

Honour Killings within the Context of Right to Life An Analysis

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Abstract:

Honour killings as the word represents “taking life for saving the honour”. This has been the topic of great controversy and criticism at the national and international spheres. The crime of honour killings is usually committed by the family members against their blood relations on the ground saving or regaining the honour of the family or the society. These killings are usually committed because of the social pressure. Recently there has been spate of honour killings in India. Hon’ble Supreme Court of India has strongly condemned these atrocious acts. Declaring that in a country governed by the rule of law such illegal acts should not happen. All those persons responsible for such acts must know that gallows wait for them. Crime of honour killing violate the very existence of life itself. Right to life guaranteed at the national and international level gets infringed by honour killings. Right to life which is nationally and internationally recognized as the cherished and most sacrosanct right gets infringed by honour killings. Attempt has been made through this article to analyze the right to life within the context of honour killings.

Key words: Honour killing, right to life, India, social pressure, international law, family honour

Introduction:

Life is a Divine gift
to preserve it is commendable
to destroy it is condemnable¹

¹ in Aneeda Jan. 2012. *Socio-Legal Perspectives of Euthanasia*. Jammu & Kashmir: Jay Kay Publisher, 50.

Honour killing seems to be a new word but it existed in one or the other form from the very early times. As the name suggests honour killing grammatically means killing for the sake of so called honour. The word honour killing was first coined by a Dutch scholar Ana Nauta in 1978 so as to make a distinction between honour killings and blood feuds. However, presently, Honour killing, also called as customary killings, means the murder of a member of a family by other members due to their belief that the victim has brought dishonour/dishonour upon the family or the community. Honour killing can be defined as the act of murder in which human being is killed for the actual or perceived immoral behaviour. The perceived dishonour is normally the result of the following behaviours:-

1. Dressing in a manner unacceptable to the family or the community.
2. Wanting to terminate or prevent an arranged marriage or desiring to marry by own choice.
3. Having pre-marital sex or pregnancy.
4. Engaging in homosexual act.
5. Marriage outside the caste or within the same gotra.
6. Adultery.
7. Falling victim of rape.
8. Demanding a divorce. Etc

According to National Commission for Women, honour killings take place when young people challenge accepted norms of marriage.

Central to all fundamental rights universally acknowledged and legally protected is inherent right that is 'right to life.' Honour killing deprive the persons of this valuable, inalienable right. Honour killings and violence in the name of honour infringes right to life, liberty and security of the persons. Not only this, the crime of honour killings violates the right to be free from the torture or cruel treatment or inhuman or degrading treatment or punishments which goes against the international commitments to which India is a signatory. This

basic right that is 'right to life' stands guaranteed by all the civilised Nations. No right can be enjoyed without this right. Right to life has been legally, constitutionally, judicially, and jurisprudentially recognized as the most sacrosanct of all the rights. Roseau expressed that "everyone has a right to even risk the life in order to protect it." This jurisprudential concept of Rousseau has been feathered with practical wings by various legal provisions of the countries². John Locke stated that one cannot take one's life and cannot also permit others to take it.³ Thomas Hobbes also expressed a similar view.

Killing or taking life for whatsoever reasons has been objected by Plato and Aristotle on the ground that the state loses a citizen. Kant stressed that a man's freedom may be employed to enable him to live as man but he cannot use the liberty or freedom to destroy himself or others⁴. Kant emphasized that the human being is the supreme personality on this earth and all other worldly things are secondary to it. Human being is the end of all the worldly things. All worldly institutions must be utilised to elevate the human being, the supreme creation. The human being should be used to attain alleviation from some other worldly institution to destroy his existence. On the same lines Sir Sheikh Sayeed Mohammad Iqbal while glorifying the existence of human being wrote:

'Na tu zameen kay liyai hai na aasmaan kay liyai
Jahaan hai teray liyai tu nahi jahan kay liyai'

meaning that the whole world has been created for human beings. The world has been created by the Almighty for the benefit of human beings. Human being is the ultimate end of every institution and every worldly institution should be utilized to elevate the persons, a person being the crown of the

² For instance Right of Private Defense available to the citizen under various penal provisions.

³ John Locke. 1968. *Treatise of Government*. P. Lelett. New York, 325, 402.

⁴ Jan. 2012, 40.

creation. In order to preserve ridiculous customary practices, the societies that resort to honour killings or honour violence go against the philosophy of life and against the civilised nature of human being. Every human has inherently good and bad qualities residing inside himself. The human personality should be moulded by the human beings themselves in such a way so that the inherent good part should always prevail over the inherent weak or the bad part. Moreover wrong cultures and the traditions shall never be defended and preserved at the cost of human beings' lives.

Pointing towards importance of the right to life, former United States President Ronald Reagan says:⁵

My administration is dedicated to the preservation of America as a free land and there is no cause more important for preserving the freedom than affirming the transcendent 'right to life' of all human beings. The right without which no other right can have meaning.

Right to life is the supreme right and any unlawful act which goes against the philosophy of life is generally abhorred. This fact should not be denied that only, 'He' who gives life reserves the absolute and undivided right to take it and this is also the divine command "thou shall not kill". Thus honour killing goes against the divine command of preserving the life against all the odds.⁶

Belief in the special worth of human life lies at the heart of every civilised society. It is a fundamental value on which all other values are based. This right to life is available even in those jurisdictions which do not expressly guarantee it. Some of the express provisions which expressly guarantee right to life at the international and national spheres are:

- **Universal Declaration of Human Rights:**

"Whereas the recognition of inherent dignity and of equal and inalienable right of all the members of human family is the

⁵ Former President Ronald Reagan made the statement while addressing a seminar, on euthanasia as chairperson – March 2010.

⁶ S.N. Patil. 1988. *Right to Life*, 614.

foundation of justice, peace in the world [...]everyone has a right to life liberty and security of the persons.”⁷

- **According to European Convention for Protection of Human Rights and Fundamental Freedoms**

“every one’s right to life shall be protected by law”⁸

“everyone has a right to liberty and security of person [...] save in accordance with the procedure established by law” (Article 5)

“Every human being in this world has a right to be recognised and seen as a person before the law and in this regard must be allowed to avail the rights guaranteed to him/her in order to live life with dignity.”

- **Article 6 of the International Covenant on Civil and Political Rights 1966 states that—**

“every human being has an inherent right to life. This right shall be protected by the law and no one shall be arbitrarily deprived of such a right”.

Before locating any right in any legal system the jurisprudential basis of a right has to be considered. Right is an interest protected by the law. Human rights signify those rights which are basic and inalienable to every human being just for being a human being⁹. These rights start operating from the birth of human being. The right to life is asserted in the Universal Declaration of Human Rights which was drawn up by the Nations to secure the protection of all. Article 21 of constitution of India assures every person right to life and personal liberty¹⁰.

The term ‘life’ has been given a very extensive meaning and interpretation. The courts have often quoted the following observation of Justice Field in the case of *Munn vs Illions*¹¹:

[...] by the term life, something more is meant than mere

⁷ Universal Declaration on Human Right, 1948, Article 2.

⁸ European Convention for Protection of Human Rights and Fundamental Freedoms, 1950, Article 21.

⁹ Jan. 2012, 54.

¹⁰ M.P Jain. 2010. *Constitution of India*, 1265-1271.

¹¹ 1877 94 U.S 113.

existence. The inhibition against its deprivation extends to all those limbs and faculties by which the life is enjoyed.

Francis Carolie V. Union Territory Delhi¹²; justice Bhagwati

We think that right to life means right to live with human dignity and all that which goes along with it namely the bare necessities such as adequate, food, clothing and shelter and facilities for reading and writing and expressing oneself in diverse forms, freely moving about mixing and comingly with the fellow human beings further pointing out that inhibition would extend to all those faculties by which life is enjoyed.

The culprit's family members panchayatdhars who perpetuate honour killings argue that it is their right to life which gets infringed when any of the relatives does anything against the set cultural standards. The family of the boy or the girl who does anything to dishonour them state their right to live with dignity in their native surroundings when this gets infringed. They also claim that here the interests of boy or girl are lesser interests as against the family or the community interest. If there is any conflict between lesser or greater interests the natural and obvious rule is that the lesser has to make way for the greater interest. Again here - how far the argument is a sound one, this needs to be analysed and worked upon, viewing the act of honour killings in the light of the above interpretation given to the right to life and the jurisprudential sanctity right to life. It is crystal clear that the act of honour killing goes against the philosophy of life. Honour killings amount to flagrant violation of rule of law and invasion of personal liberty. Though legal codes regulate most aspects of human life today, the concept of honour has remained intact despite the fact that it violates and brutally infringes the right to life of the persons. In most of the jurisdictions, it is barely addressed or restricted by laws allowing for a number of actions, including violence and murder, as long as one claims he/she has committed that in the name of honour. Thus, the concept of honour legally sanctions

¹² AIR 1981 SC 746, 753 (1981) SC.

any behaviour as long as one can justify it with evidence of feeling disgraced. This becomes clear when judiciary of Pakistan decided a murder based on honour¹³.

In a recent case decided by the hon'ble Supreme Court of India¹⁴, Supreme Court strongly condemned the practice of honour killings and the intrusion of informal panchayats taking law into their own hands and indulging in offensive activities which endanger the life of the person.

In the occurrence of these offences and other related incidents involving serious life and liberty consequences are frequently noticed. These informal panchayats exhibit the least regard for life and liberty and are not deterred by the process of administration of justice. The innocent youth is being harassed and victimized by caste Assemblies. While such assemblies continued to yield unhindered authority, they also seem to resist any suggestion of being subjected to any social control. The traditional views of these elders (khap panchayat) cannot be forced on the younger generation and no one has a right to use force or impose far reaching sanctions in the name of vindicating family honour and thereby violating their right to life and liberty.

The young couples who choose to become life partners against the wishes of their family, society, or community are subjected to various atrocities in the form of wrongful confinement, persistent harassment, mental torture, infliction of threats. Severe bodily harm is resorted to either by the close relative or some third parties or by the community members, and absolute social boycott against the person who is perceived to have brought disgrace upon the family, depriving them from the basic necessities such food, water, shelter and clothing. All the above mentioned tortures are a gross violation of the

¹³ An example of this case of Mohammad Younis, a Pakistani man who has been excused for murdering his wife with following judicial opinion. The appellant had two children from his deceased wife and when he took the extreme step of taking her life, she must have done something, to enrage him to that extent (Amnesty International, 1999).

¹⁴ Arumugam Servai v State of Tamil Nadu (2011) 6 scc at pp. 405.

fundamental right to life and liberty guaranteed at the national and international level and needs to be halted as soon as possible.

Analyzing honour killings within the context of 'life' it is clear that honour killings are in antithesis to the right to life. An honour killing violates the very existence of life. These honour killings are brutal, violating the most basic right that is right to life and liberty of the concerned persons.

The hon'ble Supreme Court interpreted the right to life as dignified life and includes within its ambit all the elements which makes it dignified life. Article 21¹⁵ of the Constitution of India also embodies the principle of sanctity of life. Article 21 of Constitution of Indian guarantees each person the right to life and liberty. Right to life not only means food clothing and shelter but it includes within its purview every aspect of life which makes it dignified.¹⁶

Now the question which arises here is that, whether this dignified right to one's life is associated with the right to life of others. In other words the question which arises here is that does the essential elements of dignified life reside with the other relations that is father mother, brother sister, daughter son, cousins, community members etc since these killings are committed as argued in order to restore/protect the so called dignity of the family/clan/or the community which in turn means right to live a dignified life by protecting one's own honour by resorting to killings. The question is whether these killings are justified, keeping into consideration the present argument. The concept of dignified life is also embedded in the preamble¹⁷ of the constitution. Preamble of the constitution

¹⁵ Art 21 provides of constitution of Indian provides that, "No person shall be deprived of his right to life or personal liberty except in according to the procedure established by law."

¹⁶ Maneka Ghandi v Union of India. AIR 1978 SC.

¹⁷ The Preamble declares: "we the people of India having solemnly resolved to constitute India into a Sovereign Socialist, Secular Democratic Republic and to secure to its citizens;justice; social,economic and political----assuring the dignity of individual.....'

speaks about the dignity of the individual which is to be protected. Further, the Supreme Court of India has also validated that the right to life implies life with human dignity¹⁸. One can say that law permits an individual to protect the dignity. Now, the question is can a mother or brother kill the boyfriend or their sister or daughter in the protection of the right to dignity. In other words, can a person kill another who endangers the reputation of the family¹⁹?

In other words, can right of private defence be exercised in order to protect the dignity of the family class or the clan? This interpretation also needs to be viewed.

This question further stretches in this direction that whether “right to dignified life” can be claimed in terms of the act of others, which means whether right to private defence and right to protect the dignity can be enforced against the persons who are attacking the reputation of family clan or the community.

Conclusion

Now keeping into view the above analysis of ‘right to life within the context of honour killings’ one can conclude that honour killings violate the basic and inalienable right to life and personal liberty. Right to life means right to life with human dignity. The courts have further stretched the right to life enshrined in article 21 of the constitution of India that any element of life which makes the life dignified can be read into it, but limited its context within the positive elements only. Thus, in no stretch of imagination can flow from Article 21 the ‘right to kill’ for protecting the honour of family/clan/community. Right to life and right to kill are inconsistent with one another. The right to life belongs to rule

¹⁸ Francis Carolie Mulliar v Administrator, Union Territory Delhi (1981) SCC 608, Sunil Batra v Delhi Administrator (1978) 4 SCC 494.

¹⁹ Dr. Madhu Sudan Dash. 2012. “Rationale of Honour Killing.” *India Bar Review* XXXIV(3): 49.

of law and it is necessary that in the democratic setup rule of law is to prevail, and for that it is necessary to protect and ensure the guarantee of right to life. Thus, the pahchayatdhars or the family members who resort to killings for protecting the dignity of their own and to their clan, community should be dealt strictly under the existing laws.

Claiming right to kill can be taken where the question of saving the life arises. Need of the hour is to stretch the interpretation of Article 21 to include within its ambit right to marry and choose the life partner of one's own choice, as a large number of honour killings are committed on the ground of intercaste, intercommunity or gotra marriages. The right to marry according to choice is already available at the international scenario but should be made an express right in the national laws and differentiation based on caste, colour, creed, religion should be strictly penalised. Sole 'dignity' aspect or 'reputation' aspect or religious aspect should not involve justifying honour killings, nor should a lenient punishment be prescribed for such offence.

For the sake of honour killings and other crime, a criminal is a criminal; he has no religion, caste, community, nationality. Behind every crime there exists a motive. Moreover, in honour killings there is motive, prior meeting of minds. If someone killed on the basis of honour there is a full-fledged pre-arranged, pre-mediated plan for such killings. Therefore, the crime of honour killings should be severely punished as it violates the basic and inalienable human right that is right to life – and without this right, no other right can have any meaning.