

INDIAN LEGAL FRAMEWORK ON HONOUR KILLING

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ABSTRACT

Honour is a prized possession of every human existence. In the name of culture and traditions no one gets the free license to eliminate precious human life. It can neither be forfeited for the individual interest nor for the collective interest. It is always immoral and illegal to kill someone and a gross violation of human right. It is illegitimate to take the life of someone without rhyme or a reason. It is also unconstitutional and against the law. Constitution has guaranteed to its every citizen the right to life and dignity. Honour is intact with life. This right is assured in the constitution of India as fundamental right. It is the right of every person to be protected from any type of danger to his/her life. Every individual has the right to choice. Right to opinion is also an integral part of its guarantee. Thus right to marry, choosing a partner by free will also come within the purview of right to life. The societal and cultural pressures can not infringe the right to reside with dignity in society. But for the sake of killing under the name of honour of the family is unlawful, the legislation has provided provisions to deal with these unwarranted practices. Killing someone will never ever replace or restore the so called lost honour rather this acts amounts to murder. In the present paper, the author has made an endeavor to analyse the concept of honour and honour killing in India under the basic legal framework. Some landmark judgments of the apex court are also discussed to tap the judicial interpretation of law.

Keywords: honour/dishonour, life/liberty, unconstitutional/ illegal, murder/killing, human right/legal right.

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“Law without Justice is blind, Justice without law is lame, law geared to Justice is order.”
.....Justice V R Krishna Iyer

INTRODUCTION:

The Criminal Laws are covered under the domain of public laws, these laws are the foundation of the criminal Justice system. As public at large is affected by the criminal acts and government is duty bound to provide security and protection to its subjects the criminal law prohibits conduct that causes or threatens public interest. As it has direct connection with the wellbeing of the society, automatically the societal and cultural values affect and shape the criminal jurisprudence. From wondering jungle man to techno savvy individual, people of the world have travelled a long destination to reach where they are today. In context of India the upheavals were drastic and harsh, but with the winds of change in the society, law and people have well accommodated each other by reciprocating the needs of each other. From a conservative society to a modernized one many cultural setbacks have revived and shaped up the law like the acceptance of love marriage in contrast of arrange marriage, now instead of marriage, the live-in-relationship, society has accepted the changed phase but not all are prone to such changed phase of cultural tolerance and thus cultural crimes like honour killing pops out of such compromised values. New generations creates new acts and then new phrases join the club of offences, debates, deliberations. Love Jihad is such new string which is keeping the debating circles busy for now and a joinder to the honor crime. In the present examination basic aim is to explore the two dimensions: firstly to identify what truly an ‘honour killing’ means and what are the causes behind its manifestation and secondly, to explore what are the various laws which are presently dealing against the ‘honour killing’ are they sufficient enough or we need a new frame of legislation in dealing with them and to study the various judgments of the Supreme Court of India.

India is a subcontinent with five thousand year old history. Our evolution is unified by its multiplicity and rich culture. We owe a glorious past in which the primary key civilization prospered around 2500BC in Indus River Valley and it appears to have been effect of

thousands of years of settlement.¹ Since the ancient period India has grown and evolved itself into an admiring Nation. As one walks through history, through India's geography, through linguistic and artistic treasures, one finds the reason for attraction of invaders who robbed us of our precious belongings and Bharat was governed by British for many years. The desire to be a free Nation made the people struggle for freedom. The people started fighting for the cause of the home rule, a movement to that effect was started and the Indian National Congress joined and infused the spirit of patriotism in the masses. The social, religious and political structure has been witness to many upheavals, many patriots have laid down their lives and after along political struggle we achieved independence on 15th August 1947. With freedom came the challenges for governance and the world's largest democracy with the leaders of Nation put all their experience, thoughtful planning, patient labour, and with peoples participation started their humble journey. Their effort was based on the faith and commitment of welfare state for promoting the legal culture in free India, for fulfilling the dream of social justice, liberty and equality and thus the Constitution of India become the uniting spirit of our Nation. The makers of the constitution strived with utmost sincerity to gift Indians with a monumental document which will lead the Nation on the path of progress. With the birth of Constitution, Indian Society is put into order by its own rulers free from atrocities and autocratic, tyrannical rulers.

If we go back a little in sketching the pages of past it would not be wrong to say that exploration of traces of history brings to our attention certain original clan Sanathana Dharma which got invaded in the sixth century BC by Persians who actually denominated the name Hindus from the root word Indus. It was the Indus river civilization which was an amalgamation of two cultures Aryans and Dravidians who are stated as central Asian origin. It can be traced in history that when these two main cultures blended it had laid the foundation of Hinduism. With passage of time Hinduism evolved from concoction of these two divergent culture. The greed of man for power was greatly in vogue and hence invasions were integral part of ancient human existence, then came a period when the Muslim rulers conquered most of our terrain and brought with it a new cultural change. So the societal and cultural values started undergoing a metamorphosis with the blend of new phase it has come across. The last one in the line were Britishers who brought a total modern outlook through its conquest over the Muslim era, so by the time after a long freedom battle we got the

¹ Sarina Singh 'Soth India' E-Book, pg 29, <https://books.google.co.in/books>

precious freedom we were deeply imprinted with the English cultural practices along with the impressions of past.

Subsequently of the historical invasions time and again, today India has a diversity which few countries can match up to. But sometimes this diversity has posed many questions in the way of administration and statutory laws. The great divide between the religious sects which were sown by British rulers for their convenience bleeds even today. Before living the nation under Indian entrustment they were successful in deeply rooting the cultural divide and automatically affecting the societal fabric of brotherhood of the Nation. This can be witnessed even today in the name of religion the exploitation of human lives is always on the threshold even for a small causes of consideration. When these gory incidences leads in sacrificing the innocent precious lives, the moot question always surfaces, was this the state of affairs for which our freedom fighters sacrificed their precious lives? Today in the forename of Honour when kith and kin don't blink an eye before eliminating the precious valued life whom they have poured in so much love, it raises many questions and the soul steering exercise to find out are we really living a free life, in which we can exercise our free choices in our own personal space. The dominance of household decision makers in the name of dignity and honor is eating up the individual decision making space which is granted to every adult of this Nation by the Constitution itself.

So in these contemporary times the bigger issue and challenge is security inside the homes. The Indians were witnessed to struggle for human survivorship, then battle for existence from various incursions, then toil for building the dignity of the broken Nation and when everything fall under its place the very comfort of homes where a human feels secure is now roving with many issues like domestic violence, sexual violence and life threatening Honour killings. The picture is not so gloomy that the whole nation is affected by such viruses but where ever it is taking place, be that even a small part of the Nation it is primary responsibility that such gruesome acts must be to be nipped in the bud itself, before it gets manifested into a larger version of havoc. As there are already legislative framework protecting the sexual violence and domestic violence the author will like to restrict its attention on the aspect of honour killings. This is a humble attempt to sensitize the very sensitive issue.

The tradition of honour killing which is exercised in some parts of India is a disgrace for the community. The great divide of religion is not only the cause of concern, the people are so obsessed with the cast and sub-cast issues, that inter religion, inter caste, then different

sub casts, gotra culture, disparity in any one can trigger a bullet under the garb of honour killing. The Republic of India is governed by rule of law. No perpetrator is allowed to victimize anyone otherwise it is the recourse of law which make the person responsible for breaking the law. There may not be specific legislation which is addressing the special concern of honour killing but network of various provision is catering the need to deal with this aspect. There are certain realities that should be put to check before elaborating the concerns of legal framework.

HISTORY OF HONOUR KILLING IN INDIA:

The practice of honour killing is not new it has its ancient origins that exist in all most all religions. Centuries before in India there are great epics written like Ramayana, Mahabharata, and if we see the origin for conflict and clashes between two factions it will be found revolving around the honour and dignity of the centric women characters. Like in Ramayana, Sita the wife of going to be King of Avadha, Ram, was forcefully taken away by the King of Lanka and to bring back Sita and preserve her honour and dignity the war between Rama and Ravana happened, and many precious lives are lost from both sides. Later on the question on her chastity by the society led to separation between the King Ram and Sita. Similarly in Mahabharata, the five brothers who were married to Draupadi, loose everything in a game of gambling to their cousin brothers, so the opponent ask them to play one more chance by putting their wife honour at stake and they lose her also. She then being dragged by her hairs, humiliated, insulted and brought in the open court and was mocked, disgraced embarrassed, demeaned and dishonored in front the whole community. The outcome of this incident is the war between brothers ending many lives on the settling score of honour and dignity. In both these incidences the war was the fall out as in both the Royal families and their honour being at stake, its subjects sacrificed their precious lives so as to preserve the dignity of their virtuous king and their families. It may not be the individual act of honour killing, but it definitely lays foundation that if great wars are fought for honour then individual family honour can also role play the same game of devastation in the name of preserving honour and dignity. Generally practice of Sati which was in trend in ancient times can also be attributed to preserve dignity and honour of women whose husband dies and so lady was forced to end her life on the burning prayer of her husband so that her dignity and honour remains intact. And like this there may be many stories which remain embedded behind the veils of history who got their breath sacrificed in the name of this very honour and

dignity. There is no trace in the history specifically as any one instance as first case of honour killing.

With advent of Muslim rulers, more conventional dynamics added to this notion as they kept their women under cloaks in the name of a faith honour killing was justified by the male protagonist of the families, so generally the trend continues even today the practice is exercised in full public view, in certain countries it relics subject to culturally prejudiced laws and exercises that provide exceptions to standard ideas of justice. It was Britishers who brought new outlook towards women's right and dignity and they helped in curbing many biased acts which women were facing that time, but nothing concrete can be said regarding their contribution towards the aspect of honour killing is mentioned in the pages of history during the modern era as well.

CHANGING DYNAMICS OF INDIAN SOCIETY:

When I was a young I heard from my granny stories of how she was married in her adolescence and never even seen the boy before marriage, with passage of time I have learnt at least my mother met with my father before marriage, by the time my elder sister got married love marriages are established as an accepted practice and by the time her son has grown into a young man, today live-in-relationship seems to be well adopted by the society, law & judiciary as a wind of change for our conservative cultural set up. But not all are prone to this change and the battle of culture against modernization left certain blisters in the nature of honour killings. There is a divide in our country as India the urban part and Bharat the rural part and this divide also shows the approaches which are adopted by present Indian society. Killings in the name of honour presently personifies the similar traditional perception that a woman is a belonging of her male relatives, mirroring their family's social standing and pride. Because of media and other modes of communication it is now more apparent and more noticeable otherwise the addition of years had only deep rooted the act of honour killings and made it more prominent in various parts of the world. There are few Nations who directly or circuitously permits honour to be a reason or qualifying feature for murder, consenting guilty party to go scot-free or to receive lighter punishments/ sentences. A male relative's simple suspicion, distrust, doubts, skepticism of a dishonoring act is often enough to validate a heinous act of honour killing. Is India also belong to such listed category of Nations? Let us evaluate. In India it was in 2009 from the debates of Rajya Sabha, issue of honour killing was taken for deliberation and from then it can be traced that consistent efforts

are made in this direction for curbing the disgraceful act but success still is far reaching for now. That means there seems to a lacking desire and efforts towards handling the issue with all sincerity and seriousness.

WHAT IS HONOUR KILLING?

What is the meaning of the word honour? Honour means prestige, when used as an adjective honour means special respect, when used as a noun honour means righteousness, when used in the context of cultural and societal backdrop honour is the premier asset of every person. But when referring to honour killing, honour somehow becomes a stigma, it becomes insecurity, it apparently also becomes a reason for brutally taking lives of own kith and kin without blinking an eye may be in some cases even without remorse.

The moot question is who decides, what is honour? Who gets to set these standards for honour? Why honour is always to be correlated with women? Some organisation in India Like khap panchayat influence and fund such honour killing exploiting the prevalent laws and judicial decisions. Therefore it becomes pertinent to note that India is a Democratic Nation governed by rule of Law and no one is above the law. No one is given a free license to play with the life of others under the pretext of cultural or societal preservation of values.

The traditional practice in certain countries of killing a family member who is believed to have brought shame on the family.² Like Said's Muslim faith, that the sisters were shot in an *honor killing* — a practice in some cultures in which men kill female relatives thought to have dishonored their families.³ Honour Killing is the killing of a relative, particularly a female relative, as revenge for the supposed dishonoring of the family, as dictated or sanctioned by some cultures and religions.⁴ So the sum total of all the above statements can be that, the Honour killing is an act of murder by members of the family, because the perpetrators act under the conviction that the girl/boy had brought shame, humiliation, dishonor, disrepute, disgrace to the family, or has disturbed the principles, morals, ethics, beliefs, tenets, values of a community, society or a religion with an honor philosophy at the backdrop.

² <https://www.merriam-webster.com/dictionary/honor%20killing>

³ Tom Steele, *Dallas News*, "Yaser Said, accused of killing his two daughters in 2008, was nearly caught in 2017, authorities say," 28 Aug. 2020

⁴ <https://www.dictionary.com/browse/honor-killing>

There are basic two jargons that are showcased one as honour and another as killing the combined effect of which is, right under the nose of lawful society and prominent judicial structure, innocent lives are sacrificed in the name of honour, dignity, pride, self-worth, poise etc. These sort of acts challenge the very structure of criminal administration and makes one think, Is taking life of some dear one is so handy under pretext of false ego? Are the kinfolk so blinded in a rage that they can play with destiny of human existence? Is it not the almighty's gift of life to be taken back in the natural recourse as per nature's authority, life to be infused and ceased as per the law of nature? Who gives one authority to cut short the life line of treasured ones under the banner of honour? And like this many question mock the very act of honour killing.

Honour is the principal strength of every person. The integrity and nobility which is attached with honour cannot be forfeited for individual or collective interest. Killing someone under the name of honour is against the law and violates the very basic human right. When one use this term honour before killing the primary issue is - Isn't Honour killing an act of murder by members of the family? The fallout from which leads to another issue for consideration, why the use of the term killing and not murder?

The use of phrase honour in crimes is somewhat deceptive as it denotes that such crimes are "ethical" and at the same time it successfully implants a reaction that these crimes are notional product of prevailing culture, customs and traditions, centric to specific communities or faiths. The association of such crimes with age old tradition as justification for amongst regions and communities in no way validate the offence of murder. In the name of honour it will be horrifying to take away precious human lives. No one is permitted to violate the very set norms of law and such perpetrators must be brought under the realms of mandate. There is not one honour in killing one's very own human league, just to satisfy the self and then to connect it with traditional backdrop of either culture or custom. You can kill someone by doing murder, hence honour killing is an act of murder.

The very difference between murdering and killing is presence of guilty intention. When one is killed it may not have mens rea the guilty mind, like someone is killed in the accident or a soldier in the battle field kills the enemy and in murder the person intentionally and meticulously lays a planning of eliminating a person's life for which he puts every possible effort to see to it that the end result is death of the person he/she targeted. Secondly killing is a term which can be used for death of a person or any other living being for instance a poacher killed a wild bear in the jungle, or a tiger attacked and killed a deer, thus it can be

intentional or unintentional and doer of the act may or may not be a human always. So in the act of killing one is ending the life of another and in act of murder one human being killing another human with criminal intention. Thirdly murder is a defined criminal offence under section 300 of the Indian Penal Code, 1960, the punishment for which is provided in section 302 of the Indian Penal Code, 1960, however there is no defined presence for the ploy of honour killing in law. Thus murder has ingredients of cruelty, evil, aforethought, the very action of killing someone is a result of premeditated act and is driven by some sort of passionate human emotions, cold attitude, displeasure, unhappiness, frustration, jealousy, vengeance, hatred etc. Further the murder or homicide is sometimes can be done for monitorial earns or some premeditated advantage while the honour killing are having the sole motion of reinstating the honour of the family. Any stranger can commit homicide but honour killing is undertaken by a near relative of the victim. Honour killing may be driven by severe societal pressure because of which he commits the act it may be self-driven or abetted by incitement from people in the community whereas in homicide the sole motivation is to put an end to life line of a person. Conclusively it will be proper to draw the base that in the label of honour killing it is the murder that usually takes place. With the usage of honour and killing the act of playing with life of another human at the behest of family members will not change the very fact that it was a planned execution which law defines as either culpable homicide or murder or attempt for the same.

REASONS FOR HONOUR KILLING:

In terms of criminal orientation one can treat honour as precious and unique property possessed by each individual. It cannot be seen with bare eyes but its presence is so powerful that it encompasses the whole human behaviour. When we weigh honour as property, the measuring scales can be in terms of female behaviour, sexual and other aspects. So here women are centric to holding such property or rather the pameter of honour hovers around the essence and presence of women.

Although men and women both can commit and both can be the objects of honor killings, in specific cultures the canon of honor has distinctive banners for men and women, where it may be found in cases of female one can observe harsher criteria's for chastity for women and task for men to commit violent acts if demanded by honor. It may be primarily because in India patriarchal pattern is deep rooted and women are entrusted under the protection of father, brother, husband or elder male members of the family. Where as in some

places honor code is part of a higher social system that suppresses womenfolk to men resulting into use of violence against women. This use of violence is sometimes created as women being object of honour and honour is wealthiest property in possession, the killings/murders are committed for the sake of honour.

Thus primary reason for steadfastness of an 'honour killing' is conviction that the victim had brought shame to the family. There may be variations for this dishonour as it is subjective and for different families different consideration of honour will apply like for some conservative families unacceptable dress codes are prohibited and it is co-related with family prestige, for others love marriage is a taboo, one cannot decide the partner of his or her own choice, it should be strictly in compliance with parental order, non-acceptance to live-in relationships, pre-marital sex, finding out the status as lesbian, gay, third gender etc.

Another dimension can be, as discussed in the beginning, India is a nation of diversity in which religion, gotra, caste system endures to be at its rigid best. Two different mind sets are present in India one as urban (India) and another as rural (Bharat). Urbanized population are generally open to modernization of cultural and societal development and rural population adhering to the boundaries of ethics and culture don't like anyone messing into the cultural setup. Hence traditional role of men as protector of family, it is expected that men enforce such norms and traditions and protect families from disgrace. Whereas women are expected to demeanor themselves honorably and are prohibited from crossing any of the frontiers in name of society shamming and perseverance of culture. This perceptiveness of the belief gives legitimacy to very forms of social parameter of women's behaviour and to aggression steadfast against them. This may be the reason because of which rural population indulges into more honour killing than urban. But with growing incidences of honour killing this divide appears fictional. Illiteracy can also be one of the reasons for thriving honour killing instances.

When one think of this aspect it seems so strange, inhuman, insensitive, heartless, merciless, barbarous, fierce and painful act which violates the natural right which are outright claims of the victims. In the name of honour when the women is abused, tortured, tormented, mutilated, raped, forced to marry someone else against her wish, confined within the four walls of home or most heinous of all murdered with intent to preserve and protect the family honour, we deprive that woman her right to life and liberty, which is her fundamental right. The reason may be any like girl went ahead and chose a life partner of her choice and definitely that boy is belong to other religion, cast, sub-cast, gotra or from the enemy group.

Her right of choice, privacy, body integrity, life, liberty, freedom, right to marry & have family all goes on for a toss. Rights gets replaced by force and atrocities of her own family member and along with her precious life the life of her partner also lands up in peril. One must know that killing a couple is not going to resolve the issue entangled with honour. Rather it devastates the families involved and traumatise the social fabric of the society.

Any kind of gross punishment can never compensate the brutal killings. Honour killing is one of the most atrocious crimes, the elements involved make it stand apart from act of murder, but it seems more heinous than murder, as one who vents such horror are her very own people for whom she may have strived hard and shared her love and respect. In reciprocation she may also have received the love, but apathy is when it came to choose between her precious presence and ideology of honour, they end up opting for intangible, unseen, vague notion of honour and all her love for them swayed away and her own protectors becomes her predators.

DRAWING AN ANALOGY:

Now that I have brought point home that the use of the word killing cannot shadow the act of ruthless murders, I will like to bring on notice one more aspect; the attribute of victim's own people, to be victim's protectors becoming the predators, is far more dangerous as victim is constantly hovered over the stress, pressure, anxiety, tension, trauma and danger of life and wrath of those own people, her very own family. The strangers getting involved in the act of killing we label as murder and impose harsher punishments, then why not the stringent punishment of the gory act takes the same norm of law governance when it comes to home people in case of honour killing. No justification can supplement the strangulation of trust, love and respect be faded under mild punishment measures. The smartness of the words honour and killing should in no way distract us from drawing the conclusion that it is an act of murder although the term killing is used, offenders here are far more dangerous if they have not taken mercy on their own dear and near ones then strangers are more at the threat of facing the brutalities by these criminals.

Dhananjay Chatterjee v State Of West Bengal⁵ this case draws the attention here. On 14 Aug 2004, Dhananjay Chatterjee was hanged till death for raping and murdering a girl named Hital Parekh. The brief facts of the case were Dhananjay was security guard at victims apartment, on complaint of the victim he was transfer in other apartment and he in an act of

⁵ 1994 SCC (2) 220

vengeance raped and murdered victim, he was convicted as the court regarded crime as heinous combination of offences. As he was a security guard he should have been in charge of victim's safety, because the protection giver had become killer it was enough to make the case rarest of rare category of crime, warranting a death sentence.

At this instant let me draw your attention towards some observation made by the Apex Court, Justice A S Anand remarked that "The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous." In this case if security guard was acting rash and instead of providing protection he put the life of the girl in peril after making her face brutal physical assault termed as heinous, on the same lines when very own house people putting the life of the victim's in peril are also committing heinous act.

The court further observed "If the security guards behave in this manner who will guard the guards? The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society." Underlying importance of human dignity was highlighted here with the specific observation that one who is supposed to safeguard if act against the set norms it sets a bad example for the society, and the social fabric thus gets badly affected. In case of honour killing the same principle can be made applicable when the flesh and blood don't care and provide protection where will be the victims look for in terms of her security? The society also witnesses a bad precedent being set and law & order being mocked at by the offenders. It also encourages other society members who toe with the same ideology of honour killing to go ahead and exercise free dispensation when their house women will offend their commands.

Further while fastening the punishment the court submitted "We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defenseless young girl of 18 years, by the security guard certainly makes this case a 'rarest of the rare' cases which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant." In cases of honour killing as well

it is well planned, coldblooded brutal murders which are without provocation, as the defenseless women/men exercises their right of choice given by law of the land and their families not approving the same under any pressure like self-ego, culture, societies, difference in religion, cast, sub-cast, gotra etc. Ultimately the people who should be responsible for the security and wellbeing of the victims becomes the tyrants.

Now if we draw the same analogy, the girl should be protected by the people inside house, but when her own very people draw weapons to end her life line, 'Women are secured in their houses' seems to be a fallacy then, as their protectors becomes their predators, when she takes a decision of choosing a life partner of her choice, in the name of honour her freedom is not respected. So these offenders should also be made liable for the offence committed by them in the coldest manner and not to be sympathized under the banner of cultural or societal compression that they have to commit the act to save the honour.

DEMOGRAPHICS:

The northern regions of India are first in line in regard to reporting of honor killing cases. Punjab, Rajasthan, Haryana, Uttar Pradesh, Tamil Nadu in the south, Maharashtra in the west, and Gujarat in the east are the most populous states in India. The main cause of these crimes is the result of people marrying without their relatives' consent, especially when it is between members of two different castes, backgrounds, social statuses, or religious groups, or, more specifically in northwestern India, even between members of the same *gotra*, or exogamous clan. In 2014-16 National Crime Records Bureau data shows, 281 honor killings were reported in India, activists consider this number to be a significant undercount due to the misreporting of killings under general murders.⁶ According to the survey done by All India Democratic Women's Association (AIDWA), over 30 percent of the total honor killings in the country holds place in Western Uttar Pradesh.⁷ In some other parts of India, notably West Bengal, honor killings completely ceased about a century ago, largely due to the activism and influence of reformists such as Vivekananda, Ramakrishna, Vidyasager and Raja Ram Mohan Roy.⁸ Because of the role performed by Khap Panchayats, more instances are reported in Punjab and Haryana. Khap Panchayats are a faction of persons or a community organization specifically found in villages and in Northern India to exert a social influence within the community. Khap

⁶ <http://www.aljazeera.com/news/2016/12/india-sees-huge-spike-honour-killings-16120715333597.html>

⁷ "30% honour killings of the country in west UP: AIDWA survey" News 18. 29 October 2015.

⁸ "Honour Killings in India" Daily Life in India. 16 June 2010. Retrieved 3 September 2010

Panchayats take law in their own hands and indulge in offensive activities which endanger the personal lives of persons marrying according to their free will.⁹ Khap Panchayats are accused of encouraging honour killings and interfering with people's personal life. These types of organisations should be outlawed totally so that they do not seize control of the country's laws and use its citizens as puppets.

INDIAN LEGAL FRAMEWORK ON HONOUR KILLING:

The Indian Constitution:

The fundamental document for governance is the Indian Constitution which is a guiding light for administrative networking and protecting rights to its citizens. The provisions from the constitution which provide protection against Honour killing are:

1. Article 14 (the Right to Equality),
2. Article 15 (1) and (3) (Prohibition of Discrimination on grounds of religion, race, caste, sex or place of birth),
3. Article 17 (Abolition of Untouchability),
4. Article 19 (1) (the Freedom to Speech and Expression) and
5. Article 21 (the Right to Life and Personal Liberty).

Honor killings, with women as the primary targets and males as secondary targets in the majority of instances, become a nasty form of gender violence. The ability to express a woman's or man's choice is stifled, leading to such deaths and a violation of that person's fundamental rights. Because the primary point of killing is based on religion or caste, it cannot be justified on the basis of divisiveness. This action is completely incompatible with the Constitution. The Directive Principles of State Policy (DPSP), while not required, are used to assess the country's ability to rule effectively. As a result, Article 39 (a) mandates the state to provide all people with appropriate means of subsistence. In most circumstances, however, honour killing negates the woman's life, and Article 39 (e) and (f) require the state to ensure that infancy and youth are safeguarded from exploitation and rising or growing material desertion. In contrast to this conventional practice of honour killing, many young people, teens, and married couples are threatened with death and placed in dangerous situations. As a result, it is the state's obligation to safeguard such vulnerable individuals and their lives from this heinous behaviour.

The India Peal Code, 1860 and Code of Criminal Procedure, 1973:

⁹ Ibid

Honor killing offenders are considered murderers, as previously stated. Although it might be difficult to identify lawbreakers since acts of homicide are frequently guarded by the community, it is conceivable. The perpetrator may also use Section 300 of the Indian Penal Code, 1860, as a defence, claiming that he acted in response to a grave and sudden provocation and that nothing was planned or premeditated. The act of the victim was so soul stirring that he lost the self-control and acted purely on what he witnessed, which was an act of dishonoring the family. Apart from this Sections 300, 302 murder and its punishment, Section 304, 307 attempt to commit murder Section 120A & 120 B Criminal conspiracy, Common Intention section 34 & 35 are also explored to assess the act of murder from killing. Murder (section 302 of the Indian Penal Code) and Culpable Homicide are the sole categories under which these killings are registered (Section 304 of IPC). The judicial system in northern states is run by Khap Panchayats, who provide orders for the execution of death sentences against their own family members, making it difficult for law enforcement to find the genuine criminals. As a consequence of the law's failure to identify the perpetrators and gather evidence, no FIRs have been filed by the police. If a FIR is filed and the cases are pursued, the conviction rate is essentially zero.¹⁰ The legal formality prescribed in the criminal procedural code for registering the FIR seems as no choice of exercise for the governance of Khap Panchayats.

Indian evidence Act, 1872

Whenever a case is to be proved, it must be built on the foundation of the Indian Evidence Act, 1872, which punishes individuals who are complicit in the concealing of facts before, during, or after the alleged crime. Section 13 of the Act can specially be mentioned and helpful in understanding the aspect of honour killing, it states - Facts relevant when right or custom is in question - The following facts are relevant when determining the existence of any right or custom: (a) Any transaction by which the right or custom in question was created, claimed modified, recognised, asserted or denied, or which was inconsistent with its existence; (b) Specific instances in which the right or custom was claimed, recognised, or exercised, or in which its exercise was disputed, as well as any transaction by which the right or custom in question was created, claimed modified, recognised, asserted or denied, or which was inconsistent with its The purpose of this Act is to ensure that people who become

¹⁰ Anand Mishra, Honour Killing: The Law It Is and The Law It Ought To Be, Manupatra.

victims as a result of khap panchayat judgments receive justice. Without referring to legal regulations, this organisation has its own way of dealing with situations.

The Indian majority Act, 1857¹¹

This Act deals with the question of a person's major age for legal reasons; according to section 3, every person domiciled in India reaches the age of majority when he or she reaches the age of 18 years, unless his or her personal law stipulates otherwise. In the case of a guardian assigned to such a child, however, the age of majority will be 21 rather than 18. When it comes to honour killings, this Act becomes relevant in cases where khap panchayats have forcibly separated married couples who are otherwise eligible for such marriage due to age or other factors. As a result, it aids in establishing khap panchayat members' attitudes and their disregard for the law of the land. Such cases are clear case of violation of the provisions under this Act.

Hindu Marriage Act, 1955:

The fundamental criteria for a legal marriage are laid out in Section 5 of the Hindu Marriage Act, 1955. The clause specifies that for a legal marriage, certain forbidden degrees of connection must be maintained. Both civil and criminal laws safeguard marital relationships by penalizing their transgressions by providing appropriate remedies in civil law and prescribing harsh punishments in criminal law. The Act nowhere put fitters on the choice of marriage partner, indicating inter-caste marriages amongst Hindus are permitted.

Special Marriage Act, 1956:

This Act takes care of special form of marriages without bothering for their caste, class, religion of the Indian Citizens. The inter-caste marriages can be facilitated with recognition and registration by this Act. As the social system of India is based upon rigid threads of cast system inter-cast marriages are registered more in urban India than rural. The Act states that the parties must not be in banned relationships, but that if a tradition governing at least one of the parties authorizes a marriage between them, such marriage may be solemnized even if they are in prohibited relationships.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989¹²

¹¹ Act No 9 of 1857

The Indian Parliament passed this Act in order to avoid incidents of atrocities against Scheduled Castes and Scheduled Tribes. The Act's primary goal was to make it easier for Dalits to integrate into mainstream Indian culture. Assaulting, dishonouring, and outraging the modesty of a SC/ST woman, sexual exploitation of a SC/ST woman, and forcing a SC/ST to leave his or her family or village are all examples of atrocities covered by this Act. This Act was enacted with the understanding that it has a connection to honour murders, since there have been several cases of honour killings when caste and religion are at the root of the crime.

The Protection of Women from Domestic Violence Act, 2005¹³

The endowments of the Protection of Women from Domestic Violence Act, 2005 provide for more effective protection of women's rights guaranteed under the Indian Constitution. These women all seem to be victims of violence of any kind that occurs within the family, and for matters connected with or incidental to it.

Protection of Human Rights (Amendment) Act, 2006:

This Act ensures that everyone's human rights are protected, as well as the establishment of commissions and courts to achieve such goals. Despite such regulations, honour killings continue to be common, resulting in grave violations of human rights.¹⁴

Thus if we look at the framework of available laws it seems apparently clear that there is no specific law that will deal with the aspect of Honour killings. Thousands of young lives are butchered mercilessly under the pretext of bringing disgrace for the families. The legal structures, the judgments of the Judiciary are still falling short to comprehend the menace of honour killing. Governments are being accused for their criminal carelessness in dealing with these crimes. There is no legal definition of the crime, no legal acknowledgment of diverse components of the crime, no protection for self-choice couples, no preventative measures, no responsibility, and no penalty. Because most of these deaths are classified as either murder or culpable homicide, the vast majority of them go undetected. As a result, there are no accurate data on such homicides in India. In the government's records, there is no organised data for these types of instances.

¹² Act No 33 of 1989

¹³ Act No 43 of 2005

¹⁴ Puneet Kaur Grewal, Honour Killings and Law in India, IOSR Journal of Humanities and Social Science, Vol.5, Issue 6, 2012.

INITIATIVES TAKEN AGAINST HONOUR KILLING:

According to the United Nations Population Fund, around five thousand women and girls were slain for the sake of honour by members of their family and relatives throughout the world. If we try to trace the beginning of the discussion of honour killing cases, we will discover that the topic of honour killing was first brought up in Parliament in 2009.

1. The Rajya Sabha was the body that debated this subject. Members of both parties debated the topic in July 2009, and presented a proposal for a separate law to deal with crimes of honour murders.
2. In March 2010, the Karnal District Court handed down a historic decision in the Manoj and Babli honour killing cases, giving the Khap Panchayat chairman a life term for ordering the killings. According to the judge, the khap panchayat has operated in violation of the constitution and has taken the law into its own hands.¹⁵
3. The decision resulted in the subject being sent to the Law Ministry, which issued specific recommendations in 2010. The "Indian Penal Code and Certain Other Amendment Bill 2010" was the name given to these suggestions. The basic line established in the recommendation focused more on crimes, particularly murders committed for reasons of honour, leaving the entire subject of tortures suffered by young couples out.
4. In August 2010, the legal cell of the All India Democratic Women's Association (AIDWA) developed a complete bill called "The Prevention of Crimes in the Name of Honour and Tradition Bill" in conjunction with other women's organisations and submitted it to the government. This bill fills in the gaps left by the previous law, including the infringement of young couples' rights, and specifies a variety of crimes in addition to murder, as well as proposed preventative measures and penalty levels.¹⁶
5. In its 242nd report, the Law Commission of India presented its own version of the Bill in 2012. This bill was seen as taking a more cautious and limited approach to honour murders. The bill was named the "Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011," and its main focus was on

¹⁵ Manreen Bhugra and Yasha Bhanthia, Honour Killing: A Critical Review of Personal Law and Societal norms, *International Journal for Legal Development and Allied issues*, Vol. 1, Issue 3, 2015

¹⁶ Brinda Karat. (2016). Honour killings are a separate horror. Retrieved from <http://www.thehindu.com/opinion/lead/article14168010.ece>

"Unlawful Assemblies" known as Khap panchayats. The Law Commission's proposal is still waiting.

6. In March 2018, India's Supreme Court issued preventative measures to fight honour crimes. With the intention of following these principles until a formal law is enacted. While the Supreme Court has issued recommendations, it appears that appropriate and rigorous legislation is still required without delay, since delays in justice might lead to denial of justice. Till then proper implementation of the preventive measures is to be ensured.¹⁷

DISAGREEMENTS AGAINST THE NEED FOR NEW LAW:

In majority of the situations it is generally observed that we as Indians have really provided with structural dimensions of law protection, it is a marvelous fact that law crafted on paper by means of Act or Codes are sufficient for providing the protection, the loopholes can be traced in proper implementation & executions. By displaying the above network of laws, it can be shown that, even today, we are well equipped to cope with the threat of honour killing, despite the fact that there is no specific legislation for recognizing and prosecuting honour killing. This is feasible if the terms of the current murder legislation are effectively applied, and the perpetrators are punished. The elegance of the words honour clubbed with killing should in no way distract us from drawing the conclusion that perpetrators here are far more dangerous if they have not taken mercy on their own daughters or sons, then third party as strangers are reeling under additional threat of facing the brutalities by these criminals. To punish criminals charged with murder under Section 300 of the Indian Penal Code, first and foremost, police officers as investigative authorities must not soften and must become more aggressive. They should focus on gathering adequate evidence, proofs against the crime, or death orders from relatives in general, and khap panchayats in particular. Wrongdoers can also be charged and punished under Section 120-B of the Indian Penal Code, as well as Sections 34 and 36 of the Indian Penal Code, 1860, for criminal conspiracy and common purpose to murder. The offered laws may not be at present in the satisfactory state but if implemented properly along with the guidelines laid down by the highest court of this land it has the capacity to deal in its present form of laws. The necessity for new legislation is being debated, and proposals are being considered in certain areas, but no law or punishment can

¹⁷ Richa Taneja (2018), Khap Panchayat Verdict: A Look At Supreme Court Guidelines To Prevent Honour Killing, Retrieved from <https://www.ndtv.com/india-news/khap-panchayat-verdict-a-look-at-supreme-court-guidelines-to-prevent-honour-killing-1829395>

prevent those who commit honour killings. The mind-set which is deeply rooted in dominance and treating women as object or property, or figure of honour gets a twist along with need for change in the societal perspective in bits and pieces. In addition under the shed of cultural demand we don't stop this exploitation no new law will be effective. The legislation must be adequately implemented, and state law enforcement officers must be empowered and trained. The most effective method to eradicate this evil is to raise public knowledge and sensitize the problem in every conceivable venue.

Secondly even when laws specifically are present and concentrating on a specialized issue still the legislation is not effective to curb such acts, as the defect is in the mindset of society, for example rape laws, the laws dealing with offence of rape are time and again modified and more stringent after some gruesome rape cases in India, but they still are falling short to place any deterrence over the sexual offences and offenders of law in the very face of it are mocking it with continuous barbaric and heinous rape crimes irrespective of laws and judgments every now and then. That means laying a different legislation may not ascertain to be effective by its presence, what is required is to give it a serious thought and sincerity in implementing the preset set of laws. To make withstand the rule of law upright, willingness to implement present set of laws and not the quilling spike of new set of laws will bring the offenders under realms of law.

INDIAN SUPREME COURT'S VIEWS ON HONOUR KILLINGS:

The Judiciary is one such institution in India which has earned a lot of respect through its magnanimous contribution. People of India have very high expectations and hopes from the temple of Justice. The more than 70-year journey has resulted in a long-lasting contribution to the governing system. The judiciary worked as a promoter of peace, fostering harmony, balance, and cooperation among the government's many departments. The initial phase may be rigid, providing judgments only from legal point of view, by interpreting the laws and regulations but with the passage of time the judiciary expanded its horizon and delivered path breaking Judgments. The judges as the architect of justice crafted the pronouncements by adopting scientific, procedural, technical, methodological approach and expanded the ambit of fundamental rights and protected and provided platform for all the laws. It gave numerous instructions for safeguarding the people of India's human dignity and human rights through a number of rulings, specially focusing on the issues of women, children, bonded labours, plight of prisoners, socially and educationally backward people,

environmental jurisprudence etc. So this sensitive issue of honour killing also got its representation through apex court recommendations.

Honor killing has remained a societal reality in India, despite the country's moderate and secular pledges. According to a study released by the National Crime Records Bureau, there were at least 281 incidents of such violence between 2014 and 2016. This startling figure served as the foundation for a landmark decision that declared honour-based violence to be not only a criminal offence, but also a violation of adults' fundamental right to exercise choice, as guaranteed by Articles 21 and 19(1)(a) of the Constitution, which protect the right to a dignified life and freedom of expression, respectively. As a result, the freedom to pick a spouse of one's choice for a significant individual has become a basic right.

In the case of *Shafin Jahan v Asokan K. M.* which is popularly known as “Hadiya Case” proved to be a significant judgement for women’s right to marry the person of her choice, on 8 March 2018 Justice D Y Chandrachud upholding Hadiyas marriage to Shafin Jahan delivered its verdict in favour of Hadiya. The larger bench of Apex Court dealt with the matter Justice Dipak Mishra, Justice Ajay Khanwilkar & Justice Dhanjay Chandrachud were the sitting judges. Hadiya, a Hindu woman married to a Muslim guy, converted her faith and changed her name to Islam in this instance. Hadiya's parents successfully opposed her marriage in court. Even though she was 25 years old, the High Court maintained her father's claim to custody and delivered her to him. The term love jihad was popularised by media by this case. The Apex Court by exercising the freedom to choose religion and life partner of her choice as her basic right granted set her marriage as valid and thus the parental pressure was removed under the name of honour of the family.

In the same year on March 28, 2018 the Supreme Court through its ruling in *Shakti Vahini v Union of India* came heavily on khap panchayats/communal assemblies and the way deal with the issue of honour crimes. The court declared in a 54-page judgement authored by then-Chairman of the Supreme Court of India, Shri Dipak Misra, that "the act of honour killing puts the rule of law in a catastrophic crisis" and pressed a reminder that it is the government's responsibility and duty to protect the lives and dignity of those harassed by assemblies. It further said that no person or group has the authority to intervene in a lawful and voluntary relationship between two adults. It handed down necessary instructions for the police to video record proceedings of khap panchayats, reiterating the significance of the freedom to choose as an irrefutable component of the right to a decent life provided by Article 21 of the Constitution. The court has also ordered that employees who fail to take

action against such khap panchayats while being aware of unlawful activities face disciplinary punishment within six months. The court's prior rulings make it clear that so-called honour killings are not honourable. "India's Constitution is a humane Constitution that gives not just the right to life but also the right to a decent existence," Chief Justice Mishra said. The right to choose one's life partner is essential to one's personal dignity. When a marriage is lawful, no one or group of people has the authority to intervene. It completely removes the involvement of any individuals or groups when it comes to choosing a life partner. "The human rights of a daughter, brother, sister, or son are not mortgaged to the so-called or so-understood honour of the family or clan or the collective," Justice Mishra said in the momentous decision. He went on to say that honour crimes include not just honour killings, but also any ill-treatment of men and women who exercise their right to pick their spouse. Justice Mishra made the following observation: "It can be stated without any fear of contradiction that any kind of torture or torment or ill-treatment in the name of honour that tantamount to atrophy of choice of an individual relating to love and marriage by any assembly, whatsoever nomenclature it assumes, is illegal and cannot be allowed a moment of existence." The court was so clear in making its anguish known by the usage of the word a moment of existence, issuing the directions to central government to work with states for drafting of law against honour killing it also directed a remedial measure, that, the police shall provide protection to couples facing threats and, if they so desire, facilitate their marriage and its registration. Following up on previous steps, the government was ordered to create safe homes to lodge such couples, which would be supervised by the district magistrate or the superintendent of police. Unmarried couples and inter-caste or inter-religious couples facing danger will be allowed to use this service. Finally, the court stated that if a police official discovers that a khap panchayat has broken the rules and does nothing, disciplinary procedures must be launched and the officer penalised within six months, the court decided. This landmark judgment has definitely laid the foundation for the executors of the law to awake and act in promotion of law and lawful duties and at the same time government is made responsible for protecting the lives of those torments by direction of various measures to be undertaken by both Central and State Governments. This case surely is an example of liberal jurisprudence exercised by the apex court.

Going down the line in the year 2011 in the case of *Armugam Servai vs. State of Tamil Nadu*¹⁸, the bench comprising of Markenday Katju, Gyan Sudha Misra JJ, held that, on

¹⁸ *Armugam Servai vs. State of Tamil Nadu*, AIR 2011 SC 1859

reaching the age of majority every individual becomes independent and gets the right to marry a person of their choice. This freedom of choice is not bound by caste, creed, or religion; a person can marry someone from a different caste or with someone who the parents do not approve of. In such cases parents have the free mind to cutoff the relations, but they cannot harass or threaten the young couples. The court also advised the government's administrative department to keep an eye on the situation "that if a person, who is major, undergoes inter-caste marriage with another, the couple must not be harassed by any one or subjected to threats or acts of violence. However, if anyone threatens or harasses or commits violence, a criminal proceeding shall be instituted against such person." It went on to say that anyone convicted of an act of honour killing under the legislation should be prohibited from running for office for at least five years. Fast track courts should also be established to expedite the trial of instances involving honour killings. A further legal correction should be made by amending the Special Marriage Act to shorten the time it takes to register a marriage from one month to one week, as well as a change to the Indian Evidence Act to transfer the burden of evidence to the accused and the bench agreed that a modification to the Indian Penal Code should be made to add a new section pertaining to the concept of honour killing, as well as a punishment for the crime. The Shakti Vahini case was thus an extension to this verdict and the aspects which were left out like video recording and making police and Governments more responsible were the additional facets.

Two more cases needs mentioning the first one *State of U.P. v. Krishna Master and Another*¹⁹ a case were six members of a family were killed by three persons, who were later awarded life sentence for honour killing by the division bench of Supreme Court. The perpetrators were sentenced to life in prison for the crime of honour killing by the Supreme Court, which was presided over by Justice Harjit Singh Bedi and J M Panchal JJ. The Supreme Court declined to sentence the appellants Master Krishna, Ram Sewak, and Kishori to death since the crime occurred over two decades ago, and it chastised the High Court for acquitting them by dismissing the testimony of a child and other witnesses. In *Lata Singh vs. State of Uttar Pradesh and Anr*, a panel of two justices, Justice Ashok Bhan and Markendey Katju JJ, expressed their worry over incidents of harassment, torture, threats, and violence against young men and women who married across caste lines. Threats, harassment, assault, and other forms of harassment are all prohibited, according to the court, and perpetrators must be punished for their actions or omissions. The bench echoed that, "There is nothing

¹⁹ *State of U.P. vs. Krishna Master and Anr.*, AIR 2010 SC 3071.

honorable in such killings, in fact they are nothing but barbaric and shameful acts of murder committed by brutal and feudal minded persons who deserve harsh punishment”.

Thus thread by thread with every case tackled by the apex court it tries to work on more stringent measures to protect the life and rights of youngsters of India. As Justice Krishna Iyer has quoted, Law without Justice is blind, if laws are there but no voice to address the concern of needy then the justice is visionless, similarly Justice without law is lame, righteousness is there but it is crippled or weak then also it is difficult to walk on the path of justness and law geared to Justice is order when both are handy to each other supplementing and complimenting each other society remains just & fair.

SUGGESTIONS:

1. The Separate legislation is not the need of the hour but with a new triggered debate on love jihad if an independent legislation comes at least strict and stringent punishments will help in bringing down the rate of honour killing but it is not going to stop the offence. Hence with the help of present set of laws executives should implement the law of letters into action to bring the needed dynamism of law protection.
2. Awareness, discussions, education are the best remedies for the honor crime.
3. Handy legal setup should be made available to the victims of honor crime so that they can express their grievances and also get the idea regarding which of legal provisions they can resort to so that they will be safe and sound.
4. Society should openly embrace and support women's decisions in all aspects of their lives.
5. As judgments of the Apex Court no legal backing should be provided to assemblies or institutions dealing with life of the people against the law.
6. If the relationship is not acceptable to the families then let them be not part of your family, you can shun the future relations but don't play with life of anyone as a toy or respect their decisions as adults and let them go ahead and let them learn from their own mistakes, if you think that they are committing mistake.
7. As families will show inclination to honour decisions of their loved ones automatically the honour killing will start showing the downward graph, thus by counselling the families must be made aware about their limitations and prevalent laws and how breaching the law and cutting the threads of relation adds only in making the lives of all miserable than honorable.

CONCLUSION:

Honour killing is carried out in order to preserve the family's grace and honour. But there is no honour in murdering someone, especially someone close to one's heart; it is unquestionably not worth it. Because religion and laws are always subjective and susceptible to interpretations, the domains of 'religion' and 'culture' cannot and must not be utilised as a pretext for the slaughter of women or any individual. Everyone has the right to a dignified and equitable existence. As a result, aggressive legislation is the only way to combat such dishonest actions. There is no faith or culture that can justify the heinous act of honour killing. The freedom to believe does not imply the right to murder. Many crimes and criminals have been declared punished by the judiciary, yet a few offenders have escaped owing to legal loopholes. One such flaw frequently stated is that there is no distinct statute or provision in Indian law dealing with honour killing. If the current set of laws and legal standards are successfully followed, we can still go a long way toward preserving some valuable lives. Multiple laws are insufficient to eliminate the threat of honour killings. Let us use the plethora of laws to apply them with utmost care. As laws can only assist in the punishment of criminals, the crime itself can only be eradicated if people's mindsets or mentalities are reformed.