

**VOLUME 1 | ISSUE 1 2020****INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH****HONOR KILLING IS NOT ABOUT HONOR**- Prasoon Kumar<sup>1</sup>

The term Honor and Killing together are extremely distasteful in their own sense with context to every possible meaning. Honor Killing is an act, which is/was mistakenly recognized as a custom. Accurately it is the act of murdering a family member by another (murderer) because of the belief that the family member has brought shame or disrespect to their family's social reputation or has violated the customs laid by their community. Although it is quiet transparent that both the genders i.e. men and women have been the victim of Honor Killing but this is also a fact that in many other sects the definition of Honor is different for a man as well as for a woman. These asymmetrical standards are provided to both the genders. Honor Killing comes under the category of Domestic Violence, which not just affect two individuals but a whole family or sometimes even much more than that.

**HISTORY OF HONOR KILLING (in Indian Context)**

Although it's not India alone that has been facing these cases of Honor Killing, the history of Honor Killing has also been traced from many other countries in the World. Even there are some countries like Jordan where this act is said to be legal or minimally punished. Despite being the representation of a society that is mentally blocked or restricted to think what can be in good or bad interest of the people it holds, Honor Killing has been proudly practiced since the time of the Mughals in India, and it passed on to the British who took it forward and used it as a strong weapon in fighting and capturing India and making it one of their many British Colonies.

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Even though the British Rule was eradicated from India, their passed on custom of Honor Killing was later adopted by the **after Independence India**, and in parts like Haryana, Rajasthan, Punjab and in the community of Jat and Gujjars it was very largely practiced in the name of family's Social Reputation. It was the Khap Panchayat that acted as Court for them and its head (the SARPANCH) of the Panchayat was supposed to be the Judge of the Court, and in his/her laid the fate of that person. In other words Khap Panchayat represents a single clan or a group of clans. The KhapPanchayat is not affiliated to the electoral bodies or any specific political party by any means and is more of a private body that is basically concerned only with the khap it represents. Also, Tribal and Village Administration is what the khaps later evolved themselves into.

The Supreme Court of India declared the KhapPanchayats illegal on various grounds out of which one was that the Khaps promoted Honor Killing and other established beastliness in the society that sets a bad example for the rest of the Country. This decision was given in the year 2011 by a three-judge bench headed by former Chief Justice of India Dipak Mishra with justice AM Khanwilkar and DY Chandrachud. During the trial of this case the Khaps have shown complete hypocrisy where on one side promoted Honor Killing if it was for a love marriage which was inter faith or inter caste, and on the other side in the court they said that they promoted inter faith or inter caste marriages by referring to the provisions given in the Hindu Marriage Act that prohibits the union between Sapinda Relationship or Close Blood Relations in Hindus which was later overruled by the Court on the basis of its not being related to the point on which the case actually was.

Even if the Khaps are declared Illegal and they don't exist onrecord in India still there are many places in the northern part of India where this system is followed in complete discrepancy. And if we put aside the whole scenario of Khap Panchayat there are still many places, communities, clans, castes etc. where this system is followed and no one really takes a step forward against this practices because of either they themselves support this or they are suppressed by their fellow mates for some reason.

## **METHODS OF HONOR KILLING**

Honor Killing comes under the category of Domestic Violence so it has as many ways to be committed as any other form of Domestic Violence does.

Some Common ways which have been recorded for Honor Killing are:-

- Shooting
- Strangulation
- Acid Attacks
- Hanging
- Throat Slashing
- Burning
- Beheading
- Stoning
- Stabbing and many other methods.

### **TRIGGERS OF HONOR KILLING**

In complement to every action done there is a reason why that action have been done or the causes triggering that action to be.

Before getting through the main causes it is really important to be brought into the knowledge that Honor Killing is not entitled to any specific gender and is equally likely to happen to both the genders.

Some of the causes triggering the heinous act of Honor Killing are,

- i. When a person tries to marriage the other person of his own choice and is alleged to go against the will of his family members and society.
- ii. When a spouse is not really comfortable in his present marriage and tries to get involved in other marriage by getting divorce to his first partner, which might trigger Honor Killing.
- iii. When a female wishes to wear the clothes of her own choice in a society that is very narrow minded and does not wants the females to live by their own will.
- iv. Is someone denies to perform marriage in accordance to the will of the society he lives in, then this might hurt the ego and social reputation of the family members and hence might result in Honor Killing.

- v. In a scenario where one of the party in a marriage seeks divorce from other party, there is a saying that marriage connects two families and of suppose the wife wants to divorce the husband without his consent in that case the family member might think that if this divorce happens then it will result as a disrespect in the society and they might lose their reputation that they have built in the society so they go for Honor Killing of the Wife.
- vi. If a female is a rape victim then the family might think that the girl/woman being a rape victim is bringing disgrace upon the family and instead of helping her and giving her support to stand proud by forgetting and overcoming what happened to her they go for Honor Killing.
- vii. The concept of the girl being a virgin is also given a great weightage in the society, there are certain parts of our country where if a girl has lost her virginity before marriage she'll be considered impure and a symbol of disrespect to her family and if a girl who has been married and it is found later that the girl is not a virgin the family might kill her for a small reason.
- viii. If there is a couple who is already involved in a love affair and their families are informed about this and they don't like it they might even get together and kill both of their own children in the name of Honor Killing.
- ix. If a person of either of the gender gets involved in a homosexual relationship and wishes to take that forward and marry the person he/she loves, this is also a major cause of Honor Killings.
- x. If one of the spouse finds out that his/her partner is involved in an inappropriate relation sexually or in any ways then in such case instead of solving it like intellectuals the family might just go for the cruel way of Honor Killing so that it does not tamper their family reputation in front of the society. In any way if the family or the society thinks that a person has surpassed or broke the rules of the society as an institution.

### **HONOR KILLING AND LAW (in Indian Context)**

The Indian Legal System as of now does not have any specific or absolute law or act in relation to Honor Killing but still it has some Standard Provisions that indirectly works in this case.

Primarily there are the Fundamental Rights that have the sole purpose of providing equal set of Elementary Rights to every citizen of the country and in relation to that there are some rights that are infringed if the act of Honor Killing is committed. These Fundamental Rights are given in the Part 3 of the Constitutional Law of India.

Some of those Rights are:-

- Article 14- Right to Equality (equality before law)
- Article 21- Protection of Life and Personal Liberty
- Article 23-24 – Right against Exploitation

Other than the Fundamental Rights there are provisions in the Indian Penal Code that are applied in case of Honor Killing.

Some of those Provisions are :-

- Section 299-304 – Murder
- Section 34 – Common Intention
- Section 120(b) - Conspiracy
- Section 498-A – Cruelty
- Section 107-116 – Abetment of offences including murder and Culpable Homicide
- **Article 39(a) of Directive principles** of the state policy says that the state should ensure that its citizens are provided with adequate means of livelihood

- **Special Marriage Act , 1954**

This act provides the provision for special form of marriage for Indian citizens as well as residents of India who are residing in foreign countries. Under the Special Marriage Act marriage is done irrespective of religion, caste or faith of parties intending to marry.

- **Domestic Violence Act, 2005**

Under this Act it is provided that Human Rights of Every individual must be protected.

Commissions and Court must be constituted for securing and protecting Human Rights of every individual.

- Indian Majority Act, 1859

Section 3 of Indian Majority Act provides that a citizen who attains the age of 18 years

These are the Provisions or Acts that are applied if there is a case of Honor Killing.

Still there are a large number of people or many sects where Honor Killing is not considered as a Heinous Crime. If the act of Honor Killing would be classified separately as an offence then it will help in bringing clarity in the process of Law Enforcement. A new set of laws would help in discouraging Honor Killings as it is more of a Social Sanction than just being an offence, and the society in many places has accepted it. Also there is need of creating awareness in the society through education. If the Khap Panchayats are not held accountable this will be harmful for those people who don't believe and support such killings.

The landmark case in which the judgement in relation to the abolition of the Khap Panchayat practice was given and the same case that has been mentioned earlier in this presentation is *Shakti Vahini v. Union of India*<sup>2</sup>

In this case it was also given against the Khap Panchayat that they cannot act illegitimately as a law enforcing body on their own as they have not been authorized through any means by the law. The actual law enforcing agencies have the power and are allowed to sustain the law within itself. For instance, if there is a crime committed by a person under the CrPC then the power of dealing with it or punishing that same person shall not be vested in the hands of some irregular, incompetent and illegitimate body who is by far not consulted to the government and its law, the power shall be only and only vested in the hands of actual law enforcing bodies and whosoever the CrPC has discussed in the given provisions. Therefore any kind of illegal act is totally prohibited to commend any type of acceptance or recognition by any means.

Apart from this case only, there have been many other cases also where the limits of the term Honor have been tested, like in the case of *Asha Ranjan v. State of Bihar*,<sup>3</sup> it was stated by the court that it is the constitutional right of a woman to make a choice of her partner, the same has been mentioned in the article 19 of Constitution of India

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<sup>2</sup> (2018) 7 SCC 192

<sup>3</sup> (2017) 4 SCC 397

which also in the same sense defies the mere hypothetical sense of group thinking and class honor because even after being practiced by a society the term class honor won't have any sense of legitimacy in it be it in this period of time or any notion of upcoming future events.

There was another case also, called State of UP v. Krishna Master and Others<sup>4</sup> in this case there were six person who were killed and wiping the whole family in the non-sensible family honor and fake reputation of that family. This case was also specified later in the judgment as 'RAREST OF RARE' by the court and hence the accused was ordered Capital Punishment i.e. Life Imprisonment and a fine of Rs. 25000.

All these cases and there decision very efficiently define the 'Honor Killing' gravity as a crime.

## CONCLUSION

It will be not wrong if they say that the Indian Society has earlier been a home for many such customs or systems that they believed will be good and in healthy benefit of those living in this, but with time it has proven to be very poisonous for our society to run. It is the need of the hour to eradicate such systems from its very deep root and prove them to be nothing but merely a myth that was acting as an infection in the mentality of the society.

The basic argument to support the above statement is that the term used is 'HONOR KILLING' Honor is joined to Killing that says it all, as Killing is not an official term rather it is more of an emotion exploiting agent because it is not used in context to humans only but also in relation to animals or things also like, Kill the engine or Killing a lion. Whereas Murder is an official term that is recognized by the law also and the law is the supreme power used for governing and running a Country, and the term is Killing is not recognized by law. Which directly says that Honor Killing as the, law hence it should not be done does not recognize a practice or if done shall be treated as illegal.

Honor Killing is merely as misconception of the Hierarchical Society and also the term Honor needs to be defined by the Law.

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<sup>4</sup> (2010) 12 SCC 324

There is a Concept of **Social Legal Evolution** which states that the law needs to evolve with the necessity and momentum of time, when Social Legal Evolution is taken forward It results in conflicts and conflicts have a major chance of leading to Honor Killing.

*“And it is the right time for the country to wake up and be able to differentiate between the good and the wrong so as to lead itself in the destined path of development as the true nature of development only happens in the mentality and nowhere else.”*

FOOTNOTE:

<https://www.aljazeera.com/indepth/opinion/honour-killings-india-assault-women-autonomy-180314090856246.html>

<https://timesofindia.indiatimes.com/readersblog/know-your-rights/honor-killing-a-major-offence-in-india-5248/>