

Prevention Of Honor-Killings Via The Special Marriage Act

Yogesh Dharangutti* and Rhea Bazaz

Symbiosis Law School, Pune

Symbiosis International (Deemed University)

**Email: yogesh.d@symlaw.ac.in*

ABSTRACT

Honor killing is a cultural phenomenon which attempts to control young individuals by using the aspect of reputation to ensure that they do not rebel or go against established norms. While India may be a democracy where certain rights and freedoms are guaranteed, there still exist certain communities where an individual act of marrying for love is considered as an affront to the family and the community and the family must be avenged.

This paper aims to explore the role and functionality of the existing legislation to address the problem of honor killing, instead of exploring the idea of a separate legislation. The author first explains the idea of honor killing and the way it takes place, along with the various aspects of sexism related to it and the latest statistics at the national level. The author then moves on to the existing legislations and the loopholes in them. The author then goes into the history of the Special Marriage Act and various controversies and debates which surrounded it while analyzing the current provisions. A comparative study is then made with Turkey and Canada as to how their legal systems have dealt with this phenomenon and the paper then ends with suggestions to amend the existing laws, citing an interview and primary research carried out by the author.

KEYWORDS: Murder, honor, family, crimes, sexism, control, amendment, politics, violence

INTRODUCTION

In India, the concept of love marriage is not new. It has been around since the ancient period, known as *gandharvavivah*. However, this form of marriage was not approved since it did not involve *kanyadaan* or the ritual of the father giving away his daughter to the groom- a practice which is an integral part of a Hindu marriage. The Hindu society was already divided because of the *varna* system and did not accept marriage between individuals belonging to different castes. This society became more averse to marriages between people from

different cultures, locations and religions due to increased invasions from rulers of different nations. Other than the fear of inter-mixing and dilution of cultural values, many communities discouraged love marriage out of the fear that people of other sects would gain control over the ancestral property. There were many social reformers like Raja Ram Mohan Roy and Periyar who agitated to put an end to all forms of discrimination in all areas of life including marriage. It is these social reforms which formed a basis for the present Constitution of India which places a lot of importance to equality and dignity of every citizen (Jaishankar, 2017).

However, due to the lack of a Uniform Civil Code, marriage is still governed by the various personal laws because of which the institution is still closely linked to family values and when an individual tries to exercise his autonomy by getting married according to his preference, it is seen as an insult to the values of the family and community and this affront to the ego and 'honor' is what leads to a phenomenon which is broadly classified as 'honor-based violence'. In every society, there are a few communities which are more powerful than the others and the State and legal machinery also often acts as a form of exercise of this power. It is often felt that one important way to display power is by the act of coercion and in order to showcase the power dynamics, coercion is used to prove the will and dominance of one community and the submission and subordination of the other. This coercion is often displayed through the use of violence. Power is the means and ends of all societal interactions and every individual and community seeks to prove his power through one way or the other and these dynamics are further perpetuated by ensuring obeisance to the rules of the community by all members. Those who dare to differ are often shunned and killed to make an example of subordination to the collective and communal rules.(Zaleśny, 2020)

The term 'honor-based violence' includes activities like torturing, intimidating and killing of one's own family members in order to eradicate the feeling of shame and dishonor apparently brought about by their actions. Out of these, the most-common is honor killing, where relatives and community members carry out the extra-judicial murder of those members who dare to marry against the wishes of their family. The name is misleading however, because there is never any honor in the gruesome act of murdering one's own kin and it often brings with it the possibility of disrepute due to imprisonment and a criminal case. Honor killing

is meant to protect the collective interests of the community members and not unlike a mafia group is structured as a pyramid. In the top position are the organizers or the leaders of the community, the next rung is that of the executives, followed by the foremen and the lowest position is occupied by ordinary fighters and members who are indoctrinated to act in the best interests of their community and to hamper any resistance or dissent to the values of the community. This pyramid structure often makes the commission and investigation of honor-killings similar to that of an organized crime(Horbachov, 2020). The crime of honor-killing does not start and end at murder but instead leads to a vicious chain of planning, conspiring, intimidation, destruction of evidence and abduction, even by and against minors in some cases.(Akimzhanov, 2017)

It is often believed that the caste system is a thing of the past but unfortunately, such crimes reveal that many communities continue to hold on to such division. They still believe that their position in society is decided by the caste they are born into and the members are forbidden from marrying outside the group. In such communities, marrying outside one's caste leads to a loss of position in society and hence, disrepute to the entire family. Such incidents often show sexual undertones since it is often believed in Indian society that it is a woman who is responsible for upholding the reputation of her family. Once she gets married, she belongs to another family and becomes a member of her husband's caste. The parents are often pressurized by their relatives and senior members of the community to take action against the erring daughter. A glance at the National Crime Records Bureau data of 2018 shows us that there were a total of 30 deaths caused in the entire country due to honor killing. Out of all the states and union territories, Jharkhand showed the highest figures (9 cases),

followed by Himachal Pradesh (6 cases) and the states of Maharashtra and Punjab (3 cases each). (National Crime Records Bureau, 2018)

While honor killings due to marriage are often highlighted, there are other reasons also why honor killings are carried out. Such acts of violence are inflicted on the youth when they attempt to annul or walk out of a marriage, engage in any sexual acts with the opposite sex or pursue or homosexual relationships. Even rumors being spread about one's character or the misfortune of being a victim of rape or sexual assault cause the families to commit such heinous acts (Singhal, 2014). Another important aspect which forms part of such crimes is that of revenge. Revenge is known to be an initial reaction of an individual who has been hurt in a way. It is seen as a form of primitive justice in a system where there is a lack of rules or regulations. Here, the person acts on the motivation that the culprit who committed the wrong against them (real or perceived), shall not be punished by the system and they need to take things in their own hands. This often leads to a form of vigilante justice and is seen as a form of retribution or payback. (Shary, 2019) If the head or any member of the family or community feels that they have been dishonored or wronged by the person who chose to get married outside the community or the 'outsider' who tried to sully their honor, they may try to intimidate and even kill the couple as a way to preserve their respect as well as to send a warning message to the other community.

LITERATURE REVIEW

The term 'honor killing' or 'customary killing' has been described at length and research has also been carried out on this area. Extensive discourse has been made on the background of the caste system and how it perpetuates the concept of 'honor' (Hosseini, 2015). The linkage between community sentiment and marriage has

also been explained and how it leads to a fear of disrepute and subsequently, crimes of such a gruesome nature (Halder & Jaishankar, 2017). Revenge also plays a strong role in motivating a person or community to carry out a gruesome crime (Shary, 2019). The power struggles of every society and the constant fight to assert dominance has also been analyzed as a factor which contributes to this crime (Zalesny, 2020). The role of khap panchayats has also been examined and the reason behind their strong influence on the minds of people has been analyzed (Singh, 2015). The presence of such power structures and leadership often gives such crimes an organized nature and leads to the formation of a mafia-like structure (Horbachov, 2020) and the entire act of killing the victims does not only consist of murder but leads to a combination of several crimes being committed in a sequence (Akimzhanov, 2017). This construct of honor affects women more since they are expected to be the bearers of respect of their homes. Hence, this crime also gets a sexist shade to it. (Singhal, 2014) While most authors call for the need to define honor killing as a separate crime with its own section and punishment, there is yet to be an examination of the possibility of amending present laws and using the Special Marriage Act to bypass the wrath of communities and to get protection from any violence. The process of registration of marriages could be simplified in order to help consensual adults in exercising their basic human and legal rights. While the Special Marriage Act was brought around to encourage registration of marriage and to promote secular values, the author aims to analyze its scope to actually prevent honor killings by supplementing existing criminal provisions.

CURRENT LEGISLATIVE FRAMEWORK

As far as the world is concerned, the Universal Declaration of Human Rights (UDHR), a historical document which has been drafted by representatives from various countries, provides that both men and women who have attained the age of majority have the right to enter into marriage according to their consent without the limitation of religion, race or nationality. Both spouses have equal rights during marriage and the dissolution of the same and the family is entitled to be protected by the society and State.(United Nations, 1948) This Article was accused of giving only heterosexual couples the right to marry. However, with increased understanding, it was interpreted that the Article did not mandate a person to marry somebody from the opposite sex but provided both sexes the equal chance to marry. Also, this Article was drafted in response to the Nazi law prohibiting inter-racial marriages. Hence, it is worded in such a way so as to remove any restrictions on who an individual could marry.(Office of the High Commissioner, 2018)

India has signed and ratified the Convention on Elimination of Discrimination of All Kinds against Women (CEDAW). The provisions can be used to argue that punishing or boycotting an individual, especially a woman for the subjective act of bringing dishonor to her family and subjecting her to violence for the same can be considered discrimination against an individual. The provisions also state that a woman has the right to administer contracts on her own behalf and to enter into a marriage with her full consent and to choose a partner.(Hosseini, 2015) However, India has made a reservation against these provisions by stating that the government cannot put an end to such practices without the consent of the communities and would not wish to interfere in their personal matters.(UN WOMEN, 1993) This is ironic in itself if we consider the fact that India has made a commitment to implement CEDAW, which aims

to protect women from discrimination, to the maximum extent possible but is helpless in implementing the basic provisions which prohibit such discrimination on a community or cultural level.

In India, there is no specific law defining and punishing the act of honor killing. Honor killings are considered equivalent to the crimes of homicide and murder which are dealt with under sections 299 and 300 respectively of the IPC (Indian Penal Code). Article 14 of the Constitution of India guarantees equality before the law and equal protection from the law. The practice of honor killing goes against this provision. As already stated earlier, this practice is mostly targeted at the women of the family and hence, goes against Article 15 of the Constitution which prohibits discrimination on the basis of race, sex, caste and place of birth.

EVOLUTION AND SCOPE OF THE SPECIAL MARRIAGE ACT

Today there are two points of view of the institution of marriage. One view is that marriage is a civil agreement while the alternate view considers marriage as a religious sacrament. There are some countries like Japan where marriage is regulated by civil law and there is no scope for a religious authority to act while there are countries like Saudi Arabia where marriage and divorce are not codified and are purely under the domain of personal laws and religious heads. We also have certain jurisdictions like the United Kingdom where the legislation (Marriage Act of 1949) provides for the solemnization of marriage by a religious head as well as a civil marriage which is officiated by a registrar's certificate. India also has a similar system since religious communities have their own rules pertaining to marriage and

family while there is also a law pertaining to civil marriage.

The history of this Act can be traced back to the pre-independence era. The demand for a civil marriage law originated from within the Brahmo Samaj in the 1860s and the original Special Marriage Act was enacted in 1872 after the failure of two draft bills. This Act was notable for placing a ban on polygamy at a time when it was permitted even in Hinduism. While this Act was very unpopular amongst the common people due to the fear that it would encourage 'immoral' marriages, it could not be as effective because it was supposed to be applicable only to those people who declared themselves to be non-believers of the major religions such as Hinduism, Islam, Christianity etc. Another Bill was introduced in 1921 which aimed to make the Act applicable to all- to those who professed a religion as well as non-believers. A Select Committee was formed which presented a report to the Legislative Assembly in 1923. Unfortunately, the Committee restricted the scope of the Act to quite an extent, rendering it ineffective. Another amendment Bill was introduced in 1928 to extend the applicability of the Act but it did not yield any results.

In 1946, another Bill was passed which aimed to grant greater rights to women, especially the right to divorce. However, due to a combination of factors such as stiff opposition from the orthodox members and the granting of independence to India, the Bill could not be enacted. After Independence, the Law Minister CC Biswas introduced the Special Marriage Bill in the Rajya Sabha in 1952. This was not an amendment of the original Act but a Bill to re-enact the same. This Bill was published in the Gazette and the Joint Committee of the two Houses were nominated in 1953 which presented a report in the Lok Sabha in 1953. In 1954, the Bill was passed in both Houses of the Parliament.

The main aim of the first ever Amendment Bill was to make the Act applicable to every Indian but this could not happen since it was restricted to those who did not practice the religions mentioned in the Act. This Bill was opposed by many members of the Parliament on the ground that since marriage was considered a sacrament in Hinduism, the idea of a civil marriage went against the tenets of Hinduism. There was a common fear that such a measure would lead to the destruction of Indian society. While some members agreed on the fact that a civil marriage was necessary, they called for certain precautionary measures to be included. One such measure which was suggested was that if a Hindu man gets married to a girl of a different religion under this Act, then he should not be able to insist on his right to live with the Hindu joint family since this marriage would cause a lot of inconvenience and awkwardness to the other family members. Another suggestion was that if a Hindu man gets married to girl from a different caste or religion under the Act and is an only son, then his father should have the right to adopt another son in order to fulfill the formalities of the last rites of the father as per Hinduism. In addition to these clauses, the Select Committee also restricted the right to adoption of a couple married under this Act. These provisions were seen as a measure to appease the orthodox people and to minimize the impact of such a marriage on the families as well as to discourage civil marriage as a whole. Subsequently, only the first clause was retained in the 1952 Bill which caused a great deal of controversy while the rest were removed.

In 1952, when the Law Minister was questioned as to why he introduced a re-enactment instead of an amendment if most of the provisions were retained, he stated that this Bill would allow inter-religious marriages of all kinds and the government wished to lay emphasis on this change. This Bill was also supposed to have

extra-territorial jurisdiction by allowing Indian citizens to solemnize their marriage even in foreign countries. Other than bringing in a law for civil marriages, the Bill was also seen as a way to achieve the goal of implementing a Uniform Civil Code in India as envisioned under Article 40 of the Constitution. This Bill was also opposed by the orthodox people who gave the same reasons they had given for opposing the 1921 Bill. Some members also remarked that since people belonging to the same religion could also get married under this Bill, this was an encroachment in the personal laws of the religions and it was an unpopular Bill which was being forced upon the common people by a small fraction of 'social reformers'. However, the Law Minister as well as the then Prime Minister Jawaharlal Nehru pointed out that this Act permitted a civil marriage for those who wanted to do so and did not force everybody to get married in this way.

This Bill also attracted strong criticism due to the clause which stated that the Divorce Act of 1869 would apply to marriages conducted under this Bill and also provided for divorce by mutual consent at a time when this concept did not exist in the Divorce Act or the Hindu Marriage Act or any other laws applicable. This provision was seen as a way to destabilize marriage in Hindu society.(Fujioto, 2018) One provision which has been retained in the present Act is that of giving a notice 30 days before the intended date of marriage. Initially, the Joint Committee Report provided for a period of 14 days which was approved by the Rajya Sabha. However, there were disagreements with this time period in the Lok Sabha. It was argued that this would allow runaway couples to go to far-off places and get themselves registered by making false declarations about their age. This provision is supplemented by the clause which states that if neither of the parties permanently resides in a particular district, then the Marriage Officer of

that particular district shall send a copy of the notice to the Marriage Officer of the district where such a party has permanent residence. This provision created an obstacle for 'runaway' couples since the notice would reach their hometowns and give the parents and communities ample opportunity to harass the couple. This clause did not exist in the original 1872 Act or the draft Bill of 1952 and when it was brought before the Rajya Sabha for discussion, some members argued that sending a notice to the home district was not enough and the notice should be published in daily newspapers and sent directly to the parents of the party. However, these suggestions were rejected and the current provisions can be seen as a compromise to prevent runaway marriages and to protect the privacy of the couples at the same time. Hence, the Special Marriage Act as we know it today, was a result of a great deal of debates and deliberation and has a lot of historical background related to it.

The fundamental conditions for the marriage to take place under the present Act are that the boy is 21 years old and the girl is 18 years old, both the parties consent to the marriage, are mentally fit to understand the responsibilities of marriage and they should not be related by blood.(Sec 4, Special Marriage Act, 1954) The application to solemnize the marriage is received in the area where either of the parties has a permanent residence and this is the place which has district jurisdiction. Once the marriage officer receives the application signed by both the parties, he shall issue a public notice for a period of 30 days in order for any member of the public to raise objections against this marriage. This notice is to be published by affixing in a prominent place at the office of the Marriage Officer. A copy of the same is also to be attached in the 'Marriage Notice Book' which anybody is free to inspect. If there are no objections raised after 30 days, then the marriage is to be solemnized and the

notice is valid for a period of 3 months.(Sec 7, Special Marriage Act, 1954)

A Bill was introduced by the Parliament in the year 2010 to provide a strict punishment for honor killing. The Bill proposes to add a clause related to honor killing in section 300 of the IPC, which deals with the crime of murder. It also provides an amendment to the Indian Evidence Act to shift the onus of proof on the accused. It has also been recommended that the notice period of 30 days mentioned in the Special Marriage Act be done away with since this is often misused by the families to intimidate and discourage the couple from getting married.(Law Commission of India, 2018). While this Bill has been debated over and the Centre has also asked the States for their opinion, it is yet to be implemented.(Deccan Herald , 2010) If the recommendation of streamlining the Special Marriage Act as well as the criminal statutes to come down on honor killings comes through, then there could be a strong deterrent to those who indulge in such acts.

LANDMARK JUDGMENTS

The Supreme Court has affirmed that the right to exercise one's choice is an inalienable part of an individual's liberty and dignity. When this right to choose is crushed in the name of honor and an individual's physical being is treated with absolute indignity, it affects the entire society at large. If it is found that the khap panchayat of any area has passed a diktat against a family, an FIR related to the appropriate sections must be registered by the police and must provide security to the couple or their families and if required, make arrangements to conduct the marriage under police protection. The State governments were directed to set up safe houses for couples escaping the wrath of their families (Shakti Vahini v. Union of India, 2018). The Court has also held that India is a free and democratic country and inter-caste marriages are

not barred by any law. Honor killings are brutal acts committed by feudal-minded individuals and deserve the harshest punishment possible (Lata Singh v. State of Uttar Pradesh, 2006). In one case, the Court held that honor killing came under the rarest of rare cases to fulfill the criteria of death penalty as it would be a strong deterrent for such outrageous behavior(Bhagwan Dass v. State (NCT of Delhi), 2011).

In one case, the court specifically held that the freedom of thought and conscience of a woman included their right to marry according to her choice and while a person's honor may be important, it cannot be considered more important than the life of another (Vikas Yadav v. State of Uttar Pradesh, 2016). In another case, a woman approached the court stating that she had entered into a marriage of her choice and her father was now forcing her to marry a guy she did not like. The court allowed the petitioner an opportunity to give a statement in court about her choice and accepted that since she was a major, her personal liberty should not be restricted. Keeping this in mind, the court stayed the arrest of the petitioner's husband (Shiv Kumar Gupta v. State of NCT of Delhi, 2012). The Supreme Court has also criticized the practice of the khap panchayats taking matters in their own hands and carrying out dangerous activities against those who have gotten married of their own free will. The bench observed that honor killings had become too common in many parts of the country and it was up to the administration to protect young couples from such excesses and those police officers who were complacent or misused their powers should also be punished (Arumugam Servai v. State of Tamil Nadu, 2011). In the past also, the Court had ordered the state authorities to restrict the high-handed behavior of the khap panchayats and to ensure that the erring members are punished.(Laxmi Kachhawaha v. State of Rajasthan, 1999)

Many social scientists believe that the abysmal sex ratio in areas dominated by khap panchayats is an important factor. The priority in these areas is to prevent the phenomenon of 'male marriage squeeze' or the shortage of brides. These communities impose heavy restrictions on their girls and do not allow them to interact freely with men. Many couples have been murdered due to the diktats passed by these khaps since they consider any marriage outside their community to be a threat to their culture. These diktats are often passed at meetings where the older members are involved and often involve boycotting and banishing the families of the youngsters involved and imposing fines or punishment on those people who try to help them or even talk to them. There question remains as to why these local judicial bodies continue to exercise so much influence. There are various factors at play such as the historical origin of this institution which makes people hold on to it and believe in the justice dispensed by it and the fact that while courts take several years to dispose cases, here the matters are solved very instantly. Also, the police might harass the parties for details and investigation while the khaps generally know all the details of the parties involved and it is comparatively easier for them to cross-check facts. Generally, since the adjudicators in such cases are the elders of village, people feel that these people are experienced and hence, correct in their decision.

In areas like Haryana, where khap politics is very common, the Jats and Gurjars form the majority of the population. Any act to curb the khap politics might antagonize the members of these communities and result in electoral losses. Hence, these parallel and undemocratic structures are still unchecked because of vote bank politics.(Singh, 2015)

In the famous Manoj-Babli case, both the boy and the girl belonged to the same community

and were considered siblings in spite of not being related by blood. Both of them got married and the girl's relatives abducted and murdered the couple on receiving orders from the khap panchayat of the village. The Karnal District Court awarded death sentence to five of the perpetrators involved and the driver who was involved in the abduction was sentenced seven years' imprisonment. The khap head who gave the order received a life imprisonment sentence. The court observed that the khap panchayat had acted contrary to the Constitution and had ridiculed its own body by trying to become a law unto them.(Chandrapati v. State of Haryana, 2011)

INTERNATIONAL SCENARIO

1. **Turkey-** According to Turkish organizations which are actively working for women's rights, 302 women were killed and 532 were severely injured by men during the observation period of January 1, 2019 to October 20, 2019. Out of these victims, 31 were murdered by their fathers, brothers or sons to save their honor (Asharq Al-Awsat, 2019). In Turkey, the concept of *namus* or the sexual purity of girls comes in. This kind of honor is included in the physical and moral qualities a girl must possess in order to be eligible for marriage. The sexual purity of a girl is an important determinant for her family's honor and gives rise to society's obsession with a girl's virginity. While there is no such honor attached to the men, the entire family, including its men faces disrepute when a woman engages in any relationship without the approval of her family.(Livaneli, 2006)

Generally, the crimes which result from this infraction are not committed by one imbalanced individual but are planned collectively by family members and include both immediate family as well as extended relatives. In many cases, it is found that the youngest male member of the family who is chosen to carry out the killing. This is done because the young age of the perpetrator invokes sympathy in the mind of the court during the subsequent criminal trial and hence, leads to a reduced sentence. Thus, by manipulating the judicial process, the clans are able to perform murder in a strategic manner and turn it into a social practice which the State does not interfere in. During the trial, the action is defended by repeatedly referring to culture and tradition and the emotion of shame in order to justify a reduced sentence. Once the act is carried out, the family is somehow able to regain the honor they had lost. Even a rumor made against a female is enough to threaten her reputation and that of her family. Once shame is introduced to the entire equation, this transgression concerns the entire community as a whole, not just the family. As a result, killing the female is seen as the only way to escape disrepute and the killer is praised for his action.(Corbin, 2014)

Under the Turkish Penal Code of 1926, a minimum period of 24 years' imprisonment was given for deliberate murder. Article 462 of this Act provided for a reduction of up to 7-8 months in cases where the killer was 'provoked' to kill his spouse if he saw her performing an act of adultery. Honor-based crimes were considered a result of unjust provocation and aggravated grief and the judge used to have the discretion to

reduce the sentence to quite an extent(Women for Women's Human Rights , 2003). However, the Turkish Penal Code was amended in 2004 after increasing pressure and outrage from the European Union. Articles 462 and 51 were revoked and Article 29 was amended to clarify that the defense of grave provocation would not apply to honor killings(Art. 29, Turkish Penal Code, 2004). Article 38 was amended to provide that all family members would be punished equally if it is found that the crime was committed by the youngest member and the prescribed sentences were increased for cases where guardians are also involved.(Art. 38, Turkish Penal Code, 2004)

2. **Canada-** While there is not much data available on the honor killings in the country, there are certain immigrants who have continued to maintain their cultural practices and such incidents are often specific to them(Department of Justice, Government of Canada, 2016). In one case, the accused had killed his younger sister, her husband and the man who lived with them in. The accused disapproved of the alliance and felt that being the eldest son; it was his duty to uphold the family honor. He was convicted on the charge of first degree murder for which he was awarded life sentence and was not eligible to receive parole for the next 25 years.(R. v. Dulay, 2009). In one case, three members of a Pakistani family sought a refugee-status for protection since one of the members was involved with a girl whose family got her killed, beat him up and got a fatwa issued against the boy's family. It was ruled that the entire family had been targeted by the fatwa

and if they were sent back to Pakistan, their lives would be endangered. (Syed v. Canada, 2005)

While Canada does not have any specific legislation pertaining to honor killings due to the lack of data on such incidents among the local population, the Canadian courts deal with this phenomenon by applying refugee law to those incidents which take place outside Canada in order to grant protection to those people and communities who are at a risk of suffering the same. Canada was the first country to adopt guidelines which made it possible for people to apply for refugee status due to gender-based violence as a form of persecution. These guidelines were adopted in 1993. If a woman has a justifiable fear of persecution because of her gender and the state authorities of her country of origin refuse to or are unable to take action and if she has no viable way to escape the persecution within her country, then she shall be eligible for protection in Canada. There is no requirement that the woman has to have suffered domestic violence in the past. Keeping this in mind, the court accepted the application of a 44 year old woman from Pakistan who was believed to be a source of shame to her family and had pleaded that she could be murdered by her family if she is sent back home. (Tabassum v. Canada, 2009)

SUGGESTIONS TO PREVENT HONOR-BASED KILLING

- Recognition as a Separate Offence- The courts have made many guidelines pertaining to the prevention of such ghastly crimes. However, due to the lack of a sturdy legislature and the support of the law enforcement agencies, such

actions go unpunished in a large number of communities. The identification of honor killings as a separate crime with its own punishment is the need of the hour. The author interacted with Mr. Harsh Malhotra, founder of Love Commandos, an organization which helps individuals in getting married against the wrath of their families. Mr. Malhotra revealed that the organization conducts the wedding ceremony for the couple based on their choice of tradition and also helps them in registering their marriage by obtaining court documents on their behalf. They also ensure the safety of the couple by providing them accommodation in secret locations and helping them to settle in another place. Mr. Malhotra also stated that the Supreme Court judgment mandating police protection to be given to the victims is hardly ever implemented and it is the organization which has to intervene to arrange the same. He also revealed that contrary to the popular notion that such crimes take place only in the villages at the behest of the khaps, it is a common phenomenon even amongst the city-bred educated people. He lauded the state of Haryana for showing a decrease in the number of crimes and stated that the state of Telangana is now showing an increase in this area. He strongly stated that a separate legislation is the way to go about and honor killings need to be recognized as a separate offence altogether. The takeaway from this suggestion is that the crime of honor killing must be given a proper definition along with a specific punishment for the same.

- Separate Punishment- While it seems that a separate legislation would

specifically define the crime and broaden the definition of the same it may not be passed in Parliament since there are certain communities who form part of various vote banks and the politicians would not be keen to upset them. Also, since honor killing is a form of murder, it should be included in the Indian Penal Code as a kind of murder which would have increased punishment if it is proved that all family and community members conspired together.

- **Strengthening the Special Marriage Act-** Also, while the Special Marriage Act was enacted to facilitate inter-caste and inter-religious marriages, it only lays down the procedure of solemnization, registration and inheritance in case of such marriages. This Act could be further strengthened to ensure that it actually achieves its true objective and brings about a change in the mentality of the people. As mentioned above, the 30 days' notice period must be done away with so that there is no scope for the family members to create obstacles. The mandate for police protection and establishment of safe houses must be laid down in this Act and punishment must be described for those officials who refuse to fulfill their duties. These provisions shall strengthen the Act and make it binding on all citizens and authorities to accept inter-community marriages. The scheme of the entire Act could be divided into definitions, procedure, requirements and then the provisions extending protection to the couple. This way, the offence will be recognized as whole and will be associated with some form of punishment and there will be no need to go through the entire process of bringing in new laws. An already-existing

framework shall be strengthened and the benefits of the same shall be made known to all. Without any procedure to ensure that people can actually take advantage of the Act, it is merely a paper tiger which is ineffective at best and counterproductive at worst.

- **Executive Action-** A special police task force must be formed in areas which are most affected by honor killings and multiple helpline numbers must also be formed in order to protect the couples and nab the culprits.

CONCLUSION

Honor based violence is a social menace with criminal repercussions. The differing perspectives in the Indian demography can only be addressed through a radical change in legislation and implementation outlawing such acts of violence. People in villages feel that marriage must be within one's own community and it is the parents and the elders of the family who can make the best decision for the children's marriage, while there is an overwhelming support for inter-community marriage among the cosmopolitan population. This points to a key ideological difference between rural and urban population. Even older segments of the urban population are gradually becoming aware of evils of committing a crime for a false sense of pride. This wind of change in mentality along with the strengthening of existing legislations can go a long way in ridding the society of evil practices and truly protect the secular fabric of our country.

REFERENCES

- ArumugamServai v. State of Tamil Nadu, (2011) 6 SCC 405, (India)
- BhagwanDass v. State (NCT of Delhi), (2011) 6 SCC 396, (India)
- Chandrapati v. State of Haryana, Crl. Misc. No. M-42311 of 2007, (India)
- Debarati Halder & K. Jaishankar, Love Marriages, Inter-Caste Violence and Therapeutic Jurisprudential Approach of the Courts in India, Therapeutic Jurisprudence and Overcoming Violence against Women (pp.30-42), (February, 2017)
- Jacek Zalesny, Correlation of Legal Regulation and Political Violence in the Social Concept of Global Constitutionalism, Journal of Legal, Ethical and Regulatory Issues (2020)
- Lata Singh v. State of Uttar Pradesh, (2006) 5 SCC 475, (India)
- Laxmi Kachhawaha v. State of Rajasthan, Civil Special Appeal No.365 of 1998, (India)
- Munahi Khanthl Bin Shary, Legal Implication of Revenge Killing and its Relation to Terrorist Ideologies, Journal of Legal, Ethical and Regulatory Issues (2019)
- Oleksandr Horbachov, Combating Organized Ethnic Crime: Theoretical and Applied Problems, Journal of Legal, Ethical and Regulatory Issues, (2020)
- R v. Duley, (2009) AJ No. 29 (QL) (Alta C.A.) (Canada)
- SeiedBeniamin Hosseini, Study on Honor Killing as a Crime in India- Causes and Solutions, (January 2015), International Journal of Preventive, Curative and Community Medicine, 2016; 2(1)
- Shakti Vahini v. Union of India, (2018) 7 SCC 192, (India)
- Shiv Kumar Gupta v. State of NCT of Delhi, (1999) 39 ACC 169, (India)
- Shiv Kumar Gupta v. State, (1999) 39 ACC 169, (India)
- Syed v. Canada, (2005) FCJ No. 1710, (Canada)
- Tabassum v. Canada, 2009 FC 1185, (Canada)
- Talgat Akimzhanov, Theoretical and Legal Basis of Conception of Organized Crime in Modern Era, Journal of Legal, Regulatory and Ethical Issues, (2017)
- Teruaki Fujioto, Marriage and Secularism: Parliamentary Debates on the Special Marriage Amendment Bill of 1921 and the Special Marriage Bill of 1952, Centre for Historical Studies, Jawaharlal Nehru University (2018)
- Vikas Yadav v. State of Uttar Pradesh, (2016) 9 SCC 541, (India)
- Vineet Singh, Khap Panchayats: Honor Killings in India, (September, 2015), https://www.researchgate.net/publication/297346507_Khap_Panchayats_Honor_Killings_in_India
- Vipin Singhal, Honor Killing in India- An Assessment, (March 7, 2014), Indian Council for Social Science Research, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2406031