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# Scope of Honour Killing as a distinct offence: An Analysis

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**Abstract:**

*A democratic state like India, banks on the smooth functioning of the three origins of State that is, the legislature, the judiciary and the executive. The three organs of the state work in tandem according to the principles of natural justice and rule of law. Kangaroo courts be in the forum of Khap Panchayats or Shailshi Adalat, which are without any doubt extremely influential in the areas they exist, by their bizarre diktats which seemingly possess a lot of social sanction and approval of the masses, question the effectiveness of the state with brazen impudence. So strong is the influence of these Panchayats and quasi judicial bodies among villagers and sometimes even among educated class (Retired govt senior officers also) alike that the state machinery most of the times fails to respond timely to their unfair dikats which are nothing but pure mockery of rules of natural justice. Be it the ordering of gang-rape of women for having an affair with a man of higher caste*

*or the banning of mobile phone use by young girls, the impact of diktats of Kangaroo Court is profound on the geographical areas where they exist.<sup>1</sup>*

*The political class for the fear of losing their vote banks, try their best to ignore the inhuman diktats which shock the vey conscience of any civilized human being. What make the Khap Panchayat so powerful is that every Khap rules over eighty-four villages, turning them into leaders of powerful vote banks which are capable of controlling power play of numbers at the time of elections. Khap Panchayats grasp on the lives of the people is an indicator towards the states inability or unwillingness interventionist role in these affairs.<sup>2</sup>*

*We need to see whether the state does recede completely from the supposed 'private' sphere, especially when such a*

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<sup>1</sup><http://ncw.nic.in/pdfReports/ReportbyJamiaMilia.pdf>

<sup>2</sup> Ibid

*retreat has imperiled several innocent young lives. In this paper, we would analyze the role which the state organs play when faced with barbaric diktats against women are being justified in the name of tradition, honour and culture.*<sup>3</sup>

**Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliance) Bill, 2011** has been enacted by the legislature to prevent the unlawful practices by the Khap Panchayat. But, later, the intransigent BJP Government stalled over the slow progress of law with an opinion of having no-law at all. The various sections under Indian Penal Code 1860, are not being violated by the Khap Panchayats including section 149 i.e. , every member of unlawful assembly is guilty of offence committed in prosecution of common objects, section 302 of IPC 1860, that is, punishment for murder as the honour killings could be considered as being the part of murder etc. Until the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliance) Bill, 2011 is passed and comes into force, there is essentially no legal framework created to counter the menace of honour killings

prevalent in North India (Uttar Pradesh, Rajasthan and Haryana). There are no specific laws to deal with honour killings and an honour killing is just another offence which is to be dealt with under the Indian Penal Code, 1872.<sup>4</sup>

In absence of specific offence in the IPC, honour killings would be treated as murder they fall under the category of section 300 of Indian Penal Code 1860. Clause fourth of Sec 300 IPC specifies that 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 bodily injury as aforesaid commits the offence of murder. This very explanation covers the act of killings which are done for honour. Here the act is intentional, imminently dangerous and in all probability has the chances of causing death, so it will not be improper to say that the culprits involved in honour killings should be

<sup>3</sup> Ibid

<sup>4</sup><http://ncw.nic.in/pdfReports/ReportbyJamiaMilia.pdf> visited on 22 Aug 2016.

punished as the murderers and capital punishment should be imposed on them.<sup>5</sup>

The Uttar Pradesh government submitted in its affidavit that “There was no specific legal framework to address the problem of honour killings but the Director General of Police and additional DGP have issued directions to ensure compliance with the provisions of Protection of Women from Domestic Violence Act, 2005.” The State of Rajasthan relied on two circulars, one issued in 2001 and another in 2006, to check activities of caste panchayats. Haryana, on the other hand, said it put in place an action plan to combat honour killings. This information was collated by amicus curiae Raju Ramachandran from the affidavits filed by the States in response to a PIL by NGO Shakti Vahini seeking the apex court’s intervention to protect couples, who were forced to annul their inter-caste marriages or killed for defiance. The Centre said it was actively planning to amend the Indian Penal Code to make honour killing a specific offence.<sup>6</sup>

To have a separate offence for dishonor killings is highlighted by the Manoj-Babli

case. The Trial court sentenced to death five men who dragged out the young couple Manoj-Babli from a crowded bus and killed them for marrying against the wishes of their community in rural Haryana. Additional District and Sessions judge taking a strict stand against the traditional caste-based ‘Khap Panchayats’, one of which had come out against the May 2007 marriage of Manoj and Babli, sentenced to death the culprit which included Babli’s brother Suresh, uncle Rajinder and Baru Ram, and cousins Gurudev and Satish. ‘Khap Panchayat’ leader Ganga Raj, who too was convicted for murder along with five, was given life imprisonment. Mandeep Singh, a driver accused of abducting the couple, got seven years in jail.<sup>7</sup>

The Couple had married in May 2007 after falling in love but the Panchayat of the area declared their relationship as void. Just a month after the marriage, their relatives dragged them out of a bus and murdered them. Later, they dumped their bodies in an irrigation canal. The High Court however on appeal converted the death sentence to life imprisonment due to lack of direct evidence. The High Court observed that-“As we have

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<sup>5</sup> Ibid

<sup>6</sup> Ibid

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<sup>7</sup> Ibid

rendered the verdict based on the circumstantial evidence, our conscious does not permit us to confirm the death sentence awarded to the accused.” The court convicted the offenders for the offence under Section 302 IPC sentenced them each life imprisonment. Adding that they shall not released unless each of them completes 20 years of actual imprisonment. They were also ordered to pay a fine of rs.5000/- each falling which they shall further undergo RI for a period of six months each.<sup>8</sup>

Had honor killing been a specific offence under a special law, such a situation would not have arisen and the High Court would not have been forced to reduce the punishment from death penalty to life imprisonment. Former CJI P. Sathasivam also favors a special law to combat Honor Killings. In this regard he stated,

“A special legislation will certainly be a welcome effort as it will help in generating additional protection to the victims. Though the prevailing law punishes the act of homicide, it does not directly punish the members gathering for such purpose.”<sup>9</sup>

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<sup>8</sup> ibid

<sup>9</sup> ibid

The stringent provisions of the proposed Bill coupled with those in the IPC would effectively combat honor killings and protect the helpless young couples and their families who are the victims of this social evil.<sup>10</sup>

Amicus curie Raju Ramachandran’s report keeping in view the legislation vacuum existing for the purpose of countering Khap Panchayats and honor killings directions to prevent atrocities in the name of honor and tradition. He further suggested that the States must be directed to immediately areas, where Khaps are active and the police officers in charge of these areas must take every step possible to protect any inter-caste marriages, including protection to threatened couple. The amicus also said that the police must act in advance and prevent Khap Panchayat meetings aimed at taking decisions against couples in the name of honor and if required arrest key members to foil the gatherings.<sup>11</sup>

The National Commission for Women in 2010 drafted a Bill titled “ Prevention of Crime in the name of Honor and Tradition” suggesting certain prohibitive and penal

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<sup>10</sup> ibid

<sup>11</sup> ibid

measures to curb the spate of murders and dishonorable crimes in the name of “honor”. The bill very categorically affirms every individual right to choose partner whether in marriage or otherwise. Clause 3 of the bill reads-“ All persons including young persons and women have the right to control their own lives, a right to liberty and freedom of expression, and a right of association, movement and bodily integrity. They have a right to choose their own partners in marriage or otherwise and any action to prevent the exercise of these rights shall amount to an offence under the provisions of this Bill,” thus any attempt in preventing a life partner of one’s choice would be an offence under the act.<sup>12</sup>

The Bill penalizes any killing in the name of honor by punishment prescribed in the IPC. It also penalized the harassing of any woman or her partner in order to prevent them exercising their right to marry out of their own choice. The bill makes both physical and mental acts of harassment punishable and describes the acts of harassment with meticulous details.<sup>13</sup>

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<sup>12</sup> Ibid

<sup>13</sup> Ibid

Explanation 1 of clause 5 reads- The acts of harassment and prevention in this Section shall include both physical and mental acts such as<sup>14</sup>-

- 1) Declaring the couple, who have got married, a brother and sister, provided that they are not children from the same natural parent and such marriages are recognized by any law or custom for the time being in force.
- 2) Extraditing the couple or their family or relatives from the village or area they live in,
- 3) Asking the couple or anyone associated with them or harboring them to pay a fine,
- 4) Imposing social sanctions or social boycott on the couple or their family or anyone associated with them,
- 5) Imposing economic sanctions or boycott on the couple or their family associated with them,
- 6) Divesting the couple or their family including the family of the male partner of any land or property belonging to them,

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<sup>14</sup> Ibid

- 7) Repeatedly harassing the couple or either of them not to meet or associate with or live with each other, by physical visiting them or through any means of communication,
- 8) Threatening the couple or either of them or their family or anyone associated with them of retributive action of any kind whatsoever,
- 9) Causing harm or injury to the girl or the couple or anyone connected with them,
- 10) Any other act of harassments or intimidation, whether physical or mental or psychological, to stop the couple or either of them from meeting or being in the company of each other.

A mere endorsement of killings or of harassment by anyone in public is a punishable offence under the bill.

The bill also shifted the burden of proving where any person or persons is or are prosecuted for an offence under the bill, on the person/persons so accused that he or they have not committed the offence or offences. The power to prohibit certain acts under the

act is on the collector or the District Magistrate.<sup>15</sup>

Clause 8 reads-

- (1) Where the collector or the District Magistrate is of opinion or has received information that any of the offences under Section 4'5 or 6 are likely to be committed, he shall by order prohibit/prevent the commission of such offences and further prohibit the meeting of any persons or body of persons likely to discuss the commission of the said offences.
- (2) Whoever contravenes any order made under Sub-Section (1) shall be punishable with imprisonment for a term which shall not be less than six months but may extend to two years and with fine.
- (3) When an Executive Magistrate receives information that any person or persons acting in concert with, or at the behest of, a member of the family or a member of a body group of the caste or clan or community or caste panchayat is likely to commit

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<sup>15</sup> Ibid

any wrongful and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person or persons acting in concert with, or, the behest of, a member of the family or a member of a body or group of the caste or clan or community or caste panchayat, to show cause why he /they should not be ordered to execute a bond with sureties for keeping peace and maintain good conduct for such period, not exceeding one year, as the Magistrate thinks fit. Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.<sup>16</sup>

(4) When a Magistrate acting under this provision, deems it necessary to

require any person to show cause under such section he shall make an order in writing, setting forth the substance of the information received the amount of the bond to be executed the term for which it is to be in force, and the number, character and class of sureties required.<sup>17</sup>

The bill interestingly makes a provision for the desirous couple to notify about their intension to marry to government officials. However, the provision falls short of providing any sort of protection to the couples who notify government officials of their intention to marry as there is no mandatory duty cast on such an official so notified to protect the couple. Clause 10 the bill also casts obligation on certain persons to report about commission of the offences under this bill. The provisions of this bill shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.<sup>18</sup>

The draft bill proposed by NCW was a welcome step trying to curve the growing criminal activities done in the garb of honor,

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<sup>16</sup> Ibid

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<sup>17</sup> Ibid

<sup>18</sup> Ibid

however, as pointed out rightly in the report of the law commission, it missed the necessity and desirability of the focus on directly dealing with unlawful assemblies and their vicious influences. Thus, the law commission came up with the proposed peace of legislation, the “ Prohibition of Unlawful Assembly ( Interference with the Freedom of Matrimonial Alliance) Bill, 2011 propose by clause 2(1) that no person or any group of persons shall gather with an “ intention to deliberate on, or condemn any marriage, not prohibited by law, on the basis that such marriage has dishonored the caste or community tradition or brought dispute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned.” The explanation to the clause includes a proposed or intended marriage with in the term ‘Marriage’.<sup>19</sup>

Clause 2(2) directs any such gathering or assembly or congregation to be treated as an unlawful assembly and every person convening or organizing such assembly and every member there of participation to be punished with imprisonment for a term of not less than six months but which may be

extend to one year and shall also be liable to fine up to ten thousand rupees.<sup>20</sup>

By virtue of clauses 4 of the bill any member of an unlawful assembly who alone or in association with other such members counsels, exhorts or brings pressure upon any person or persons so as to prevent, or disapprove of the marriage which is objected to by the said members of the unlawful assembly, or creates an environment of hostility toward such couple or either of them or their relatives or supporters, shall be deemed to have acted in endangerment of their liberty and such an act of endangerment shall be punishable with imprisonment for a term of not less than one year but which may extend to two years and shall also be liable to fine up to twenty thousand rupees.<sup>21</sup>

Clause 4(1) penalizes criminal intimidation of the couple or their relatives. The clause reads- “ any member of an unlawful assembly who, with a view to secure compliance with the illegal decision of that assembly in relation to the marriage that is being objected to, indulged in criminal intimidation of the couple or either of them

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<sup>19</sup> ibid

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<sup>20</sup> Ibid

<sup>21</sup> Ibid



or their relatives or supporters shall be punishable with imprisonment for a term of not less than one year but which may extend to three years and shall also be liable to fine up to thirty thousand rupees provided that if the threat be to cause harm or injury of the description referred to in second part of Section 506 IPC, the maximum punishment shall extend to seven years of imprisonment instead of three years and fine extending to thirty thousand rupees.”<sup>22</sup>

The explanation to the clause clarifies that Criminal intimidation means the same as section 506, Indian Penal Code 1860.

The bill further tightens the noose on person participating in the assembly by presuming his intention to commit the act. The clause 6 of the proposed bill reads- “ In a prosecution under section 3 or section 4, if it found that any accused person participated or continued to participate in an unlawful assembly, the court shall presume that he intended and decided to take all necessary steps to put into effect the decision of unlawful assembly including the

commission of acts referred to in Section 3 and 4.”<sup>23</sup>

The Collector or the District Magistrate has been entrusted with the responsibility of ensuring the safety of the persons targeted in case any decision is taken by the Khap Panchayat and he/she shall take necessary steps to prohibit the convening of such illegal gatherings. Any violation of any provision of the proposed law will attract imprisonment up to three years and a fine up to Rs 30,000.<sup>24</sup>

The cases to be tried in Special Courts presided over by a Sessions Judge or Additional Sessions Judge. The Special Court would be empowered to suo motu cognizance of the cases. All offences under the proposed Act will be cognizable, non-bailable and non-compundable.<sup>25</sup>

The basic intention behind the proposed piece of legislation is to secure freedom of choice and right to family of the individual and to deal with mischief created by unlawful assemblies that threaten an individual’s freedom of choice to matrimony. The law commission’s endeavor

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<sup>22</sup> Ibid

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<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Ibid

is commendable however, it is not flawless. Any potential act that comes beyond the Khap type for example the family of the victim is left unaddressed. However, since the proposed law only in addition to the existing criminal law, any homicide or act of criminal intimidation by the members of the family can be easily covered under the IPC.<sup>26</sup>

The root cause of the problem lies in the mindset of people which the bill fails to address completely. The solution offered in the Bill is criminalization and as experiences have shown, criminalization might be not be that successful to bring remedied.<sup>27</sup>

It has been suggested by the NUJS in its analysis of the bill that the word ‘marriage’ should be enlarged to include live in relationships and the like, keeping in view the changing mores of the society and in consonance with the Supreme Courts legitimizing live-in relationship in certain cases. Keeping in mind the ground realities of the societies in which Khaps function and yield power, such an inclusion of “live-in” relationships within the ambit of “marriage” would only further alienate the rural masses

from the law makers and would defeat the whole purpose by inciting anti-law sentiment in the rural heartland, who takes pride in sticking to their age old customs. May be once the rural society reaches that point when sagotra marriages or inter caste marriages become acceptable, we can think of including “live-ins” into the ambit of “marriage.”<sup>28</sup>

The prohibited action in section 2 is “gather assemble or congregate at any time with a view or intention”. This seems to suggest only gathering/assembling/congregation in the physical space. The section should also take into consideration the technological advancement and include virtual participation through social networks and the like. It should cover both direct and indirect participation. The action intended in section 2 may not always be collective action. As mentioned in the general observation above, if intimidation, threat or coercion can occur from within family/or one of the member of family. Such act need not always to be break marriage. Therefore, under the prohibited action in section 2, such acts should also figure in.<sup>29</sup>

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<sup>26</sup> Ibid

<sup>27</sup> Ibid

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<sup>28</sup> Ibid

<sup>29</sup> Ibid

Clause 6 uses the word ‘participation’ which should be defined to mean not only physical presence but also political, financial and other influences. With the increase in occurrence of phenomenon of flash mobs due to increasing mobile phone and internet use, there has to be a room made for virtual participation.<sup>30</sup>

Just like the bill proposed by NCW, the LCT’s Bill also does not include punishments for omission on the part of the authority, which receives information about the said offences but fails to take appropriate action. Addition of accountability on the part of responsible office/officers in the section has to be considered to make the law effective and implementable.<sup>31</sup>

A NCW Member, Smt. Shamina Shafiq, who visited the residences of the couple who was lynched by the girl family, spoke to their family members, relative and friends. The young couple was killed by girl family because they both belonged to same gotra and the same village. While speaking to media persons after visiting boys family, she said “They told me that they have decided not to pursue this case legally, as they fear a

social boycott. We will try to speak with women who are not related to this case.” She further said.<sup>32</sup>

“A kind of above the law social structure has been created and people are punishing people by killing them. This needs to be strongly condemned. It is the responsibility of the police and other authorities that such an incident is not repeated.”<sup>33</sup>

Slamming Khap Panchayats justify honor killings on the plea of seeking an amendment in the Hindu Marriage Act 1955. “They want to say that an amendment in law will stop such murders. Does this mean that you are trying to scare us that if you marry in the same gotra, we will continue to kill people? This is no justification. When and what kind of amendment will be done in the law, this is a legal issue.”<sup>34</sup>

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<sup>30</sup> ibid

<sup>31</sup> ibid

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<sup>32</sup> ibid

<sup>33</sup> ibid

<sup>34</sup> ibid