

Honor Killing - Current National and International Legal Framework

Mr. Salim Khan

Research scholar C.C.S. University Meerut

Abstract- *The notion of honour has fundamental importance in collective societies since the dishonorable conduct of an individual reflects upon the rest of the family members or community. The worldwide media has regularly exposed younger generations to liberal thought, which has caused them to start to doubt the standards of the old society that have been imposed by extreme vigilance. The most horrifying of all the several crimes of honor that occur is undoubtedly honor killing. Despite the fact that some of the illegal components of honor killing may overlap with those necessary for murder under a country's legal systems, honor killing has several particular qualities that make it even more horrifying than murder. Usually, a victim of an honor killing is a relative or friend who belongs to the victim's own social group. The perpetrator is frequently a brother, father, mother, or other relative whose traditional duty it was to protect the victim from danger. Honour killings are inherently murders of individuals. All murders of individuals that are prosecuted if they fall within the ambit of sections 299 and section 300 of the IPC. On international level the provisions of the CEDAW cover murder and other homicides that do not amount to murder. The stipulations of the treaty, which in general forbids any degree of bodily or mental discomfort that is accumulated to women, immediately cover all aspects and angles of honour killings against female members of society. The executive is required to exercise all due diligence to ensure that the member states of the CEDAW take preventive measures to protect women and outlaw all forms of discrimination against them.*

Keywords - *Honor Killing, Indian Penal Code, Customs, Caste-system, Horrible offence and International laws.*

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Meaning and Definition of Honour Killing - Honor killings are similar to intra-family violence in that they involve the murder, usually by male relatives, of women who are thought to be the guardians of the male or family's honor and who as such must preserve their virginity and chastity. These women are thought to have ruined the family's honor and should be killed in order to restore it. Although men can also be killed for the sake of honor, women are typically the victims of honour killings. Honor killings are first and foremost acts of violence against women and violations of human rights. Even though there is disagreement over what exactly qualifies as a "honor killing," most researchers, female rights activists, NGOs, and legislators consider it to be a specific category of honour-based crimes in which a man is killed by the family in order to restore the degraded family honor. Honour killing is defined as the act of murdering a person, usually a female relative (such as a daughter, sister, or spouse), who is believed to have brought shame to the family by engaging in improper sexual behavior.

Honour killings have been occurring for a long time. They have been taking place all over the world for centuries. Honour crimes are violent acts, generally murder, carried out by family members against male or female relatives who are believed to have damaged the family's reputation. Even the perception that a woman has behaved in a way that "dishonors" her family is enough to start an attack on her life. A woman may be targeted by her family for a variety of reasons, including refusing to enter into an arranged marriage, being the victim of sexual assault, seeking a divorce even from an abusive husband, or (allegedly) committing adultery. The decision to kill the daughter in the interest of upholding the family honor might be made for a number of different reasons. The fact that the rural sections of India refuse to modify their attitude toward marriage is the most evident reason why this practice still occurs as quickly and frequently as it does. They contend that any girl who defies her parents' wishes about marriage and opts to a They decide to give the daughter the death penalty since granting her requests to someone of a different gotra or caste would undermine the family's honor. Sociologists contend that the caste system's persistent caste-based rigidity is what causes honor killings to occur. Here, they commit this heinous act out of fear of losing their caste status because of which they receive many benefits. Crime. The people's mindset has not evolved, and they just cannot understand that marriage can occur within the same gotra or outside of one's caste, which is another reason why honour killings occur.

Human Rights Watch explains the term honour killing as follows:

Honour killing are the acts of vengeance, usually death, committed by male family members against female family members, who are held to have brought dishonor 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 away that ‘dishonors’ her family is sufficient to trigger an attack on her life.¹

Honour killing also referred to as ‘customary killing’ or ‘Domestic public violence’ According to The Black’s Law Dictionary honour killing defines² “A crime motivated by a desire to punish a person who the perpetrator believes has injured a person’s or group’s sense of honour.” Honor killing is neither specifically defined by law nor is there any other term that could be said to have widespread acceptance. Yet, human rights organizations and experts have not offered many reasons of honour killings. Honor-based violence, honour crimes, and violence based on honour rules are all terms used to describe the notion of honour killing, which is a complicated idea., “...since they have many variants of definitions.”³

Indian Legal Framework for Honour Killing - There are numerous provisions in the Constitution of India that that substantiate and allow for a citizen to do as and what he wishes to do till the time he or she does not encroach upon the rights of others. There are fundamental rights and civil liberties that have been given wide interpretations so as to allow for citizens and individuals within India to take free decisions. However, fundamental rights and directive principles of state policy do not always deal with issues and freedoms directly, but have to be interpreted in a fashion so as to allow for the implementation of these liberties and freedoms into ever pervading spheres of life. Honour killings are inherently murders of individuals. All murders of individuals that are prosecuted if they fall within the ambit of sections 299 and section 300 of the IPC.

Honour Killings are cases of homicide and murder which are grave crimes under the IPC (“Indian Penal Code”). Under the provisions of 299 & 301 of the IPC, culpable homicide not amounting to murder and murder are both made punishable offences. . The offence of honour crimes falls within the parameters of section 299 and 301 because families kill either with the intention to kill or not for the breach of family honour. The punishment for the offence of honour killings or any killings whatsoever for that fact are contained under section 302 of the Indian Penal Code. In past instances, the courts of India have also held the khap Panchayats and the families as well the local communities responsible for the offence of honour killings under section 302 if the IPC.⁴

Such murders are violative of Articles 14, 15 (1) & (3), 17, 18, 19 and 21 of the Constitution of India. By the force of Article 14, India puts forth the rule of law that means that everyone is equal before the eyes of law and that no one is above the law. This means that the law is applicable to each and every one and no one irrespective of their social status can breach the law and get away with it. This part of the Constitution of India falls within the ambit of the basic structure doctrine, which states that no authority can amend or change this particular power that the constitution permits to the citizens and individuals in India. And it is for this very reason that all crimes committed for the alleged or actual protection of honour in the family are grossly adverse to the rule of law as contained in Article 14. Honour killings are inherently murders of individuals. All murders of individuals that are prosecuted if they fall within the ambit of sections 299 and section 300 of the IPC. These are also directly violative of Article 19 and 21 of the Constitution of India.

Article 19 is the following- “19. Protection of certain rights regarding freedom of speech etc

- (1) All citizens shall have the right (a) to freedom of speech and expression;
- (b) To assemble peaceably and without arms;
- (c) To form associations or unions;

¹ Human Rights Watch, Honoring the killers. April 2004, vol.16 No.1(E)

² Bryan A. Garner (ed), Black’s Law Dictionary, Ninth edition 2009 P. 428

³Linda Edvardsson, “Crimes of Honour- Females’ Right for Support in the Multicultural Society” (2008),availableat:<https://muep.mau.se/bitstream/handle/2043/6820/1%2B2%2B3.pdf?sequence=1&isAllowed=y> (Last visited on October 20, 2018)

⁴The Indian Penal Code, 1860. Sections 299, 301 and 302

- (d) To move freely throughout the territory of India;
- (e) To reside and settle in any part of the territory of India; and
- (f) Omitted
- (g) To practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.”⁵

Article 21 provides the Protection of life and personal liberty as “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Therefore, all such murders are against Articles 19 and 21 of the Indian Constitution, which have consistently been given broad interpretations in order to protect the lives and way of life of Indian citizens. Therefore, all coercive and aiding behaviors on the part of the perpetrators, their families, communities, villagers, or khap Panchayats constitute violations of Articles 19 and 21 and are subject to punishment under Sections 299 and 300 of the IPC. The Section 299 of the IPC reads- “ Culpable homicide.-- Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

⁵The Constitution of India. See Article 19

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z' s death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or to cause death by doing an act that he knew was likely to cause death. Explanation 1.- A person who causes bodily injury to another who is laboring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death. Explanation 2.- Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented. Explanation 3.- The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.”

While section 300 of the IPC reads “Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly,- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Hindus, Muslims, Christians, and Zoroastrians each have their own laws that govern marriages in accordance with their respective religious practices, as long as such rituals are in line with Indian public policy. The Special Marriage Act of 1954 was created to regulate marital unions between people who want to marry outside of their marriage or social class.

That shows the establishment's intent, which calls for the rural Indian community and khap Panchayats to acknowledge the legalization of interfaith and inter caste unions. In order to achieve their own goals, the Indian people frequently disregard provisions that are in place to protect such marriages. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, which was passed by the Indian Parliament to outlaw discrimination against the scheduled castes and scheduled tribes in India, also prohibits honour killings that are justified by caste differences. While this contains the legal discrimination against marriages between people of different religions, it also violates the law.

This paints a painful picture of the actual circumstances faced by the smallest quasi-judicial bodies, namely the khap Panchayats, when they decide on issues related to honor crimes while acting in opposition to the law of the land. There are a number of offenses committed against both men and women who are members of scheduled castes and scheduled tribes, the majority of which are sexual in nature and are intended to be criminalized by the law. In keeping with the principles of this country's founding fathers, the act seeks to end discrimination against the lower classes.

Apart from the aforementioned provisions, there are also human rights legislations, namely the Protection of Human Rights (Amendment) Act, 2006, creates the legal framework to protect the individuals residing within Indian from the various acts and instances by virtue of which the basic necessities of life are not take away from the individuals residing in India. In accordance with the legislation, the National Human Rights Commission and the State Human Rights Commission have been created for greater access and implementation of human rights law in India. There are plenty of Human Rights Courts that have also been established for the better protection and quicker adjudication of the human rights of the vulnerable groups. In many instances of honour killings there are instances where the couple is burnt alive or has been subjected to acid attacks; and such instances are in gross violation of the human rights law as laid down by the Protection of Human Rights (Amendment) Act, 2006.

Not only are many honour killings against marriage, but they are also seen as improper behavior after marriage. The Protection of Women from Domestic Violence Act of 2005 covers both these claimed indecencies and the offenses associated with them. It guarantees a woman's protection against her husband and his family in the event that they hurt her body, mind, or reputation. When a woman is discovered having adulterous relations with a man other than her husband, she frequently faces gruesome and violent situations that are covered by the requirements of the relevant law. "For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –

(a) Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person."⁶

The judiciary and the executive have the power to take punitive action against those who attempt to conceal or manipulate evidence in accordance with Section 13 of the Indian Evidence Act of 1872. This provision is applicable for the entire duration of the crime that begins at the beginning of the crime at the attempt stage, and carries on endlessly. In most cases of honour killings, the family or community or local community of the killing makes the best attempt to conceal evidence that could charge sheet the perpetrators of the crime. Section 13 states that "Where the question is as to existence of any right or custom, the following facts are relevant: (a) Any transaction by which the right or custom in question was created, claimed modified, recognized, asserted or denied, or which was inconsistent with its existence; (b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from." This is also applicable to the illegal verdicts passed by the khap Panchayats in violation of the law. Thus it is the domestic legal framework for honour killing in India.

International Legal Framework for Honour Killing - The United Nations is constantly working in order to protect the human rights throughout the world through its various Legislations, Conventions and Treaties. Some important provisions of these have been discussed in this research paper. For instance The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is an international treaty adopted in 1979 by the United Nations General Assembly. Described as an international bill of rights for women, it was instituted on 3 September 1981 and has been ratified by 189 states. India is a signatory to the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW 1979) and has also ratified the convention. The provisions of CEDAW can be used to argue that the tradition and practice of punishing individuals for ill-informed ideas of dishonoring the family, is essentially institutionalized discrimination against individuals and creates a legally binding obligation for India, as a State party to the convention, to take all measures to end all forms of the practice of honour killing and ensure that all discrimination against women in matters relating to marriage and family relations are eliminated, providing them with the equal right to enter into marriage and to freely choose a spouse and to enter into marriage with their free and full consent.

For instance, Article-2 of the said treaty mandates that states parties ratifying the Convention declare intent to enshrine gender equality into their domestic legislation, repeal all discriminatory provisions in their laws, and enact new provisions to guard against discrimination against women. States ratifying the Convention must also establish tribunals and public institutions to guarantee women effective protection against discrimination, and take steps to eliminate all forms of discrimination practiced against women by individuals, organizations, and enterprises. And the article-16 prohibits "discrimination against women in all matters relating to marriage and family relations." In particular, it provides men and women with "the same right to enter into marriage, the same right freely to choose a spouse," "the same rights and responsibilities during marriage and at its dissolution," "the same rights and responsibilities as parents," "the same rights to decide freely and responsibly on the number and

⁶ Protection of Women from Domestic Violence Act, 2005

spacing of their children," "the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation" "the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. Thus, the CEDAW prohibits discrimination against women protecting them as a class or category.

Apart from the CEDAW, there is the UDHR ("Universal Declaration of Human Rights") of 1948,⁷ which puts forth the philosophical premise that all individuals are born equal and no one is above or greater than another, and this equality must be established, maintained and protected at all given points in time. This declaration protects class based and gender based discrimination, and on those grounds protects the rights of both women and men from aggressors who kill them in attempt to preserve the honour of the family. Article 1 and 2 of the declaration state that "all human beings are born free and equal in dignity and rights," and that "everyone is entitled to all the rights and freedoms set forth in" the declaration irrespective of "sex". Therefore as enumerated in the declarations Articles 3 and 5, women are entitled to enjoy the "right to life, liberty and security of person" and also the "right to be free from torture or cruel, inhuman and or degrading treatment". Crimes of honour violate Article 3 and 5 when the purpose of the perpetrator is to inflict severe mental and physical pain on the women.

There is also the ICESCR of 1976("International Convention on Economic, Social and Cultural Rights").⁸ Under Article 12 of the International Convention on Economic, Social and Cultural Rights (ICESCR 1976) State parties have to take all steps to ensure the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health", is ensured. Honour killings involve aspects of mental, physical and sexual violence as is clear from the aforementioned incidents that have been reported. The executive bodies of the nations are mandated to protect these rights and thereby take strict action against those who violate these provisions in furtherance of honour crimes. There are other covenants which though are not legally binding but carry persuasive value in directive principles to be followed by the states to prohibit honour killings. An example of the same is the BPFA of 1995("Beijing Platform for Action")⁹ which in paragraph 232 states "human rights of women include their right to have control over and decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence" and directs the executive authorities to "take urgent action to combat and eliminate violence against women, which is a human rights violation resulting from harmful traditional or customary practices, cultural prejudices and extremism."

Conclusion - Honour crimes are a clear violation of the local laws of the country and the international law which India is obliged to uphold. The legal framework is thereby in place to ensure that adequate action should be taken by the police forces to ensure that there are no honour killings in the country. These provisions need to be enforced repeatedly in order to ensure that the frequency in their violation is minimized substantially. Two UN documents that deal directly with the offences of honour killings are "Declaration on the Elimination of Violence against Women" of 1993 and the "Working towards the Elimination of Crimes against Women Committed in the Name of Honour" of 2003. In these documents it has been categorically stated that "Violence against women is a manifestation of historically unequal power relations between men and women, which have led to discrimination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men." However, the law itself and only partially its enforcement are not the issue. The bigger problem at hand is that communities living in the areas where honour crimes are more likely to occur actually support such criminal behaviour. The force established to prevent honor crimes has its single biggest hurdle here.

⁷UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html>

⁸UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>

⁹United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference, on Women, 27, October, 1995, available at: <http://www.refworld.org/docid/3dde04324.html>