ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

Volume 2
Issue I

August 2020

VIPS STUDENT LAW REVIEW

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES

ISO 9001:2015 Certified Institution
(Affiliated to GGSIP University & Approved by BCI & AICTE)
The Institute is NAAC Accredited 'A' Grade, recognized by UGC under section 2(f)
& NBA Accredited for MCA Programme

TABLE OF CONTENTS

S. No Title of the Paper/Author **Page No.**

1. Position of Colour Trademarks, Acceptability And Related Issues: A Comparative Analysis..... 1
Anuja Misra and Chitra Ahluwalia

2. Comparative Analysis of Corporate Governance in India and USA 18
Nikita Mittu

3. Right to Marry of Muslim Women on Divorce: An Analysis..... 39
Dr. Raghuvinder Singh and Arti Sharma

4. Syrian Refugee Crisis and its Impact on International Humanitarian Law..... 28
Jayanta Boruah

STUDENT SECTION

5. India's Call on Scientific Criminal Investigations 54
B.Yamuna Saraswathy and R.B. Rishabh

6. Copyrights in ebooks: A Tussle between DRM Technology and Principles of Copyright Law 62
Ananya Jain

7. Assimilating Intermediary Liability Regimes In India..... 74
Akanksha Badika and Pragya Mishra

8. Squinting at the Narco-Analysis and the Brain Mapping tests through 'Fluid" consent 86
Kanak Mishra

9. Changing Dimensions of Fantasy Games in India and its Legality..... 98
Akshit Bhardwaj

10. Little Red Riding Lawsuit: An Analysis into the Legality and Application of Single-Colour Trademarks in India, Highlighting the Dire Need for their Adoption with reference to Christian Louboutin S.A.S v. Abubaker and Ors. 112
Manan Katyal

11. A Shift to Inquisitorial Model: Assessing the Challenges to India's Criminal Justice System..... 132
Merrin Muhammed Ashraf

12. Analyzing the Enforceability of Force Majeure Clause in light of COVID-19 … 146
Rishabh Soni

13. Lockdown in India- A Major Setback? 156
Ananya Sanjiv Saraogi and Vallabhi Rastogi

14. Due Diligence Exercise: Demystifying the Duty of Merchant Bankers in Indian Securities Law Regime 171
Mansi Mishra

15. The Use and Misuse of Mercy Petitions: Its Growth as a Defence 186
Rupesh Sunil Dhengre and Omeshwari Pancham

16. A Surge in Domestic Violence: Manifestations of the Virus 198
Adiba Khan and Gunjan Kanoongo

17. Honour Killing: Preserving Honour or attracting Ignominy 213
Nidhi Chhillar and Ritika Sharma

18. The Biological Weapons Convention: Legal Lacunae and the way forward in light of COVID-19 223
Samavi Srivastava and Rounak Doshi

19. Marital Rape: Need for its Criminalisation in India 242
Manasvita Tejsi and Mridull Thaplu

CASE COMMENTS

20. Buyers' Cartels- Two Differing Opinions by the Competition Commission of India 258
Hartej Singh Kochher

21. Rathnayke Tharanga Lakmali v. Niroshan Abeykoon: Sri Lanka Supreme Court Recognises Custodial Death as a Violation of Right to Life..... 263
Raj Krishna and Kumar Mukul Choudhary

22. Dissecting the 100% Reservation Case: Case Analysis of Chebrolu Leela Prasad Rao v. State of A.P. 271
Jaideep Singh Lalli

HONOUR KILLING : PRESERVING HONOUR OR ATTRACTING IGNOMINY

Nidhi Chillar* and Ritika Sharma**

Abstract

Honour killing is one of the most serious offences against humanity. Women have been viewed as property from time immemorial and that is the reason that the present patriarchal society is unable to accept the fact that women have the right to choose their male counterparts. It is expected from them to live according to the norms of the families and the community she lives in; even the slightest deviance may lead them to lose their lives. The situation becomes worse when the woman falls in love with a man who is from a different caste. It is believed that inter-caste marriage brings dishonour to the family and this is the reason that many girls have fallen prey to honour killing. The families kill their daughter, sometimes even her male counterpart to preserve what they think to be the honour of the family. The Khap Panchayats also have a major role to play in honour killings. Khap Panchayats which are seen as the authority to preserve the tradition and custom of the villages often instigate and engages in the brutal act of honour killing.

Honour killing is a crime not only against an individual but the society as a whole. Various measures have been taken by the legislature to enact strict laws against honour killing. Judiciary has also played an important role in punishing the perpetrators of such a brutal offence.

The present paper tries to cover the topic "honour killing" in detail. The paper tries to focus on the causes responsible for honour killing, the infamous cases on honour killing, how the Khap Panchayats have played a major role in instigating honour killing. The paper has also tried to bring in light the consequences of honour killing and to describe the laws to protect the victims from honour killing, the response of the

* Student, Vivekananda Institute of Professional Studies, Delhi.
** Student, Vivekananda Institute of Professional Studies, Delhi.

judiciary on such crimes. The paper has also provided for the desired solution to combat the menace of honour killing.

The paper is primarily concerned with India, however, certain cases that took place outside India has also been highlighted to understand the concept better. The paper has also analysed the judicial response in Honour Killing cases.

Keywords: *honour killing, honour, caste, patriarchy, Khap Panchayats, dishonour, murder, homicide.*

INTRODUCTION

Killing females in the name of honour expresses a despotic society dominated by arbitrary culture

- Khaled Hishma

Honour killing is one of the barbarous offences. An honour killing is a homicide of a member of a family by the other members of the family, due to the belief that the victim has violated the norms of the community or a religion thereby bringing shame to the honour of the family.[1] Honour killing is nothing but a plain murder in the name of so-called honour. Women have been thought of as a chattel and her chastity a matter of honour. She is brutally killed if she marries, or loves someone who is not of the same caste or religion. The perpetrators justify themselves by citing that the acts of the victim have brought shame to the family and they killed the victim to preserve the honour of the family, with no sign of remorse.

Most of the time, it is the woman who fell prey to honour killing but there can be no denial of the fact that men can also be victims of honour killing by the members of the family of the women with whom is believed to have an inappropriate relationship.[2] It is sad to note that in many countries the data of honour killing are not sufficiently collected and the cases are often difficult to be traced as the cases go unreported or the family members of the victims register or report the cases as suicides or accident.[3]

1 Seied Beniamin Hosseini & C Basavaraju, *Study on Honor Killing as a Crime in India- Cause and Solutions*, 2(1) MYSINTCON 90 (2015).

2 *"Honor' crimes in India: An Assault on Women's Autonomy" Al Jazeera English (Aug. 02, 2020, 10:05 AM), https://www.aljazeera.com/indepth/opinion/honour-killings-india-assault-women-autonomy-180314090856246.html.*

3 Hillary Mayell, "*Thousands of Women Killed for Family "Honor"*", National Geographic News, 12

Causes of Honour Killing

There are various factors responsible for honour killing. Some of them are discussed below:

- Dressing in a way unacceptable to family or community norms.
- Denying arranged marriage or being in a relationship with a man of the caste lower than the girl's caste. It is one of the major reasons for honour killing. In a recent *Kevin Murder Case*, Kevin Joseph who belonged to a Scheduled Caste was murdered for loving a girl named Neenu, who is a Malankara Catholic.[4]
- A woman wanting to obtain a divorce without the consent of the husband. It is considered as a shame for the husband's family.
- Allegation on the character or morale of the women. Sometimes the mere allegations are enough, however false they may be. It is believed that the women should be chaste and pure, any deviance from the prescribed norms is considered as a shame for the whole family.
- If a woman is raped it is believed that it brings dishonour to the family, it is especially the case when the woman becomes pregnant.
- Having an extramarital affair is perceived as bringing dishonour to both the families i.e. the husband's family and the girl's family.

Infamous Cases Related to Honour Killing

Honour killing has often led to major high-profile murders of women in the name of dishonour brought on the family. Honour killing is often done by a male member of a particular family claiming that the action of that woman has defamed the name of the family or its prestige. Such crimes are widely suspected to be underreported and they take place throughout the world. The UN estimates that around 5,000 women and girls are murdered each year in so-called "honour killings" by the members of their families.[5] Honour killings are widely reported in the regions of the Middle East and South Asia but most of these crimes occur in countries like Bangladesh, Brazil, Canada, India, Egypt, Iran, Italy and the United States. The crime of honour killing is not limited to women and girls rather is also on the rise against LGBTQE, particularly gay men.

February 2002, (20th March 2020), https://www.nationalgeographic.com/culture/2002/02/thousands-of-women-killed-for-family-honor/.

4 Shaju Philip, Kerala court finds 10 guilty in case of honour killing, The Indian Express, 23 August 2019.

5 The Horror of 'Honor' Killings' Even in US, Amnesty International, (20th March 2020), https://www.amnestyusa.org/the-horror-of-honor-killings-even-in-us/.

Manoj-Babli Case

The infamous Manoj-Babli honour killing case shocked entire India when a couple from Kaithal district, Haryana were brutally murdered just in the name of ignominy which was brought to the family by the act of the couples. The cruel act was carried out on the orders of Khap Panchayat as the couples married in the same *gotra* which took place in June 2007. On June 23, two decomposed bodies were found from Barwala branch canal in Hisar.[6] The investigations unfolded the shocking details about the case. According to the reports, the couples were forcefully asked to accept each other as brother and sister. When they both denied, the vengeance of the family members came into the picture. The couples were forcefully fed pesticides and were brutally strangled to death. The dead bodies were thrown in the canal. The families of couples lived in Karoran Village, Kaithal. Manoj's family consists of five members. Similarly, Babli's family included five members with the only earning member who was her eldest brother. Manoj's mother confessed that she knew about Babli long before they decided to marry each other. In April 2007, Manoj and Babli got missing from their houses. It was alleged that Manoj has eloped Babli to Chandigarh and they got married to her at a Durga temple which was a mere commitment to one another transcending their willingness to abide by societal norms.[7] The Khap Panchayat intervened and annulled the marriage. However, Babli's relatives were chasing Babli and Manoj even after the Court provided police protection to the couples. Even after all the security and protection of the police and the efforts of the couples to escape, they were kidnapped, beaten and were strangled to death. Their bodies were wrapped in a gunny sack and were dumped in the Barwala Link Canal in Hisar District. The case was brought before the trial court convicted the accused and the policemen who did not comply with their duties rather misused their powers. There were constant threats to the judge also, who gave the verdict in the matter. The matter went for the appeal in the High Court of Punjab and Haryana Court and the four convicts were awarded death sentence.[8]

Qandeel Baloch's Case, 2016

The pattern and the reason for killing in this are not new at all. A Pakistani social media celebrity named Qandeel Baloch was murdered ruthlessly by her brother. She was drugged and asphyxiated by her brother when she was sleeping in her parents home in Multan.

6 Nitish Katra muder case: what you need to know, The Hindu (Aug. 03, 2020, 11:35 AM), https://www.thehindu.com/news/national/Nitish-Katara-murder-case-what-you-need-to-know/article15423924.ece.

7 Death sentence commuted in Manoj-Babli case, THE HINDU, 12 March 2011.

8 Manoj-Babli honour killing: SC allows plea against acquittal of accused, The Times of India (Aug. 05, 2020, 11:40 AM), https://timesofindia.indiatimes.com/india/Manoj-Babli-honour-killing-SC-allows-plea-against-acquittal-of-accused/articleshow/9844060.cms.

Autopsy reports confirmed the same. Her brother Waseem confessed that he murdered her sister as she was bringing disrepute to their family's honour and reputation.[9] The murder was widely condemned all over the world by several famous personalities.

Ghazala Khan's Case, Denmark, 2005

Ghazala Khan was the Danish woman who was killed by her brother as she married against the will of the family. It was confessed by her brother that the murder was ordered by their father to save the honour of the family. It was being mentioned by the family that the girl was involved in an intimate relationship with Emal Khan, three years before her marriage.[10] After the confession of her feelings, she was badly beaten up by her mother and was locked inside the home in isolation. After they were married, the family member played a trick to kill the couple. They pretended to meet and reconcile the issue. They convinced the couples to meet at a railway station and this was the location where both Emal and Ghazala were shot. The accused were convicted in the court proceedings and were awarded requisite punishment.

Bhavna Yadav Death Case, 2014

Bhavna Yadav was a 21-year-old Delhi University student who was strangled to death by her parents just after three days of her marriage. This was because she married against her parents' wishes. This case was one of the most shocking cases as so-called honour crimes rarely involve middle class educated families in big cities.[11] The girl was brutally killed for marrying her batchmate as according to the family, she brought disgrace to their reputation.[12]

Khap Panchayats and Honour Killings

What is Khap?

Khap is a cluster of villages, where every boy and girl is deemed to be brother and sister. Thus, they cannot form the ties of affinity within a khap[13].

9 Qandeel Baloch's absconding brother arrested, THE HINDU, 06 October 2019.

10 Lewis Frazier, "What You Should Know about the honor killing of Ghazala Khan", BBC NEWS, 15 September 2017.

11 Bhawna Yadav,"Small dreams of Delhi 'honor killing' victim", BBC NEWS, 21 November 2019.

12 Urban honor killings: Backlash against change, The TIMES OF INDIA, 23 August 2015.

13 Kachhwaha, K. 2011. Khap Adjudication in India: Honouring the Culture of Crime, International Journal of Criminal Justice Sciences Vol 6 Issue 1 and 2 January-June/July-December (Combined Issue).

Khap Panchayats and their Role in Honour Killing

Khap panchayat is the traditional local judicial body active in north-western states like Haryana, northern Rajasthan, the rural belt of Delhi and western Uttar Pradesh.[14] The leadership of the Khap Panchayat is decided on the parameters of caste, status, gender and financial status etc.

The very mention of khap panchayat brings to our minds the horrifying picture, where the couples are brutally killed for loving each other against the norms of the community.[15] According to the Justice Verma Committee Report, the Khap Panchayats have no sanction under law.[16] The Khap Panchayats have always tried to maintain caste order by preventing inter-caste marriages and debarring *sagotra* marriages. These practices have severely restricted the individual's freedom to choose their life partners. This further unduly emphasises a woman's honour, thus, not only controlling her sexuality but also her marital choice by stigmatising inter-caste marriages.[17]

Khap Panchayats are considered as the custodian of the customs, culture and traditions of the community. Khap Panchayats are seen opposing the marriage within the village, *Sagotra* marriage; marriage within the khap and inter-caste marriages.

The Khap Panchayats does not allow the violation of the above-stated norms. Any violation of these norms attracts strict and barbarous punishments, often leading to humiliation and even the murder. In *Arumugam Servai v. State of Tamil Nadu,*[18]the Hon'ble Supreme Court pointed out that there is nothing honourable in "honour killing" and, it is nothing but a shameful and barbaric murder.

Consequences of Honour Killings on the Society

Honour crimes are usually considered as a convenient expression to describe the incidents of violence and harassment caused to the young couple intending to marry against the

14 Kachhawah, Kavita (2011): Khap Adjudication in India- Honouring the Culture with Crimes (ICJS, Vol 6 Issue 1 & 2 January-June/July-December 2011).

15 Japdeep Singh & Anju Beniwal (eds.), Panchayati Raj and Rural Development (Pointer Publishers, Jaipur, 2015).

16 Government of India, "*Report of the Committee on Amendments to Criminal Law*" (January 2013).

17 Chakravarti, U. 1993. '*Conceptualising Brahmanical patriarchy in early India: Gender, caste, class and state'*, Economic and Political Weekly, Volume (14): 579-85. See also; Baxi, P., Rai, S. M. and Ali, S. S. 2006. *'Legacies of common law crimes of honour in India and Pakistan'*, Third World Quarterly, Volume (7): 1239-53.

18 *Arumugam Servai v. State of Tamil Nadu*, (2011) 6 S.C.C. 405.

wishes of the so-called community or the concerned family members. However, the terms of such kind are often used as catchy phrases and not as apt and accurate expressions.[19] It has been widely observed that men are also targeted by honour killings. The consequences are far more negative. Honour killings are not at all honourable. It is a wrong perception in the minds of the perpetrators that by killing the couples who have disobeyed the norms and the rules of the community would lead to deterrence and no other individual will think of taking any step of this kind. This misconception has led to the deaths of many innocents. There are perils of falling in love. A kind of mental trauma and a deep fear of being killed is usually instilled in society by such acts of honour killings. People begin to fear to fall in love. Love becomes a tool to commit crimes of such sort.

Laws to Protect the Victims from Honour Killing

There is no specific legislation on honour killings as of now and it is generally considered as murder or culpable homicide. However, there are various provisions contained in various statutes and the Constitution that deals with the same. These provisions are discussed below:

- Honour killings are the cases of murder and homicide both of which are the grave offences under the Indian Penal Code (IPC). Section 300 of the IPC deal with murder while Section 299 and 301 deal with culpable homicide not amounting to murder. Since the honour killing is committed with the intention of killing the victims because their acts have brought the dishonour to the family, therefore, the act of honour killing falls within the murder and culpable homicide.[20]
- The members of Khap Panchayat or the family can be made liable under Section 302 of the IPC for instigating to commit suicide those who have violated the norms of the community.[21]
- Since the honour killing particularly targets the woman, it is against Article 14 of the Constitution which provides for the Right of Equality before the Law. Honour killing has given rise to Gender Violence[22].
- Killing someone in the name of honour is violative of Article 21. Article 21 guarantees the right to life and personal liberty. The family members and the

19 Law Commission of India, "*242nd Report on Prevention of Interference with the Freedom of Matrimonial Alliances: A suggested Legal Framework*" (August, 2012).

20 Puneet Kaur Grewal, "*Honour Killings and Law in India*", *5* IOSR JHSS 28, 28.

21 *Ibid*.

22 Seied Beniamin Hosseini, C Basavaraju, "*Study on Honor Killing as a Crime in India-Cause and Solutions*", 2(1) MYSINTCON 90, 91 (2015).

Khap by killing the victim violate Article 21. Every person has the right to live and the capital punishment can only be given as per the rule established by law. Since neither the Khap Panchayats nor does the family members authorised to invoke capital punishment by law, they act in violation of Article 21.[23]

- The Special Marriage Act, 1954 came into force to legalise the marriage solemnised outside the caste, religion or within the same village, khap or gotra. Thus, making such marriages completely legal. The couples belonging to different castes can thus marry under the Special Marriage Act, 1954[24].
- Scheduled Tribe and Scheduled Caste (Prevention of Atrocities) Act, 1989 was enacted to protect the SC's and ST's from any kind of humiliation and atrocities. The Act is connected with honour killings as most of the cases of honour killing are committed in connection to caste and religion.[25]
- The Protection of Human Rights (Amendment) Act, 2006 contains provisions for protecting the individual rights of human beings. It also provides for the establishment of the National Human Rights Commission, the State Human Rights Commission and Human Rights Courts for better protection of Human Rights.[26]

Judicial Response

Every society has its customary practices. Some practices are good for society while others may turn out to be bad. Honour killing is the most barbaric and brutal nature of the customary practice. The judiciary has always condemned Honour killing through its judgments and has been successful in awarding appropriate punishments to perpetrators.

In the *State of Uttar Pradesh v. Krishna Master and Another*[27], the accused were guilty of murdering six members of the family in the name of honour killing. The Hon'ble Supreme Court in its judgment observed that killing six members of the family on the flimsy ground of saving the honour falls within the rarest of the rare cases. The Supreme Court thus awarded rigorous imprisonment for life and a fine of ₹25,000 each, in default, RI for two years.

23 *Supra* at 29.

24 *Ibid*.

25 *Supra* at 91.

26 *Ibid*.

27 *State of Uttar Pradesh v. Krishna Master and Another,* Criminal Appeal No. 1180 of 2004, decided in 2010.

In *Lata Singh v. State of U.P. and Another*[28], the Supreme Court of India observed that the caste system is dividing the nation into two parts. It was observed that inter-caste marriages are in the national interest as they will result in destroying the caste system. The Supreme Court further stated that India is a free and democratic country, and once a person becomes major, he/she has every right to marry any person who he/she likes. If the parents don't agree with the choice of their child what they can do is that they can cut their social relations with the child but cannot threaten or harass them. The Court held that such threats and harassment are wholly illegal and those who commit these shall be severely punished.

The decision of the Supreme Court in *Arumugam Servai v. State of Tamil Nadu*[29] is noteworthy. The case arose in connection with the violation of certain provisions of Scheduled Tribe and Scheduled Caste (Prevention of Atrocities Act), 1989. The Supreme Court observed that the act of Khap Panchayat (khatta Panchayats) in Tamil Nadu in encouraging the honour killing is wholly illegal and is needed to be ruthlessly stamped out. The court further observed that the Khap Panchayats by indulging in such acts takes the law in their hands, and amount to kangaroo courts, which are wholly illegal.

The Supreme Court in *Bhagwandas v. State (NCT of Delhi)*[30] observed that "*honour killing for whatever reason would come within the category of rarest of rare case deserving death penalty*."

Present Situation

In the present situation, crimes of honour killings are taking novice and distinctive forms. It is increasing day by day and there has been no break in the increment if the same. The National Crime Record Bureau statistics depict that honour killings in India have grown by more than 76%-79% from 2014 to 2015.[31] While 28 murders were reported under this category in 2014, this number jumped to 251 in 2015. Moreover, there are many cases which go unreported. The data available is only of the cases which are reported. There have been thousands of cases in the interiors which are not reported.

28 *Lata Singh v. State of U.P. and Another,* (2006) 5S.C.C. 475, AIR 2006 SC.

29 *Arumugam Servai v. State of Tamil Nadu,* (2011) 6 S.C.C. 405.

30 *Bhagwandas v. State (NCT of Delhi,)* (2011) 6 SCC 396.

31 National Crimes Record Bureau, Ministry of Home Affairs, "*Crimes in India*" (2016), (20th March 2020) https://ncrb.gov.in/sites/default/files/Crime%20in%20India%20%202016%20Complete%20PDF%20291117.pdf.

Desirable Solutions

- There is a need for the transformation in the attitude of the people. Inter caste-marriage should not be viewed as a stigma. There's no honour in an honour killing.
- Honour killing should be made a separate offence as it would help in bringing more clarity for the law enforcement agencies.
- Legal Protection should be given to the couples who are threatened for marrying against the wishes of their families.
- Severe Punishments should be awarded to the perpetrators of the offence to give a strong message to all.
- Regular statistics should be collected, studied and analysed to decide the steps that must be taken to combat such crimes.

Conclusion

To sum up, it is important to note that the very act of honour killing itself defies the very rule of nature. Nobody has been embodied with the right to take anybody's life. This authority vests in God only. A mere misconception of false honour and ego leads to such heinous crimes. This has proved to be the greatest setback on the entire social structure. In the name of honour, plain murder is executed. People do not understand that for whom they do such acts, those people of society will never support in any circumstances, whatsoever. In the end, it is only the blood relations who stand in the situations of crisis. The incidents of honour killings have always been a debatable one. It is a stain on society. There is a need to understand that taking life just for the momentary pleasure of maintaining one's honour, status and reputation in society cost huge amounts in the long run.