



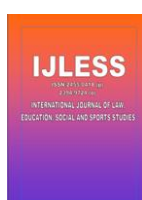
A SOCIOLOGICAL AND LEGAL ANALYSIS OF HONOUR KILLING IN INDIA

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ABSTRACT

In this research paper, the reasons for honour killing in South Asia, including India, have been investigated. According to this, the traditional basis present in India, such as caste, class, and gender, is at its root. In a patriarchal society, the presence of gender discrimination comes as a problem for women. This is the reason why girls face more problems than boys in the case of honour killing, and the killers are always the relatives of the girl. The author of this work attempted to explore the concept of honour and honour killing in India within the context of the fundamental legal system. Various major Supreme Court decisions are also discussed to get to the judicial interpretation of the statute. This paper aims to examine the legal issues of honour killings in India and proposes suggestions to address this societal problem. Legal systems and social norms are inherently interconnected in all societies. The dichotomy between law and morals is inherently elusive and has never truly existed. The legal order is a manifestation of both historical and intellectual frameworks. Social norms gradually evolved into legal customs and statutory laws in traditional societies. However, in modern societies that are highly organized and expressive, statutory laws are increasingly playing a significant role in shaping social morality.

Keywords: Honour-killing, caste, gender, patriarchal society, gender discrimination, constitutional values.

Introduction

The present research paper also discusses the conflict between modern and traditional values in India. Because the Constitution has given legal permission to adult boys and girls to marry according to their own will in the Special Marriage Act of 1954. Philosophers and thinkers have also permitted marriage according to one's own will. As we move towards modernity, this problem will be reduced because the traditional town background is at its root. This has been discussed in detail in the research paper.

Objectives of the study: This research paper aims to bring forth the problem of honour killing due to the conflict of values prevailing in India. Despite the legal acceptance of love marriage, the penetration of traditions in society leads to such incidents. In the era of personal freedom, such

incidents are fatal for women's progress. It is difficult to solve this problem in modern society without social sensitivity.

Chapter 8 of Manu states that a man who marries a superior girl is liable to death; whoever courts a girl of equal status, if her father wishes, will pay the marriage fee. Nabisan, G.'s (2009) study, "Exclusion and Discrimination in School: Experiences of Dalit Children ", has given examples of many areas, including Madhya Pradesh, in which Dalit children are discriminated against based on caste in schools. This study describes incidents such as throwing food at children from a distance in school and not allowing them to fill water from the hand pump of the village. Anirudh Mahajan has described the problem of honour killing in his study " In the name of honour: Comprehending honour killing in India ". In this, he has tried to substantiate the reasons for honour killing and its ideological basis.

In some parts of India, honour killing is a common practice that reflects poorly on the community. The deep divide in religious views is not the only thing that worries people. People are too obsessed with caste and sub-caste issues, to the point where any difference in any of these areas—religious, caste, sub-caste, or even gotra culture—could spark a violent act under the guise of an honour killing. The rule of law serves as the governing principle of India. It is forbidden for those who commit crimes to victimize others because the law will hold them responsible. Although there may not be a single piece of legislation specifically addressing honour killings, there is a network of several regulations in place to address this issue. Before we go into the legal system's challenges, let's look at some facts.

Case law- State of Rajasthan v. Smt. Laxmi Kachhwaha (1999)

A Public Interest Litigation (PIL) was launched in the Rajasthan High Court against the Khap Panchayat for its illegal operations. The court concluded that the Khap panchayat should be prohibited from operating, and its members must be imprisoned.

Case of Manoj Babli on March 11, 2011

This is a historic case of an honour killing involving two victims, Manoj and Babli. Since they were in love and married against the Khap Panchayat's wishes, the Khap Panchayat decided they should see each other as their brother and sister. However, they were not ready to accept this. When they objected, insecticides were forced into their throats. Their bodies were thrown into the canal after they had been strangled. Following this, a few family members who had participated in the crime were apprehended and given life sentences.

Discussion

Honour killing refers to the murder of a person who chooses his/her life partner. It is a pre-planned murder whose main reason is related to the basis of social stratification present in traditional societies, such as caste, religion and gender. In this research paper, we will mention the problem of honour killing in India, whereby the state/constitution has given legal recognition to inter-caste and inter-religious marriages through the Special Marriage Act of 1954. Honour killing is a problem not only in India but also in entire South Asia. These traditional societies kill to protect the so-called honour. In 2012, 240 cases were registered in Afghanistan, out of which 21 per cent were harassed by the husbands of the victims, 7 per cent by their brothers, 4 per cent by fathers and the rest by relatives.¹ In 2017, the United Nations Assistance Mission on the issue of Afghanistan concluded that in most cases of violence against women, the perpetrators are not punished. Out of 280 cases registered between January 2016 and December 2017, the same punishment was given in 50 cases.

Suppose we break down the state-wise cases of honour killing in India. In that case, honour killing cases are registered in northern India's Punjab, Haryana, Rajasthan, Uttar Pradesh, and the southern state of Tamil Nadu. Honour killing is prevalent in western Indian states, but it still exists. In

West Bengal, cases of honour killing are negligible, the main reason for which is the influence of reformists.

As mentioned above, the traditional basis of social stratification such as caste, sex, religion are at the root of honour killing, so first of all we will mention gender discrimination. The girl's or woman's family is responsible for carrying out such incidents. In all the cases registered so far, the girl's side carried out the incident. The harassment by the boy's family is limited to the 'daughter-in-law'. Almost no case of killing of a son in the name of harassment has been registered. In patriarchal societies, the burden of 'honour of the house' rests on the shoulders of the girl, which will be shattered in case of love marriage which is included in the category of 'unpropitious marriage'. In these societies, it is expected that the girl will leave the house for her studies and will marry as per the family's choice. In patriarchal societies, the activities of girls and women are strictly monitored. The responsibility of maintaining a woman's 'sexual purity' lies on the male members of the family, the female members of the family (due to financial and mental dependence) cooperate in this. However, women are targeted for some other reasons as well such as not being ready for an arranged marriage or demanding a divorce. The reason given for killing a woman is that she brought disrepute to the family. A general assessment of the gender discrimination prevalent in society can be made on the basis that today, while women are achieving new heights of success, the graph of heinous cases of violence against them is also rising.

In a patriarchal society, qualities like obedience, gentleness, and devotion to the wife are imposed on women, the basic purpose of which is to prepare them as sex objects, which is called 'gender socialization' in sociological language. The main objective of 'gender socialization' is to develop patriarchal-supported feminine qualities in girls. Lack of development of the desired qualities promotes violence against women in the family and society. If we pay attention to cases of honour killing, both caste and gender factors are at the root.

Caste system is at the core of India's social structure, but the presence of caste discrimination and caste superiority in constitutional provisions, many reforms in the socio-economic system, scientific progress in the 12th century is a matter of concern, and it becomes a bigger problem when many innocent people lose their lives because of it. Caste is the most despicable criterion for measuring ability, cleanliness, character traits. There is no mobility in this hierarchical structure, the lower castes are still at the bottom of the society. The power structure is limited to the upper castes even in the present rule of law.

In Haryana, you will find many examples like Manoj-Babli, Shankar-Kaushalya, Nandish-Swati, Pranay-Amrita, Viraj-Jagatap, Kannagi-Murugesan. Many cases are not even registered. If you notice, such incidents happen when one of the two consenting adults belongs to socially and economically backward communities. According to the National Crime Records Bureau of 2020, only 25 cases of honour killing were registered in 2019, while an NGO named 'Saakhya' revealed that in the last five years, 195 known cases of this were reported in Tamil Nadu alone. Obviously, many cases are not even registered. From these cases of honour killing, one can estimate the depth of the roots of caste-gender-based discrimination present in India. Honour killing also hurts personal freedom, right to choice and the natural quality of attachment of a man and a woman towards each other, while it has constitutional and legal recognition. The right to marry is part of the right to life guaranteed by the Indian Constitution. In a judgment, the High Court said that "choosing a husband is a fundamental right." [2]

The rigidity of the caste system does not recognize inter-caste marriages, so most couples elope and get married. If we notice, India is governed by two conflicting values. One is formal i.e. constitutional value which is based on individual freedom and equality, while on the other hand there are informal values full of inequality in the name of customs and traditions. Khap Panchayats and caste

Panchayats are governed by these informal values. They are governed because of these Panchayats. These values remain influential because of these Panchayats. In the name of modernity, there is a conflict between these two values. There is a conflict between informal values. Groups governed by informal values take recourse to historical references to justify honour killing.

The notions of honour and superiority have their root in caste-based hegemony, rooted in religious texts. If we look at the marriage system in Hinduism, marriage between two castes is called inter-caste marriage. This is prohibited because Hindus are allowed to marry only within their own varna/caste. There are two forms of inter-caste marriage, anuloma and pratiloma. In some cases, anuloma is permissible, but pratiloma (lower caste man and higher caste woman) marriage is not permitted. [3] Manusmriti, while laying down the penal code, states that " if a Shudra asks a high caste Brahmin girl to marry him, he should be given the death penalty." [4] Another quote from Vishnu Smriti is " The name of a Brahmin should indicate happiness, the name of a Kshatriya should indicate responsibility, the name of a Vaishya should indicate wealth, the name of a Shudra should indicate disgrace." [5]

By attacking these historical roots of caste, many social reformers of the 19th century tried to break the caste system. Jyotiba Phule, Dayanand Saraswati, B.R. Ambedkar, Ramaswamy Periyar have said that the real solution to break the caste system is " endogamy ". Ramaswamy Periyar claimed through the Self-Respect Movement that the involvement of elders in arranged marriages increases the dowry system. (Gopalakrishnan 1991)

The interesting fact in the conflict of values prevailing in the society is that in a society which behaves violently towards love marriages in real life, films based on love marriages are successful like Devdas (11 times), Heer Ranjha, Sohni Mahiwal, Dilwale Dulhania Le Jayenge, Dhadak, Kaho Naa Pyar Hai, Gadar, Bajirao Mastani are many examples. This contradiction is due to the social hold on traditions. Such incidents do not happen in families who have free-thinking from unreasonable traditions and bondages of caste and religion. There is a village in Dharmapuri district, about 360 km from Chennai in Tamil Nadu, where the 100th inter-caste marriage was recently celebrated. The population here is 3,000, and they were forced to flee their native place due to pressure from their parents and society. The villagers not only provide such couples a place to live but also provide them financial and emotional support. The district administration also comes to the aid of the village and its residents. [6] The criminality of honour killing is also confirmed on theoretical grounds because scholars have also considered the "tendency to marry of one's own choice " as " natural ". Emeritus Prof. Rex Martin tried to prove through the 'Natural Rights Theory ' that every person has some basic rights - like the right to life, liberty, health, work, marriage of one's own choice, dignity. Even the state cannot interfere in these rights. Violation of these basic interests is a violation of human rights. British Legal Philosopher John Austin argued according to the ' Positive Law Theory ' that " couples who exercise their natural right to marry, even if it is a runaway marriage, their rights are protected by law. " (Aniruddh Mahajan). Such cases are recognised under the law, and their rights are protected, but social norms do not accept such acts; it is oriented with conservative traditions and pave the way for honour killings. [7]

If we go to the root of this problem from a sociological perspective, its causes will become clear from Durkheim's theory of ' social unity '. According to Durkheim, an individual's dependence on society forces him to mould himself according to society. Mechanical unity is present in primitive and traditional societies, in which the feeling of social unity is at the highest level. Here, individuals are deeply attached to their traditions and customs and follow them without any argument. That is why, in these societies, there is a provision to punish those who break traditions. As we move towards a formal and diversified industrial society, mechanical unity turns into organic unity, and the influence of traditions diminishes. If examined on this basis, then this problem is also more prevalent in

societies/families of rural and town backgrounds than in urban backgrounds in India. Such incidents are common in societies which remain unchanged with time. The protectors of the law often cover up these incidents because they are part of the traditional society.

The Role of Law

The law's role is to protect every citizen's individual right in our nation. According to the Indian Constitution, every person has equal rights irrespective of gender, caste, or religion. The Indian Constitution unequivocally states that India is a secular state, upholding our inalienable rights to practice any religion and choose our spouse freely.

Honour killing is a phenomenon similar to homicide. The Indian Penal Code of 1860 has sections 299 and 301 that deal with culpable homicide that equates to murder. This is the deliberate killing of a person to uphold the honour of the family. Everyone is guaranteed equality before the law under Article 14 of the Indian Constitution, which prohibits discrimination based on caste, creed, sex, race, or religion. Similarly, Article 15 guarantees every Indian citizen equal rights under the law.

Regarding honour killings, it is noted that this behaviour is more commonly committed against women in a household, suggesting a lack of legal parity. There has been a gender-based violation—a woman was killed.

The Indian Constitution contains two articles that address the fundamental rights to life and freedom, respectively: 19 and 21. An individual's rights are violated in the case of honor killing. Every person has the inalienable right to choose their life mate. Nobody has the right to take away someone else's freedom or existence.

Following Section 3 of the Hindu Marriage Act of 1857, each person who reaches the age of eighteen is deemed an adult. There has been an obvious legal transgression in the case of honour killing. If a person declines to enter into a family-arranged marriage, it is crucial to stress that no one has the right to take that person's life because they are betraying their family. One of the key decisions on honor killings.

The criminal jurisprudence surrounding honour killings.

The topic of honor killing was first addressed in Parliament in 2009. The Rajya Sabha commenced deliberations on this matter. In July 2009, the parliament members advocated for the enactment of distinct legislation to address the issue of honour killings. In March 2010, the Karnal District Court made a significant ruling in the Manoj and Babli honor killing case. The court sentenced the leader of the Khap Panchayat to life imprisonment for orchestrating the killings. The judge has declared that the Khap Panchayat has operated in violation of the constitution and has assumed the authority to enforce laws independently.

There is a shortage of specific legislation addressing honour killings. If honour killings are tried, they are considered murder under Section 300 of the Indian Penal Code 1860. According to Clause 4 of Section 300 of the Indian Penal Code (IPC), if a person commits an act knowing that it is hazardous, it will most likely result in death or severe bodily injury that can cause death. They do so without a valid reason for risking death or such bodily injury; they are guilty of murder. This explanation explicitly covers honour killings. The act in question is premeditated, extremely dangerous, and highly likely to result in death. As a result, honour-killing culprits should be treated as murderers and punished with the death penalty. To address the issue of honour killings, the government is preparing a revised draft of the Indian Penal Code and Other Laws (Amendment) Bill 2010. This bill seeks to amend sections 300 (committing an intentional act that results in death) and 354 (assault or criminal force against a woman with the intent to outrage her modesty) of the Indian Penal Code, as well as section 105 (burden of proving that the accused's case falls within exceptions) of the Indian Evidence

Act. According to the proposed revisions, it would be the obligation of khap panchayat members and family members to prove innocence.

In March 2018, the Supreme Court implemented proactive measures to address and prevent honour crimes in India. The recommendations must be adhered to until a formal law is enacted. While the Supreme Court has established guidelines, there is an urgent requirement for comprehensive and stringent legislation to prevent the potential denial of justice caused by delays. Until then, it is crucial to guarantee the effective execution of the preventive measures.

The government proposes to incorporate honour killings as the fifth clause 18 in Section 300 of the Indian Penal Code (IPC), which now includes four types of murder. The proposed fifth provision specifies that if a person or group of persons, influenced or directed by a family member or a member of a specific social group, undertakes an act believing that the victim has caused disgrace or dishonour to the family or social group, they will be held liable.

According to the plan, "dishonour" and "perceived to have brought dishonour" will refer to the behaviours of persons who dress inappropriately for their family, caste, clan, community, or caste panchayat. Honour killings refer to the act of murdering someone who chose to marry inside or beyond their 'gotra' (sub-caste), caste, clan, or community, despite the wishes of their family or society. Murdering an individual for engaging in sexual acts deemed inappropriate by the community, caste panchayat, or family will also fall under this category. Expelling someone because they have created dishonour will result in imprisonment for up to two years, a fine, or both. The proposal recommends that anyone who is a member of a body, organization, caste, clan, community, or caste panchayat who orders or participates in the commission of murder be considered guilty of the crime. This would result in the most severe penalty, which is death.

The only remaining concern is the time required for the proposed draft to become legislation to eliminate the problem of honour killings. Honour killings, which occur when lovers commit suicide due to threats or strong resistance from their families, are deemed murder under existing laws. Nonetheless, the judicial system has begun to allow the use of the death penalty for the crime of honour killing, which is fundamentally a form of murder. In cases of honour killing under Section 302 of the Indian Penal Code, the courts may sentence other individuals implicated to life imprisonment, depending on their level of involvement. In light of the legal problem of honour killings, I would like to present the perspectives of notable criminal law professors and other theories.

To begin, Jeremy Bentham, a well-known criminal law jurist, claims that utilitarianism is the fundamental goal of all public laws, including criminal law. He opposes the introduction of excessive laws since they can lead to an increase in criminal activity. However, he also argues that if such a catastrophic situation occurs, social forces should be deployed to aid the general population in understanding and adhering to fundamental principles such as constitutional, criminal, and marriage laws.

As a result of the preceding, it is reasonable to assume that people's leaders should commit to changing the unpleasant practice of honour killing in certain sections of the country, as well as in other places.

After all, how can honour killing be eradicated? For this, making a separate strong law, strong refutation of the caste system derived from religious scriptures by religious representatives, inter-caste get-togethers, and inter-caste marriage conferences can be motivating steps. Premeditated deaths can be attributed to acts of crime committed in the name of honour, and this abhorrent behaviour is a grave violation of human rights. Honour killings typically result from institutionalized prejudice against people based on their caste in a patriarchal society. Under the terms of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which India is a

signatory and has ratified, the Indian government must fulfil its obligations and demonstrate its commitment to protecting its citizens from acts of violence. It also transgresses the values outlined in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. It's critical to remember that passing stringent rules alone won't be adequate. Campaigns for public awareness are necessary to build public resistance to this disgusting act. Any major social issue is typically resolved by passing strict legislation and enforcing effective enforcement mechanisms. It is improper that most legislation is still in the statute book but has not been implemented. The States will have to implement the laws, and they should never be sluggish or unenthusiastic unless there is a strong political determination. Political calculations have impeded the adoption of measures against the khaps in places like Haryana. Not a single well-known figure has openly denounced the repressive actions of the khap panchayats. What makes the situation worse is the lack of political will. The State's political elite must show that they are gentlemen and gather the strength to end these illegal activities. In addition, let us look forward to the glorious victory shortly against the evil custom of honour killing.

Conclusion

Honour killings are performed to maintain the family's honour and reputation. However, killing someone is not honourable, and it is especially unacceptable when it comes to someone emotionally significant. Because religion and legislation are both arbitrary and interpretative, it is critical that the terms "religion" and "culture" not be used to justify the murder of women or anyone else. Everyone is entitled to a dignified and equitable life. Thus, implementing strong legislation is the only way to prevent such dishonest behaviour. Honour killing is a horrific crime that any cultural or religious belief cannot justify. The freedom to have particular beliefs does not grant one the right to kill others. Although the courts have condemned numerous crimes and criminals, some perpetrators have evaded punishment due to legal loopholes. The lack of a specific act or provision in Indian law addressing honour killings is an often-raised topic. We can make significant progress in protecting essential lives if the current legal structure and standards are followed. Despite several regulations, the threat of honor killings remains. Let us make good use of the many available laws. Laws can only help punish offenders; they cannot eliminate crime. Instead, people's thoughts and attitudes must be altered.

Suggestions

- While the necessity for separate legislation may not be immediate, the current debate on love jihad suggests that enacting independent legislation could be beneficial. Implementing tough and rigorous punishments could potentially reduce the occurrence of honour killings, but it may not completely eradicate the offence. Therefore, executives should enforce the law of letters using the current set of laws in order to achieve the necessary dynamism in law protection.
- The most effective solutions for combating honor crimes are raising awareness, engaging in debates, and providing information.
- It is important to provide a convenient legal framework for victims of honor crimes, allowing them to voice their concerns and understand the specific legal measures they might take to ensure their safety and well-being.
- Society should wholeheartedly accept and endorse women's choices in every element of their lives.
- The judgments of the Supreme Court should not provide any legal support to assemblies or institutions that act against the law and affect people's lives.
- If the families disapprove of the relationship, excluding them from your family is best. You can sever future connections, but it is important not to treat anyone's life as a plaything or disregard

their decisions as adults. Instead, allow them to move forward and learn from their mistakes if you believe they are making one.

- By counselling families and making them aware of their limitations and the existing laws, the downward trend of honour killings can be observed. It is important to emphasize that violating the law and severing family ties only leads to misery rather than honour.

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