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HONOUR KILLING IN INDIA-A LEGAL PERSPECTIVE

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REVIEW ARTICLE

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ABSTRACT

India is known for its rich cultural past that speaks volumes about the religious, and strong traditional values which people continue to follow since ages. The institution of family and the concept of marriage are very sacred and sentimental for the people of this great nation. Although many superstitious and age old practices such as sati, child marriage, etc has been put to an end after a stupendous social and legal battle. Unfortunately, other forms of violence still continue to persist in the society such as honour killing. The increase in cultural crimes such as honour killing clearly reflects the existing intolerance, conventional approach and the traditional mind-set of the people on the issues of intercaste, same-gotra or interreligious marriages in India. Honour killing has serious societal concerns because honour crimes are committed by the family members against their own fellow family members which are shameful and condemnable. Though criminal cases are initiated against the people involved in honour killings, surprisingly the conviction rates are minimal as the perpetrators comfortably escape through the lacunas of the existing laws. This growing menace of honour killing, the shortcomings in the legal system and the possible ways to overcome such cultural crimes has been addressed in this article.

Keywords- Honour Killing, judgement, Khappanchayat, Marriage, Society,

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I. INTRODUCTION

In recent times there has been a spate of honour killings which has shocked the country. Honour killing is one of the types of cultural crime present in the country which is shameful and highly regrettable. Marriages in India are between two families, rather two individuals, arranged marriages and dowry are customary. The society as well as the Indian legislation attempt to protect marriage. Indian society is predominantly patriarchal. Although the very institution of marriage is in its transformational period, the blind and illogical sentiments relating to marriage is still continuing to dominate and destroy the lives of ambitious youngsters who no longer believe in such an unscientific and absurd practices. The rising incidence of commission of murders of persons marrying outside their caste or religion and other serious offences perpetrated or hostility generated against them and also causing harm to their close relatives or a section of the community on considerations of caste and 'gotra' are matters of grave concern. Those who may be directly involved in the actual commission of acts of violence or murder are either part of a community or section of the people and may also include members of the family concerned in the case of objected marriages. Very often such incidents and offences are not even taken cognizance at the threshold. In so far as the caste or community panchayats play a constructive role in addressing the common problems concerning the society or amicably settling the disputes between the local inhabitants and families, dissuading the people from a criminal path, the mission and the work of these village elders and Panchayatdars can be commended; but, if they exceed their limits, as it is often happening, impose their decisions in matters relating to matrimony and interfere with the legitimate choices of youngsters and indulge in acts of endangering their life and liberty, which is a matter of deep

concern and the law cannot remain a silent spectator in our progressive democratic polity wedded to cherished constitutional values. Hence this paper intends to highlight the lacunas in the existing system due to which this menace of cultural crime is spreading rapidly throughout the country an issue of great shame.

II. RIGHT TO FAMILY

International law recognizes the fact that the family plays an essential and central role in human society. The family is perceived to be "the natural and fundamental group unit of society and is entitled to protection by society and the State." This outlook lies at the foundation of the broad protection granted to the family by international law. The right to family life, which has been recognized as a fundamental right in international law, is enunciated in all major international instruments and conventions. As per Article 21, Constitution of India provides guarantees to every person, his right to life and personal liberty in express term. It says that no one person shall be deprived life or personal liberty except according to procedure established by law. But under the name of customary practices the family member or their relatives and caste panchayat member deprived the complete life of persons. Those who want to inter caste or inter religious-marriage against the wishes of their parents it will be treated as dishonour of the family. Liberty of marriage has been withdrawn by the religious people. In *Allgeverv.Louisana*, the US Supreme Court held that Life includes all personal rights and their enjoyment embracing the use and enjoyment of facilities acquiring useful knowledge, right to marry; Article 21 prevents the state from treating human life as that of any animal. In the recent past Supreme Court of India came across a number of cases involving honour killings and it has in the strongest possible words condemned such barbaric acts of honour crimes.

III. INTERNATIONAL LAWS ON HONOUR KILLING

"Honour killings" are a recognized form of violence against women in international human rights law because they violate women's rights to life and security of the person. International law obligates states to protect women from gender-based violence, including by family members, and to disqualify "honour" as a legal defence for acts of violence against women. 'Honour killings' are an extreme and brutal abuse of human rights, violating the most basic of human rights the right to life as well as every other article in the International Convention on Human Rights (1948). The presence of laws that treat 'honour killings' leniently is also a brazen disregard of the International Convention of Civil and Political Rights (1966), protecting individuals against the use of the death penalty except for the most serious of crimes. 'Honour killings' also violate the Convention on the Elimination of All Forms of Discrimination against Women (1979). India, as a state party to CEDAW has the legally binding obligation to "eliminate discrimination against women by any person, organization or enterprise," as enumerated in article 2e.

IV. HONOUR KILLING

Honour killing is a global phenomenon and has been widely reported in countries such as Iran, Turkey, Afghanistan, Iraq, Saudi Arabia, Egypt, Palestine, Jordan, Bangladesh, Algeria, Brazil, Ecuador, Morocco, Israel, Ethiopia, Somalia, Uganda, the Balkans, Sweden, Holland, Germany, Italy, Yemen, India and many more countries. It is estimated by the United Nations Population Fund that as many as 5,000 women and girls are murdered by family members each year in so called 'honour killings' around the world. Human Rights Watch defines "honour killings" as the acts of violence, usually murder, committed by male family members against female family members, who are held to have brought dishonour upon the family. A woman can be targeted by (individuals within) her family for a variety of reasons, including: refusing to enter into an arranged marriage, being the 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.

IV. INDIAN JUDICIARY & HONOUR KILLING

The Indian judiciary has been proactive in timely responding to the issues relating to honour killing. In *LataSingh vs. State of U.P. and Ors*, the court stated "We sometimes hear of "honour" killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism." In the case of *Maya Kaur Singh v. State of Maharashtra* in an honour killing case, the Supreme Court upheld the life imprisonment awarded by the High Court to five persons including two women.

In *GeetaSabharwal v. State of Haryana* and *Jivabhai v. State of Gujarat* in these cases the Hon'ble court directed to the administration and police authorities thought out the country will see to it that if any boy or girl who is a major

undergoes inter caste marriage or inter religious marriage with woman or man who is a major, the couple are not harassed by any one nor subjected to threats or facts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation is taken to task by instituting criminal proceedings by the police against such person and further stern action is taken against such person as provided by law.

The court had asked the authorities to follow the observations of Supreme Court in Fiaz Ahmed Ahanger v. State of J&K, which are as under: "In such cases of intercaste or inter-religion marriage the court has only to be satisfied about two things: that the girl is above 18 years of age, in which case, the law regards her as a major vide Section 3 of the Indian Majority Act, 1875. A major is deemed by the law to know what is in his or her welfare.(2) The wish of the girl. In the circumstances, we direct that nobody will harass, threaten or commit any acts of violence or other unlawful act on the petitioner, Chanchali Devi/MehveshAnjum and the petitioner's family members and they shall not be arrested till further orders in connection with the case in question. If they feel insecure, they can apply to the police and, in such event, the police shall grant protection to them."

The court has also taken note of the fact that the village panchayats should be kept away from issuing moral decrees. The court in ArumugamServai vs. State of Tamilnadu, unequivocally stated "We have in recent years heard of "KhapPanchayats"(known as "KattaPanchayats" in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out." We see that the courts have timely intervened and responded affirmatively by cautioning the authorities and punishing the wrongdoers.

VI. LEGAL VACUUM IN THE EXISTING SYSTEM.

Presently, Honour Killings cases are dealt as homicide and murder which are grave crimes under the Indian Penal Code (IPC). Section 299 and 301 of the IPC, deals with culpable homicide not amounting to murder while Section 300, deals with murder. Honour killing amounts to homicide and murder because the acts are done with the intention of murdering the victims as they have purportedly brought dishonour upon the family. The perpetrators can be punished as per Section 302 of the IPC. The khappanchayats or family members can also be booked under Section 302 of IPC for instigating suicide those who transgress the so called norms of the community. However the past experiences reveal that in many cases such provisions of IPC are not sufficient enough to bring the perpetrators to the courts of justice since the honour crimes are committed by the family members and in most cases the witness turn hostile .In order to find a solution to the existing problem the law commission drafted the Prohibition of interference with the freedom of matrimonial Alliance Bill in 2012, withan expectation to check the high-handed and unwarranted interference by caste assemblies or panchayats with sagotra, inter-caste or inter-religious marriages. In view of the rising number of incidents where young couples were excommunicated, tortured and killed for marrying within the gotra under orders from the Khappanchayats, the law commission recommended a threshold bar on congregation of people for condemning a marriage on the basis that the marriage has dishonoured caste, community or brought disrepute to the family or community concerned. The penal provision for such unlawful assembly was proposed at imprisonment of six months to a year and a fine of Rs 10,000. The bill elaborated that criminal intimidation of the couple or their families would invite imprisonment ranging between one to seven years and a fine of Rs 30,000. The bill also proposes to make all offences cognizable, non-bailable and non-compoundable. The bill is still pending and many states have raised serious objections to bill.

VII. CONCLUSION

Right to marry and to have a family is an individual right and a welfare state needs to protect such basic human rights. No doubt social transformation maynot take place over night but all the stake holders need to collectively work to eliminate such cultural crimes from the society. In view of this the following suggestions are proposed. 1. It is high time the long pending bill be passed into legislation. 2.Apart from legislation to effectively curb honour related crimes, it is equally important that the steps should be taken to organise counselling programmes for the village communities, for instance to explain to them that sagotra marriages are not opposed to law, religion 'sadachar' or medical science.3.The present procedure of getting a marriage registered is a long process. The complete process takes about 45 days. During this period a couple may be vulnerable. Steps need to be taken to simplify the registration process. 4. The Government should engage celebrities from different fields to reach out to the masses through advertisements and educate the people the menace of honour killing. 5. The Government should

financially support NGOs and other stake holders creating awareness among the people about human rights issues which would sensitise the people about various social evils and deliver them from all misconceptions. Therefore, only a literate, tolerant and civilized society can take India to a level of prosperity by ostracising Honour Killing.

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