

HONOUR KILLING: EMBARRASSMENT TO A STATE BUILT ON TOLERANCE

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“Honor killings are not honorable by God. They are driven by ignorance and ego and nothing more!”

Indian society is built on the principles of equality and acceptance. The preamble to the Indian Constitution (“**Constitution**”) declares it as a Sovereign, Socialist, Secular, Democratic Republic. Secularism, which is recognized as one of the basic features of our Constitution, works on the principle² of, ‘*Sarva Dharma Samabhava*³’; an approach of tolerance, understanding and equality of all religions. India prides itself in maintaining, unity in diversity and a sense of common brotherhood. The Hon’ble Supreme Court⁴ has recognized, Secularism as, “*one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution.*” Therefore, in a country like ours, built on such strong principles of patience and tolerance, incidents of honour killing are not only antagonistic Secularism, rather, a direct blow on such core foundational principles.

Though, loosely termed as honour killing, there is no honour associated with such heinous acts. On the contrary, such butchery in the name of family’s pride are more of an event of savagery and shame, rather, than something to be gratified of. In fact, such incidents bring more disrepute to a family rather than upholding the so-called family name and traditions. In this regard, the Hon’ble Supreme Court in *Lata Singh v. State of U.P. and Ors.*⁵, observed, “[t]here 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.”

It is commonly observed that the underlying guiding force behind such dastardly acts of violence is a misguided understanding and narrow mentality of certain classes of self-proclaimed saviors of tradition. More often than not, such crimes are committed in the name of religion, unmindful of the fact that no religion professes the use of violence. Furthermore, such gruesome incidents

¹ Suzy Kassem

² Dr. S.D. Sharma, in Dr. Zakir Hussain Memorial Lecture, delivered at Visva Bharati Shanti Niketan on 29.04.1989 (Refer to *A.S. NarayanaDeekshitulu v. State of Andhra Pradesh and Ors.*, (1996) 9 SCC 548)

³ Concept embodying the equality of the destination of the paths followed by all religions (all Dharmas (truths) are equal to or harmonious with each other)

⁴ *M. Ismail Frauqui and Ors. v. Union of India (UOI) and Ors.*, (1994) 6 SCC 360

⁵ (2006) 5 SCC 475

are directed more towards women than men, though, men may also become targets⁶ of attack by members of family of women with whom they are perceived to have an 'inappropriate relationship'. Needless to say, honour killing guillotines individual liberty, freedom of choice and one's own perception of choice. Murders committed in the name of honour, further, amount to an utter disregard of the rights conferred to individuals under the Constitution to manifest their choice, *inter alia*, in relation to their choice of partners. In this regard, the Hon'ble Apex Court⁷, observed, "*It has to be sublimely borne in mind that when two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognised under Articles 19 and 21 of the Constitution. Such a right has the sanction of the constitutional law and once that is recognised, the said right needs to be protected and it cannot succumb to the conception of class honour or group thinking which is conceived of on some notion that remotely does not have any legitimacy.*"

Incidents of honour related homicides are witnessed worldwide and are not confined within the limits of a particular community, state, country or a nation. Though, the designations may change, such as; honour killing, shame killing, pride killing, etc., these acts are nothing more than murders of family member(s) on a belief that the acts of victim has resulted in lowering the name of the family. In one of its Reports⁸, the United Nations duly noted, "*[m]urder to cleanse family honour is committed with high levels of impunity in many parts of the world. Although honour crimes have mainly occurred in the vast zone spreading from the Sahara to the Himalayas, it also occurs in other regions and countries with migrant communities.*" However, it is quite unfortunate that most of such incidents are either unreported, under-reported or un-documented. In this regard, the United Nations' Secretary General in its Report⁹, acknowledged, "*Crimes against women committed in the name of "honour" may occur within the family or within the community. These crimes are receiving increased attention, but remain underreported and under-documented.*"

In India, incidents of honour killing are commonplace in many parts, particularly in the States of Haryana, western Uttar Pradesh and Rajasthan¹⁰. While, in the western parts of the world, incidents of honour killing may be attributed mostly to women's desire/ demand of greater independence and choosing their own way of life. In India, the motives behind honour killing incidents may be several; marital infidelity, pre-marital sex, having unapproved relationships, refusing an arranged marriage or even rape, etc. However, a majority of such incidents are

⁶ Law Commission 242nd Report (Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework)

⁷ *ShaktiVahini v. Union of India*, (2018) 7 SCC 192

⁸ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo (23.05.2012)

⁹ In-depth study on all forms of violence against women: Report of the Secretary-General, A/61/122/Add.1 (2006)

¹⁰ Refer to *Bhagwan Dass v. State (NCT of Delhi)*, (2011) 6 SCC 396

attributed to the factum of marriages by family members with individuals outside the religion or within the same gotra (lineage) or in transgression of societal norms, etc.

In India, the institutions mostly responsible for perpetrating hatred and instigating innocent minds to commit incidents of honour related homicides are the Caste Councils or Panchayats, vernacularly known as 'Khap Panchayats' or 'Katta Panchayats', etc. Such institutions openly profess themselves as guardians of society and traditions, enforcing their diktats, while alleged adopting 'moral vigilantism'. The Hon'ble Supreme Court¹¹, while sternly deprecating the hate decrees or diktats of such Caste Councils, held, "*We have in recent years heard of "Khap Panchayats" (known as "Katta Panchayats" 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.*"

There are several provisions in India, under the existing law, to deal with the menace of honour killing. Provisions under Sections 299 till 304 of the Indian Penal Code, 1860 ("IPC"), penalize several acts/ offences ranging from murder to culpable homicide not amounting to murder with punishments such as death, life sentence, imprisonment for a period upto 10 years, and/or fine, etc. Sanctions are also prescribed under IPC for the attempt to commit murder¹² or culpable homicide¹³, besides prescribing punishments for persons who are a party to criminal conspiracy¹⁴. Further, Sections 107 till 116 IPC prescribe sanctions for individuals guilty of abetment of offences, including murder and culpable homicide. Under, IPC, provisions for imputing joint and group liability, for acts/ offences committed with common intention and object can also be traced to the provisions under Sections 34 and 149, respective, thereof.

Indian judiciary has also adopted a stern view on the incidents of honour killing, not only terming the same as barbaric, rather, time and again reiterating that such incidents fall within the category of rarest of rare cases, deserving death penalty. In this regard, the Hon'ble Supreme Court¹⁵ in *Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396*, held, "*In our opinion honour killings, for whatever reason, come within the category of the rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilisedbehaviour. All persons who are planning to perpetrate "honour" killings should know that the gallows await them.*" The Hon'ble Court¹⁶ has further emphasized that under such cases, concept of

¹¹ *ArumugamServai v. State of T.N., (2011) 6 SCC 405*

¹² Section 307 of the Indian Penal Code, 1860

¹³ Section 308 of the Indian Penal Code, 1860

¹⁴ Sections 120A and 120B of the Indian Penal Code, 1860

¹⁵ Also refer to *State of U.P. v. Krishna Master, (2010) 12 SCC 324*

¹⁶ *Vikas Yadav v. State of U.P., (2016) 9 SCC 541*

victim compensation cannot be marginalized and that adequate compensation must be awarded to the family members of victims. Courts in India¹⁷, have further, not shied away in exercising their inherent jurisdiction and issuing directions to State and police authorities to provide adequate protection/ comforts to prevent incidents of honour killing.

In *ShaktiVahini v. Union of India*¹⁸, the Hon'ble Supreme Court took a serious note of the illegal actions of the Caste Councils, so called Khap Panchayats and observed, "*the extra-constitutional bodies which engage in feudalistic activities have no compunction to commit such crimes which are offences under the Penal Code, 1860. It is because their violent acts have not been taken cognizance of by the police and their functioning is not seriously questioned by the administration. The constitutional provisions are shown scant regard and human dignity is treated at the lowest melting point by this collective.*" After reprimanding the lackadaisical attitude of State and police machinery to carry out their duties, the Hon'ble Court, in this case was pleased to direct, *inter alia*, State to identify areas where honour killing and assembly of Khap Panchayats took place; Secretary, Home Department of State to issue directions to Superintendent of Police of the concerned Districts for ensuring that the Officer-in-charge of the Police Stations of the identified areas are extra cautious if any instance of inter-caste or inter-religious marriage within their jurisdiction comes to their notice; Police authorities to ensure prompt dispatch of any information received about gathering of Khap Panchayats and initiate steps for prevention such proposed gathering; Police to take remedial measures to prevent passing of Khap Panchayat diktat and in case the same passed, to provide adequate protection to the couple and their family; Police to register a First Information Report under appropriate provisions under law against the members of such Case Councils; State government to take punitive actions against erring Police officials, etc. However, despite law in place and the stern attitude adopted by the Judiciary, the same has not acted as deterrence on the perpetrators of the offence.

The Law Commission of India ("**Law Commission**"), based on a reference made by the, then, Union Home Minister, carried out an exhaustive review of the existing Laws in India dealing with the menace of honour killing and submitted its Report¹⁹ thereon in August, 2012. The Law Commission, "*In order to keep a check on the high-handed and unwarranted interference by the caste assemblies or panchayats with sagotra, inter-caste or inter-religious marriages*", proposed a legislation in the form of "Prohibition of Interference with the Freedom of Matrimonial Alliances Bill"/ "**Bill**". Under the Bill, it has been proposed to, *inter alia*, create a bar on gathering or assembly of people with a view or intention to condemnany

¹⁷ Refer to *Sujit Kumar v. State of U.P., 2002 SCC OnLine All 1326*

¹⁸ (2018) 7 SCC 192

¹⁹ Report No. 242- Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework.

marriage, basis that such marriage has dishonoured the caste, community, tradition, etc. (Section 2); penalize acts endangering liberty and leading to social boycott, harassment, etc., of the couple or their family members, punishable with mandatory minimum sentence (Sections 3 and 4); raise a presumption that a person participating in an unlawful assembly, intends to commit or abet the commission of offences under the proposed Bill (Section 6); confer power to prohibit unlawful assemblies and to take preventive measures on the Sub-Divisional/ District Magistrate (Section 8); etc. The Bill further proposed the provisions thereof to be in addition (Section 5) to the existing provisions under IPC and also that the prescribed offences under the Bill, to be cognizable, non-bailable and non-compoundable (Section 11). Pertinently, the Bill has yet not been adopted in a statutory form.

Proponents in favour of prescribing honour killing as a separate offence argue that the same would help in clarifying the law for State and enforcement machinery. It has been further argued that casting a burden of proof or raising presumption on the illegality of assembly of Case Councils would deter such assemblies in their unlawful actions. Even the prescription of a minimum sentence and prescribing new offences as non-bailable, non-compoundable and cognizable, it has been argued, would favour in raising some element of fear in the minds of goons perpetrating hatred. *Per contra*, several believe that existing laws are sufficient to deal with the issues and problems arising out of such incidents and that the enactment of new law would result in more confusion than clarity. Those against a new law have further argued that raising strict presumptions may also result into a wrongful invocation of the provisions for carrying out vindictive designs of erring police/ State officials.

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It is needless to reiterate that honour killing is a grave human right violation, besides, amounting to curtailment to rights of individuals/ adult members of society to manifest and express their choices. Understandably, creation of new laws is not a solution to this problem, genesis of which roots deep into the archaic and misguided though process of a few. In fact, besides an effective implementation of the existing provisions under law, there is also an urgent need of awakening and awareness amongst the so-called cultural vigilantes. A serious reconsideration on constricted mentality is required so that the institutions of marriages/ union/ love are not curtailed for the reasons of such archaic though process. It is, further, imminently required that the underlying principles of our Constitution of compassion, acceptance, integrity, secularism, etc. are embodied by each and every individual for developing a sense of tolerance, to achieve a harmonious State. As someone²⁰ once rightly said, *“Tolerance is the mindful capacity to love, respect, accept the differences that make people unique. This tolerance exists so that all people can live in harmony without the exclusion of one over the other or the will of the few disaffecting the lives of the many.”*

²⁰ Byron R. Pulsifer