

Honour Killing and Criminal Liability Under BNS

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Abstract- *Honour killing is one of the social evils that have their origin in patriarchal ideology, caste structure, and family honor. Although honour killing has, at various points of time, been given legitimacy under various social norms and regulation of communities, it is an anomaly under the fundamental human rights principles of life, liberty, and freedom as enunciated under the Indian Constitution. Although there is no such law of honour killing under Indian law, the Indian judicial system has condemned the crime of honour killing and extrapolated the criminal liability with regard to such an act under the Bharatiya Nyaya Sanhita, 2023, superseding the Indian Penal Code, 1860.*

The article also traces the judicial evolution of honor killing, from the recognition of individual choice in the case of Lata Singh v. State of Uttar Pradesh (2006), where the Supreme Court of India held that "the freedom of adults to marry is a matter of choice," to a more critical approach articulated in Bhagwan Dass v. State (NCT of Delhi) 2011, where honor killing was termed "barbaric and feudal." The article traces with importance the case of Shakti Vahini v. Union of India (2018), whereby the Supreme Court of India laid down preventive, remedial, and punitive measures, recognizing honor killing as a heinous violation of basic human rights and the role of the State in preventing honor killing.

Honour killing, though undefined, is made punishable under the BNS through sections on murder, culpable homicide, abetment, criminal conspiracy, unlawful assembly, and common intention, making it thus possible to prosecute not only actual perpetrators but also the family members and khap panchayats for instigating or planning the same. The methodology of the research for this paper is doctrinal.

The paper concludes that though the Bharatiya Nyaya Sanhita has enough provisions to deal with the problem of honour killings, the lack of a separate provision may affect the deterrent effect. The paper, therefore, recommends that there should be more preventive enforcement, social sensitization, and a separate legislative provision to completely eliminate honour-based crimes and ensure the constitutional values of dignity, equality, and liberty.

Keywords - *honour killing, Bharatiya Nyaya Sanhita, 2023 (BNS), criminal liability, equality, liberty, fundamental human rights, right to life.*

I. INTRODUCTION

Honour killing is one of the most extreme forms of violence that has its roots in highly embedded structures like patriarchy, caste systems, and community systems. The term honour killing is used to describe the killing of a person, mostly a woman, by members of their family or community on the grounds that they have inflicted "dishonour" on their social group because of personal choices they made based on their own free will, especially regarding marriage and relationships. These kinds of crimes were traditionally not only condoned by informal systems like customary laws within communities but were actively supported.

In India today, honour killing is in direct conflict with constitutional provisions of equality, individual freedoms, and the right to life under Articles 14, 19, and 21 of the Indian Constitution. This notwithstanding, India has no specific criminal offence of honour killing under any criminal statute; nevertheless, Indian courts have had a pivotal role in discrediting honour killing socially. This changing social attitude to honour killing gives way to a direct shift to judicial denunciation of honour killing where adult individuals exercise their right to select their own life partner by judicial pronouncements such as Lata Singh v. State of Uttar Pradesh, Bhagwan Dass & Another v. State (NCT of Delhi), and a lately emerging pronouncement with *добава* strengthening of the role of the state in preventing honour killing, i.e., Shakti Vahini v. Union of India.

It must, at this juncture, be noted that the implementation of the Bharatiya Nyaya Sanhita, 2023, rather than the Indian Penal Code, 1860, marks a milestone in the history of Indian criminal laws. But,

just like its precursor, honour killings have not found any mention, rather holding the perpetrators guilty of offenses like murder, culpable homicide, abetments, criminal conspiracy, illegal assembly, and common intentions. The fact that needs to be noted here is how this would work as a tool to prevent honour killings.

In the wake of such happenings, the present study deals with the nature of the offence of honour killing and undertakes an analysis of criminal liability under the Bharatiya Nyaya Sanhita. The study, while retracing the history of the origin and evolution of honour killing as a crime, judicial response in terms of dispensation of justice, and dispensation through provisions of the BNS, tries to assess the adequacy of the existing legal regime to deal with honours-based violence or the need for a separate legislative response.

II. RESEARCH OBJECTIVES

- To understand the historical, social, and legal development and its incompatibility with constitutional ideals of life and liberty in the context of honour killing
- To understand the judicial approach with regard to honour killing, in light of the various decisions pronounced by the Supreme Court on the subject.
- To analyze the scope of criminal liability under the Bharatiya Nyaya Sanhita, 2023, in respect of honor killings under the provisions related to murder, abetment, conspiracy, and collective liability.
- To examine the accountability of family and community entities, including informal ones, which play a role in instigating or committing honor killings, under the BNS regime.
- To assess the potency of the existing laws in dealing with honor killings, as well as the need for improvement or formulation of laws more effective as deterrents.

III. RESEARCH PROBLEM

Despite the consistent condemnation and acceptance of honour killing as a violation of constitutional rights, the trend of honour killings persists unchecked in India, with the support and participation of the members of the family and the community at large. The judicial measures taken to prevent honour killings

in the country have been in the form of judicial interpretations to expand the scope of culpability, but despite these efforts, the fact remains that honour killing in India has not been addressed in any specific legislation criminalizing the offence of honour killing. Even the Bharatiya Nyaya Sanhita, 2023, which has replaced the Indian Penal Code, follows the same line and includes honour killing as a criminal offence under general provisions of murder, abetment, and conspiracy. This raises very critical questions about the sufficiency, clarity, and deterrence effect of the prevailing legal framework effectively to prevent honour-based crimes and hold all actors accountable for their actions. The central research problem thus is to examine whether the provisions of the Bharatiya Nyaya Sanhita, read with judicial precedents, are sufficient to tackle the problem of honour killing in India or whether the absence of a specific offence goes against effective enforcement and, therefore, presents a case for further legislative intervention.

IV. RESEARCH QUESTIONS

- Explain the change that the concept of honor killing has undergone—from its socio-historic background to the criminal act and constitutional disapproval in India.
- The role of judicial institutions with respect to honor killing and liability in India.
- How does the Bharatiya Nyaya Sanhita 2023 address the issue of honor killings under sections of murder, abetment of murder, conspiracy, or joint liabilities?
- How liable are the members of a family or a society in regard to laws related to criminal responsibility in the issue of honor killing under the laws of BNS?
- Are there any implications in deterring and enforcing such criminal offense in the absence of a particular criminal provision in Bharatiya Nyaya Sanhita of 'honour killing'?

V. LITERATURE REVIEW

1. Honour Killing in India and role of Khap Panchayats

The article written by Malik and Purohit, "Honour Killing in India: A Socio-Legal Analysis," tries to elaborate on honour killing as an outcome of deeply

entrenched patriarchal values and social understanding of honour as a social concept by families as a whole. As the authors and writers have revealed and elaborated through their article, honour killing can be understood as an outcome involving the violation of criminal laws prevailing in India; indeed, social beliefs and understanding play an important role in reducing criminalization aspects of honour killings. As averred by Purohit and Malik, honour killing is an act that results in crime and murder under criminal laws prevailing in India. Social understanding and support play an important role in reducing criminality by directly and indirectly involving these acts and understanding them as merely a family matter because there is an absence of any honour killing being recognized as such.

2. Critical Analysis on Honour Killings in India

Aradhana Sahu critically discusses honour killings with reference to constitutional values and human rights laws and focuses her research on honour killings with a particular emphasis on the issue of social morality versus constitutional morality.² Aradhana Sahu asserts that honour killings amount to a direct violation of Articles 14, 19, and 21 of the Constitution of India with regard to a personal liberty choice in marriage. Although referencing positive judicial pronouncements in her paper, Aradhana Sahu asserts that judicial courts alone cannot combat honour crimes without legislative support and that there exists a void at the grassroots levels between constitutional values and actual enforcement.

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4. Indian Legal Framework on Honour Killing

Authors Monika and Hadiya Khan have written a piece on the Indian position on honour killings, focusing on violation of human rights and the corresponding Indian legal framework on honour killings, particularly the Supreme Court's approach to the subject. They assert, "While providing guidance on violation of human rights, Indian courts have consistently disapproved of honour killings; yet, while relying on general provisions pertaining to offenses of murder, abetment, and conspiracy, there has been a degree of ambiguity and confusion with regard to determining the level of liability, particularly when a joint decision is undertaken by families and/or family bodies."

5. Critical Analysis on Honour Killings in India

Mangdhana et al., on the other hand, are concerned with the aspect of honour killing that overlaps with caste systems, marriage, and hierarchy in India.⁴ According to this study, one of the key findings is that all cases of inter-caste and religious marriages are the trigger points for honor killings. In this study, the authors are keen on pointing out how criminal law provisions such as common intention and unlawful assembly are applicable. According to them, honor killings cannot be such a solo activity.

6. Honour Killing as a Crime in India

Dr. Smita Satapathy critically analyses and examines the criminalization of honour killing as an offence under the Indian legal system and assesses the application of provisions on murder, abetment, and criminal conspiracy.⁵ Arguing that even though provisions of the criminal law are available to effectively deal with honour killing cases, the lack of a specialized provision of honour killing as a crime handicaps the strong moral disapproval of honour killing as a social crime. The author suggests a legislative framework which is punitive, preventive, and rehabilitative to deal with honour-based crimes.

VI. RESEARCH GAP

Though a huge amount of literature is available on honour killing in India from a socio-cultural perspective, as well as from the constitutional point of view, there has been little scholarly work on honour killing as a part of Bharatiya Nyaya Sanhita, 2023.

Most of the literature has been written before the enforcement of Bharatiya Nyaya Sanhita and does not discuss the applicability of various provisions relating to murder, abetment, conspiracy, and joint liability under Bharatiya Nyaya Sanhita to honour killing. Moreover, there has been little discussion relating to the liability of families or community bodies for honour killing under the new criminal law regime. It has become imperative that a detailed study be done in honour killing and criminal liability under Bharatiya Nyaya Sanhita in light of recent judicial pronouncements.

VII.DISCUSSION & ANALYSIS

The judicial understanding of honor killing in India is based largely on a few landmark cases decided by the Supreme Court, in which honor killings have been strictly condemned.

In *Lata Singh v. State of Uttar Pradesh* (2006), the Supreme Court had to deal with issues of violence that result from inter-caste marriages. In its judgment, it categorically stated that a major woman has a right to marry a person of her own choice, and any kind of harassment or violence by family members is illegal. The court issued a direction to take criminal action against any person who commits or instigates violence in the name of honor. Such a judgment is important because it laid the foundation for honor killing being a violation of personal liberty.

The SC further consolidated its stand in *Bhagwan Dass v. State (NCT of Delhi)* (2011). In this case, the accused murdered his daughter for having married against his wishes. In this judgment, the SC regarded honour killing as a “barbaric and shameful” act based upon feudal and patriarchal ideologies. The SC ruled out honour as a mitigating factor in such cases of honour killing and regarded them as cold-blooded murder cases that deserved the highest level of punishment. On the issue of honour killing being a planned crime, it can be said that the SC regarded such cases as murder.

In the case of *Arumugam Servai vs State of Tamil Nadu*, which was decided in 2011, the Supreme Court was scathing in its condemnation of such caste panchayats for inciting honour killings. The Court was

emphatic in its pronouncement that any authority or institution, such as the khap panchayat, did not have the legal authority or jurisdiction to mediate or get involved in the marriage between two consenting adults. Any gathering or assembly which issues threats or directives resulting in the commission of honour killing was deemed illegal and culprit individuals could face criminal action.

An important change was brought in the matter of *Shakti Vahini v. Union of India*, decided in 2018, wherein the Supreme Court recognized honour killing as a major violation of human rights or constitutional morality. It provided specific guidelines in the matter of prevention, remedy, and penalty for honour killings. It also recognized that State authorities were under a duty to prevent honour killings and protect couples who were exercising their right to choose. Moreover, it emphasized that any form of collective decision or assembly for honour killings also provided for criminal liability under the doctrine of collective responsibility.

In the recent major ruling in the case of *Shafin Jahan v. Asokan K.M.*, (2018), which was popularly known as the Hadiya Case, the SC has recognized the right of adults to choose their own life partner as an essential component of their personal liberty under Article 21 of the Indian Constitution. Even though this was not strictly an honour killing case, it must be noted for the importance of the ruling in addressing the root cause of the honour killing problem through not permitting the control of the parents and the society at large in the case of adult relationships.

Overall, the various rulings of the judiciary have exhibited a general judicial attitude of counting honor killings as murder, discrediting the notion of cultural excuses, and increasing the range of those culpable in the perpetration of honor killings beyond the immediate members of the family and the community organizations that instigate them. There is no room in the criminal law for the concept of honor, and any form of violence in its name has serious penal implications

VIII.CONCLUSION

Thus, it could be said that even while honour killing is being recognized as the most critical form of violence that is related to deep-rooted patriarchal culture, caste equations, and the larger societal concept of honour, it is submitted that the judicial evaluation of the same that has been done in the current study clearly establishes the point that Indian courts have uniformly and unequivocally disapproved of the whole concept of honour killing, thereby affirming the right to choose one's own life partners through the recent verdicts in *Lata Singh vs. State of Uttar Pradesh*, *Bhagwan Dass vs. State (NCT of Delhi)*, *Shakti Vahini vs. Union of India*, etc.

Even though the *Bharatiya Nyaya Sanhita 2023* incorporates a significant number of reforms in the criminal law system in India, honor killing is not included in the list of criminal offenses before the Indian legal system. In all cases of honor killing, the question of criminal liability revolves around the general principles applicable to offenses like homicide, abetment of any offense, criminal conspiracy, illegal assembly of persons, and the principle of common intention. It is believed that the legal provisions have been well equipped in this research study with reference to bringing the offenders in cases of honor killing as principal offenders or the authors in association with others in committing the crime.

To develop the legal system further in the context of honour killing cases, in the future, research could be undertaken to examine the implementation of the judicial guidelines laid down in the case of *Shakti Vahini v. Union of India* in different levels, such as the district level and police level. Research studies pertaining to the various approaches adopted by other countries to deal with the problem of honour-based violence, keeping in mind the specific laws that exist in other jurisdictions, would be beneficial to develop the legal system in the context of Honour Killing in India. Further research of the same nature, including the issues pertaining to the conviction of Honour Killing cases, would also be beneficial to develop the enforcement mechanism effectively. Moreover, research of the interdisciplinary nature, including the perspective of crime, sociology, and gender studies,

would likely be beneficial to develop an understanding of the various factors that lead to the occurrence of Honour Killing cases, which in turn would be beneficial to develop the system of preventive actions.

Accordingly, it can be submitted that the issue of honour killing must be examined and dealt with not only as a criminal offense but rather as a constitutional menace and concerns the need for adopting a well-planned strategy, enforcing the provisions contained in *Bharatiya Nyaya Sanhita*, and subjecting issues concerning honor killings to academic and legislative discussions and debates.

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