caste or inter religion marriages which are still unacceptable in the country. This exercise of choice is behind maximum cases of honour killings. To avoid this and give marriages a secular hue the Special Marriage Act of 1954 was brought into the picture. This allows people of different faiths to get married without conversion.

The Indian Majority Act of 1857 prevents the khap panchayats from forceful separation of married couples who are of an eligible age to get married.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 is useful as most honour killings take place owing to religion and caste. Protection of Human Right Act of 1993 is another effective act dealing with honour killings.

The Indian Evidence Act of 1872 punishes all those who help concealing facts relevant to bring justice to the victims. This act is very useful since family members of the victim along with the community members lead by the khap panchayats conceal important evidences of the crime in order to avoid punishment.

The Domestic Violence act of 2005 is effective in protecting women against any sort of violence on them within the family.

The National Commission for Women (NCW) in 1990 set up a statutory body which addresses the issue of honour killings among several ethnic groups in North India. As the result of their efforts, the rate of honour crimes has diminished in rural areas of North India.

All India Democratic Women's Association (AIDWA) with reference to many women's organisations drafted "The Prevention of Crimes in the Name of Honour and Tradition Bill" and submitted it to the government in 2010. The bill provides the right to choose a partner for marriage and any act done to prevent the same would be deemed to be an offence under the given bill. Harassment of people exercising this right or inciting others to hurt or kill them would be an offence. The bill laid the burden of proof on the accused. It also has provisions specifying certain duties of the district administration.

In 2012, the Law Commission of India came up with its 242nd report along with "Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011". The Bill dealt with the unlawful assemblies called by caste panchayats to prevent marriages

by choice. It suggested to make the offence of honour killing non bailable, non compoundable and cognizable. The District Magistrate had been entrusted with the responsibility of ensuring the safety of the persons targeted in case any illegal decision is taken by the khap panchayat. Although according to the Law Commission, the burden of proof should not be shifted to the accused as it would be against the principles of jurisprudence.

All these measures are still not sufficient to deal with the problem of honour killing. A close analysis of the reasons for the failure of these measures and suggestions to decrease the rate of this grave crime would be discussed in the next segment of the research paper. Although a fixed standard or a law is needed to keep any crime in control, the judicial precedents have till now helped to keep the rate of honour killings low and have created awareness about it.

A landmark judgment was given in the Manoj-Babli honour killing case by the Additional Sessions Court in Karnal district. The accused were given a death penalty while the leader of the khap who ordered the killings of the victims was given a life imprisonment, by the lady judge of the Court, despite facing several life threats. The court took a note of the fact that the policemen stationed to the security of the victims helped the perpetrators to commit the crime.

In **Lata v. State of UP**⁴² the bench said, *“Once a person becomes a major he or she can marry whosoever he or she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religion marriage the maximum they can do is that they can cut off social relations with the son or daughter, but cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter caste or inter-religious marriage.”* Justice Markandey Katju observed, *“There is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder.....Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.”*

In **Arumugam Servai v. State of Tamil Nadu**⁴³ the Supreme Court condemned the practice of Khap Panchayats committing atrocities against people who want to get married by their choice. In this case the Court also issued special directions to the police and the

⁴² *Lata Singh v. State of Uttar Pradesh*, A.I.R. 2006 S.C. 2522.

⁴³ *Arumugam Servai v. State of Tamil Nadu*, (2011) 6 S.C.C. 405.

administrative authority to prevent the given crime. If the crime still take place there would be an action taken against the SSP/ SPs and District Magistrate along with the general court proceedings against the perpetrators.

In **Ashok Kumar v. State**⁴⁴ the High Court of Punjab and Haryana stated that, these couples are chased by police and relatives and often cases of rape and abduction are registered against the boy. The judiciary has directed the state to evolve a sympathetic mechanism for speedy redressal of grievance and to provide protection to the victims.

In **Smt. Laxmi Kachawaha v. State of Rajasthan**⁴⁵ the Court observed that Khap Panchayats did not have any jurisdiction to pass social boycott order or to impose fine on the victims.

In **Madhavarao v.Raghavendrarao**⁴⁶ it was held that the marriage between people belonging to the same gotra was valid.

CRITICAL ANALYSIS, CONCLUSION AND SUGGESTIONS

Even though the country is increasingly developing and becoming modern with a large number of judgements and expressions of strict disapproval on crimes in the name of honour, there is still no progress in controlling them. There is no legal recognition given to the crime nor is it defined anywhere. The amount of punishment is also not fixed. Due to this status of the crime in the country there is no official statistic of the crime available. India. “Due to lack of serious empirical work on this issue it is difficult to quote statistics, but for us, even if there has been one such death and the state has been unable to respond, it is indicative of the need for better systems.”⁴⁷ Most politicians deny the existence of honour killing in India.⁴⁸ The need of the hour is a separate legislation on Honour crimes. It can limit the power of the

⁴⁴ *Ashok Kumar v. State of Punjab and Haryana*, (2009) D.M.C. 120.

⁴⁵ *Laxmi Kachawaha v. State of Rajasthan*, A.I.R. 1999 Raj. 254.

⁴⁶ *Madhavarao v.Raghavendrarao*, A.I.R .1946 Bombay H.C. 377.

⁴⁷ Association for Advocacy and Legal Initiatives, *Baseline Report: Rights of Women in Relation to Marriage in India* (June 4, 2016), Available at www.aalilegal.org/wp-content/uploads/2016/01/Publications_BaselineReport-RightsofWomen.pdf. (Last accessed on 27/07/2016)

⁴⁸ *AIDWA Holds National Convention Against 'Honour Killings'*, (January 18, 2007), Available at <http://aidwaonline.org/reports-struggles/whose-honour> (Last accessed on 27/07/2016)

Khap Panchayats. Shakti Vahini, an NGO, petitioned the Supreme Court in 2010 demanding the government to control honour killings. Most politicians support the influential Khaps and their activities as they do not want to lose a potential vote-bank. What needs to be understood is that such a rampant crime cannot be stopped without a law. A law would serve as a yardstick for the courts. Most of these cases are not even taken cognizance at the threshold.⁴⁹ It will not be possible for only the judiciary to end honour killings as most of these crimes do not even reach the courts as the whole community is threatened to stay silent and not approach the authority. Sometimes there is a conflict in judgements due to the absence of a law. Presently, honour killings are placed under murder (section 300 of the IPC). This is insufficient as it would only punish the murderer while the others who are directly or indirectly associated with the crime or the silent spectators of this crime are saved from stringent punishment. Minors are told to commit the murder so that they do not receive a harsh punishment. Section 300 lacks any direct act against the caste councils who in most cases are behind the killings. Invoking the given section in these cases would lead ambiguity as there is a large difference between honour killings and an uncomplicated murder. Honour killings are a degree higher than murder as they involve a complex socio-cultural phenomenon. Reasons could be authoritarianism, caste or religion. There are several dimensions that need to be addressed which the IPC is unable to. Therefore, there is a definite need for a separate legislation.

Law Commission's 242nd report brought a draft legislation titled 'Prohibition of Unlawful Assembly (interference with the freedom of matrimonial alliances) Bill, 2011'. Offences under the Act would be cognizable, non-bailable and non-compoundable. It proposed that "there should be a threshold bar against the congregation or assembly for the purpose of disapproving an intended marriage or the conduct of the young couple and this objectionable conduct of the panchayatdars should be brought within the purview of penal law."⁵⁰ The provisions of the given draft were not in derogation but in addition of the IPC.⁵¹ Instead of shifting the burden of proof to the accused (which would have altered the well-established principle of criminal of jurisprudence and would also have been likely to be misused) it

⁴⁹ Law Commission of India (August 22, 2012), 242nd report on *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework*, Available at <http://lawcommissionofindia.nic.in/reports/report242.pdf>. (Last accessed on 27/07/2016)

⁵⁰ *Id.*

⁵¹ *Id.*

inserted 'presumption of guilt' clause which is a commendable feature. According to the bill every person participating in an unlawful assembly such as a Khap Panchayat or the like, which disapproved or objected to an otherwise legal marriage, would be presumed to have intended to commit or abet the commission of the offence defined in the draft.⁵² The Collector or the District Magistrate has been given the responsibility for the safety of the persons targeted in illegal decision taken by the khap panchayat and it is his/her duty to take necessary steps to prohibit the convening of such unlawful gatherings.⁵³ Unlike "The Indian Penal Code and Certain Other Laws Amendment Bill 2010" this recommendation of the Law commission contains provisions against honour killing as well as other torture faced by the victims. Though the commission rejected the inclusion of the live-in relationships within the draft, the researcher strongly feels that live-in relationships are even more vulnerable to honour crimes than any other case as they could be alleged to bring even more 'dishonour'. Another area where the researcher disagrees with the commission report is where the commission was against the inclusion of forced marriages in the draft. The law needs to be prepared for the situation where the Khap orders a forced marriage of a girl so that she is not able to marry the man of her choice and thus uphold the honour of her family. Forced marriages do infringe the right to life under Article 21 of the constitution.

AIDWA drafted a bill in 2010 titled 'The Prevention of Crimes in the Name of 'Honour' & Tradition Bill, 2010' and submitted it to the Home Minister. This bill was similar to the above mentioned bill drafted by the Law commission, except the bill proposed to reverse the burden of proof with the accused having to prove that he/she has not committed the crime. Section 9 of the bill provides it with one of its most important features wherein it allows the couple to give a declaration of the intention to be together before any government official "who shall send the said information to the nearest Police Station and no action shall be taken by the Police and or any other authority or at the instance of third party, against the said couple." This should be a definite inclusion in framing a law against honour crimes.

An amalgamation of the two bills could have been converted into an impeccable law to prevent these crimes. Reluctance among the legislators to pass bills like these is the reason behind rampant honour crimes.

⁵² The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011 § 6.

⁵³ *Id* at § 8.

The researcher feels that the punishment awarded in the proposed bills is less than it should be. Only a strict sentence would help in eradicating the crime as for these criminals being in jail or facing a trial for domestic violence, rape etc. is not dishonourable but daughter marrying from her own choice is. The minimum punishment for honour killing should be life imprisonment. **Bachan Singh v. State of Punjab**⁵⁴ gave the theory that death penalty should be given only in the 'rarest of the rare' cases. It was said that life imprisonment should be a rule and when this option is foreclosed then death penalty should be awarded. It was also suggested that aggravating and mitigating factors should be weighed before awarding a death sentence. Giving death penalty as a punishment in honour killing cases cannot be made a rule as that would depend on a case to case basis. Also, when there is a group committing the crime, not everyone is liable to the equally. These crimes are committed by people who might not be habitual offenders but think that they are morally justified in doing the crime. Therefore, death penalty should be given on the basis of facts and circumstances of each case rather than making it a rule.

Amendments in the Special Marriage Act of 1954 are required to be made. The marriages are solemnised by a Marriage Officer who is chosen by the state government. Thirty days' notice of the planned marriage has to be given. In Uttar Pradesh in order to invite objections, photographs of the boy and the girl along with the marriage notice is displayed for 30 days in the registrar office. The local police have to investigate and give a report. This creates a vast space for corruption and even more exploitation of the couple.⁵⁵ The method for registration of marriage under this Act is difficult. The process of registration should be simplified as the couple need not be necessary literate. It needs to be understood that marriages under this act are generally against the wishes of the families of the couple as they are inter-religion. It would be an additional difficulty for the couple to face police investigation. Time between the notice and registration of marriage should be done away with. Also, the 30 day notice will give perpetrator of honour crimes more time to accomplish the act. According to section 6(3) of the act if either party of the proposed marriage is not a permanent resident of area covered by Marriage Officer to whom the notice has been given, the Marriage Officer should send a copy of the notice to the Marriage Officer of the area where the party permanently resides. This again would create difficulty for the couple as their family and their society would be

⁵⁴ *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684.

⁵⁵ Association for Advocacy and Legal Initiatives, *Baseline Report: Rights of Women in Relation to Marriage in India* (June 4, 2016), Available at www.aalilegal.org/wp-content/uploads/2016/01/Publications_BaselineReport-RightsofWomen.pdf. (Last accessed on 27/07/2016)

against their marriage and would easily be able to object to it. Hence the Act should be amended to easily fulfil its purpose i.e. inter religion marriage without tormenting the couple.

There should be a quick disposal of such cases as there is great pressure on the victims and their lawyers and the witnesses may turn hostile. People who hide facts that are important for the dispensation of justice by the courts should be give severe punishment. Witnesses should also be provided with police protection. Free legal aid should be given to victims as there would be no economic support from the family.

In cases of honour killings, the police also sides with the victim's family to uphold the social norms instead of the law. These officials should be severely punished. It should be taken care of that the police investigation is done properly and not under pressure from certain political or other powerful groups. Also, there is a need to place more women police officers at positions above the constable level. In fact, there is a need for all law enforcing agencies to be gender sensitised. Police should be instructed to protect couples who want to get married but fear violence by family or community members.

Legislation against honour crimes is only half the battle won. Only a change in mentality would help eradicate these crimes completely. Parents need to understand that there is nothing wrong in marrying by choice. Their children should be their priority instead of some artificial honour. The government should promote the right of individuals of marriageable age to marry persons of their choice, without the fear of abuse. This can be done through public campaigns, social movements and the media. There should be a special emphasis on removing the mind set of tradition and culture. Counselling programs in the village should be organised. Celebrities such as politicians, film actors and spiritual leaders who are seen as idols by the masses should be a part of such programs. These programs should be implemented with the help of women activists. Sometimes even reasonable policies of the government are not accepted by the people and are seen as oppressive in the beginning. The government need not be discouraged by this.

Most of these honour killings take place due to the presence of lack of education. Culture and tradition is give great importance. Education is one weapon that can help change the mentality of people. Compulsory free education for girls till intermediate level would also delay the age of marriage and teach the girls life skills. Also educating and training girls in life skills helps them to acquire knowledge of their rights which in turn would help them to

protect themselves against crimes like these. They would become economically independent and would be less easily suppressed. Seeing their daughters earning money and supporting the family, might end the patriarchal notions in the family.

Women groups and NGOs working against honour crimes should be promoted and financially helped so they can acquire trained professionals. They should be headed by women in order to increase sensitivity and understanding. These NGOs should group together in order to create a pressure group against derogatory policies of the government or for expediting the process of passing a bill against honour crimes. Importance of these organisations should be recognised by the government.

Crises centres and shelter homes should be created by the government at reasonable distances. There should be transparency in the running of these centres. Transparency in formulating, running and monitoring these institutions should be ensured, as well as participation by the users of the centres. Women activists and NGOs should be involved in the running of these shelters. Women should be allowed to volunteer in these centres.

All deaths should be registered and in cases of unnatural death, a post mortem should be made compulsory. Khaps should be banned to give decisions on the personal life of the community members. If they do so, they should be punished strictly. The researcher does not agree with banning them completely as they are helpful for administrative purposes. These suggestions will make India well equipped for fighting against honour crimes.