

HONOR KILLING FOCUSING ON RELIGION, CASTE AND GENDER

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ABSTRACT

THIS RESEARCH PAPER IS AN COMPREHENSIVE STRUCTURE OF HONOR KILLINGS IN INDIA WITH HIGHLY INTERSECTED FRAMEWORKS WITH THE RELIGION, CASTE AND GENDER. THIS STUDY CONCEPTUALIZED ON HONOR KILLING DUE TO SOME ACT OF HOMICIDE, OR BY AN COMMUNITY, OR BY SOCIAL CONTROL METHOD TO PRESERVE CASTE ENDOGAMY, REGULATION OF FEMALE SEXUALITY, AND SUSTAINING PATRIARCHAL LINEAGE. THIS STUDY IS HIGHLY CONCENTRATED ON CONSTITUTIONAL MORALITY AND SOCIAL MORALITY CONFLICT IN CONTEMPORARY INDIA.

ARTICLES 14,15,19,21 OF THE CONSTITUTION OF INDIA AND OTHER STATUTORY PROVISIONS INCLUDING THE INDIAN PENAL CODE ,SPECIAL MARRIAGE ACTS 1954 ARE ALSO PLAYS A COORDINATED ROLE IN THIS STUDY .SOME OF THE LANDMARK CASES WHICH INCLUDES **LATA SINGH V STATE OF UTTAR PRADESH ,ARUMUGAM SERVAI V STATE OF TAMILNADU ,SHNATHI VAHINI V UNION OF INDIA** ARE NOTABLE LANDMARK CASES IN THIS STUDY. THIS PAPER ALSO FOCUSES LAW COMMISSION REPORTS, POLICY FRAMEWORKS, AND NATIONAL CRIME RECORD BUREAU DATA TO IDENTIFY THE ADMINISTRATIVE AND LEGISLATIVE DEFICIENCIES FOR ADDRESSING HONOR CRIMES .

THE CENTRAL FINDING OF THIS STUDY IS ON CASTE AS A PRIMARY KEY FOLLOWED BY THE GENDER. THIS HIGHLY FOCUSING ON THE WOMEN WHO TRANSGRESS CASTE AND RELIGIOUS BOUNDARIES THROUGH EXERCISE OF MARITAL CHOICE. IN THIS RESEARCH THE VIOLENCE IS NOT DONE BY AN INDIVIDUAL IT IS DONE BY A GROUP OF FAMILY MEMBERS AND ALSO OTHER SOCIAL FACTORS LIKE KHAP PANCHAYTS REFLECTING COMMUNAL SANCTION RATHER THAN ISOLATED CRIMINAL INTENT.

THE JUDICIARY HAS POSITIONED CONSTITUTIONAL MORALITY AS A COUNTER MAJORITARIAN PRINCIPLE INTENDED THROUGH INTENDED TO DISMANTLE OPPRESSIVE CUSTOMS AND AFFIRM THE PRIMACY OF INDIVIDUAL RIGHTS OVER COMMUNITY NORMS. THIS PAPER HAS MADE A COMPARATIVE ANALYSIS OF DIFFERENT COUNTRIES SUCH AS PAKISTAN UNITED KINGDOM, TURKEY AND JORDAN WHERE THE PAKISTAN HAS MADE AMENDMENTS TO ELIMINATE THE "FORGIVENESS LOOPHOLE", AND TURKEY SAID AS AGGRAVATED HOMICIDE AND UNITED KINGDOM EMPHASIZE ON MULTI AGENCY VICTIM PROTECTION FRAMEWORKS.

THIS STUDY ALSO FOCUSED ON CONSTITUTIONAL GUARENTESS OF EQUALITY, LIBERTY, AS WELL AS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS UNDER GENDER EQUALITY FRAMEWORKS SUCH AS **CEDAW**. TO ERADICATE THIS HONOR KILLING WE NEED A STRONG LEGISLATIVE REFORMS, INSTITUTIONAL ACCOUNTABILITY, LEGISLATIVE REFORM, GENDER EMPOWERMENT AND COMMUNITY LEVEL PROTECTION.

INTRODUCTION:

HONOR KILLING IS THE METHOD OF PREMEDIATED MURDER OF A FAMILY MEMBER MOSTLY WOMEN AND GIRLS WHO ARE BELIEVED TO BE VIOLATED THEIR RIGHTS TIED TO FAMILY HONOR, REPUTATION OR MORAL CONDUCT. THE MAIN CAUSE OF FOCUSING ON THE WOMEN AND GIRLS IS THEY TEND TO CHOOSE THEIR OWN PARTNERS, REFUSING ARRANGED MARRIAGE, SEEKING DIVORCE, OR INVOLVED IN THE VICTIM OF SEXUAL OFFENCES. ALTHOUGH TERMINOLOGY AND CUSTOMS VARY HONOR KILLINGS ARE CONSISTENTLY UNDERSTOOD AS A SUBSET OF HONOR BASED VIOLENCE ROOTED IN THE PATRIARCHAL CONTROL OVER THE FEMALE AUTONOMY AND SEXUALITY.

HONOR KILLINGS ARE WIDELY RECOGNIZED AS AN EXTREME FORM OF GENDER BASED VIOLENCE AND A VIOLATION OF FUNDAMENTAL HUMAN RIGHTS INCLUDING THE RIGHT TO LIFE, EQUALLY BEFORE LAW, AND FREEDOM TO CRUEL OR DEGRADING TREATMENT.

INTERNATIONAL BODIES SUCH AS UNITED NATIONS AND WORLD HEALTH ORGANISATION HAVE CONDEMNED HONOR KILLINGS AS MANIFESTATION OF CULTURALLY CONDONED DISCRIMINATION AGAINST WOMEN AND GIRLS, EMPHASISING THAT SUCH ACT PERSISTS WHERE PATRIARCHAL NORMS REMAIN DEEPLY ENTRENCHED AND LEGAL SYSTEM FAIL TO DETER OR EFFECTIVELY PROSECUTE OFFENDERS.

IN MOST OF THE SOCIETIES THE MAINTENANCE OF MALE AUTHORITY AND SOCIAL REPUTATION IS PRIORITIZED OVER INDIVIDUAL RIGHTS, RESULTING IN COMMUNITIES OR FAMILIAL SANCTIONS THAT JUSTIFY LETHAL VIOLENCE IN THE NAME OF THE HONOR. STUDIES HAVE DOCUMENTED HOW THESE KILLINGS ARE OFTEN SANCTIONED – OR AT LEAST TOLERATED BY LOCAL COMMUNITIES AND EVEN STATE INSTITUTIONS, SYSTEMATIC GENDER INEQUALITIES. THOUSANDS OF WOMEN AND GIRLS KILLED ANNUALLY WORLDWIDE FOR REASONS ASSOCIATED WITH PERCEIVED DISHONOR. THE STUDY SHOWS THAT THEY ARE NO

EXPLANATORY CLASSIFICATION OF THIS STUDY IN MIDDLE EAST, PARTS OF NORTH AMERICA DUE TO LIMITED DATA AND MISCLASSIFICATION OF CASES.

HISTORICAL BACKGROUND:

IN THE TEXTS OF MANUSMIRITIS THEY WOULD BE STRICT RULES REGARDING THE MARRIAGE, CASTE ENDOGAMY, AND WOMEN'S CHASTITY. WOMEN WERE ACTED AS CUSTODIANS OF THEIR FAMILY. INTERCASTE MARRIAGE SUCH AS HYPOGAMY OR HYPERGAMY IS SEVERELY CONDEMNED. DURING THE MEDIEVAL TIMES HONOR WAS CLOSELY WITH COMMUNITY FOR EG RAJPUTS AND CERTAIN WARRIOR COMMUNITIES. PRACTICES SUCH AS JAUHAR WERE SEEN AS A ACT TO PRESERVE HONOR.

DURING THE PERIOD OF BRITISH COLONIALS THE CODE OF INDIAN PENAL WAS INTRODUCED WHERE CRIMINALISED MURDER WAS PUT DOWN UNDER SEC 302, HOWEVER HONOR KILLINGS IS NOT CONSIDERED TO BE AN SEPARATE OFFENCE, IT IS TREATED AS A MURDER.

AFTER 1947 THE CONSTITUTION OF INDIA WAS INTRODUCED TRANSFORMATIVE PRINCIPLE SUCH AS ART 14, ART 15, ART 19, ART 21 AND SPECIAL LAWS WERE INTRODUCED SUCH AS SPECIAL MARRIAGE ACT 1954, AND HINDU MARRIAGE ACT 1955.

LEGISLATIVE DEVELOPMENT AND DEBATES:

IN INDIA THERE IS NO SEPARATE LAW FOR HONOR KILLINGS BUT THEY ARE PROSECUTED UNDER THE FOLLOWING SECTIONS

1. SECTION 302 IPC
2. SECTION 120B IPC
3. SECTION 34 IPC

IN 2010 LAW COMMISSION OF INDIA RECOMMENDED A SPECIAL LAW TO CURB HONOR CRIMES AND PREVENT INTERFERENCES WITH MARRIAGE CHOICES. HOWEVER, A COMPREHENSIVE CENTRAL LEGISLATION HAS NOT YET ENACTED.

CONSTITUTIONAL DOCTRINAL FRAMEWORK:

1. RIGHT TO LIFE AND PERSONAL LIBERTY ARTICLE 21

ARTICLE 21 GUARANTEES THAT NO PERSON SHALL BE DEPRIVED OF LIFE OR PERSONAL LIBERTY EXCEPT ACCORDING TO PROCEDURE ESTABLISHED BY LAW. THE SUPREME COURT HAS EXPANDED THIS ARTICLE 21:

- RIGHT TO DIGNITY
- RIGHT TO PRIVACY
- RIGHT TO CHOOSE A LIFE PARTNER

- CASE LAWS: LATA SINGH V STATE OF UTTAR PRADESH: THE COURT UPHHELD THAT A MAJOR WOMEN HAS THE RIGHT TO MARRY ANYONE OF HER CHOICE AND THAT HARASSMENT BY FAMILY MEMBERS IS ILLEGAL.

2. EQUALITY BEFORE LAW ARTICLE 14 AND 15

ARTICLE 14 GUARANTEES THAT EQUALITY BEFORE LAW WHILE ARTICLE 15 PROHIBITS DISCRIMINATION BASED ON CASTE, RELIGION, SEX OR PLACE OF BIRTH.

- CASE LAW: IN NAVTEJ SINGH JOHAR V UNION OF INDIA, THE COURT EMPHASISED CONSTITUTIONAL MORALITY OVER SOCIAL MORALITY, REINFORCING THAT INDIVIDUAL DIGNITY PREVAILS OVER SOCIAL PREJUDICE.

3. ARTICLE 19: FREEDOM AND PERSONAL CHOICE

ARTICLE 19 GUARANTEES CERTAIN FREEDOMS INCLUDING:

- FREEDOM OF EXPRESSION
- FREEDOM OF MOVEMENT
- FREEDOM TO RESIDE AND SETTLE

CHOOSING A LIFE PARTNER IS AN EXPRESSION OF PERSONAL IDENTITY AND AUTONOMY. HONOR KILLING OFTEN INVOLVE RESTRICTING MOVEMENT, CONFINING INDIVIDUAL, OR THREATENING COUPLES WHO MARRY BY CHOICE. SUCH ACTIONS INFRINGE UPON FREEDOM.

4. ARTICLE 25: FREEDOM OF RELIGION:

ARTICLE 25 GUARANTEES FREEDOM OF CONSCIENCE AND FREE PROFESSION, PRACTICE AND

PROTECTION OF RELIGION, SUBJECT TO PUBLIC ORDER, MORALITY AND HEALTH.

SOME HONOR KILLINGS ARE JUSTIFIED ON RELIGIOUS GROUNDS. HOWEVER RELIGIOUS FREEDOM CANNOT OVERRIDE FUNDAMENTAL RIGHTS. ANY PRACTICE THAT DEPRIVES A PERSON OF LIFE OR LIBERTY CANNOT BE PROTECTED UNDER ARTICLE 25, AS IT SUBJECT TO CONSTITUTIONAL MORALITY AND PUBLIC ORDER.

5. ARTICLE 32 AND 226 – CONSTITUTIONAL REMEDIES

ARTICLES 32 AND 226 EMPOWER INDIVIDUALS TO APPROACH:

- THE SUPREME COURT (ARTICLE 32)
- HIGH COURTS (ARTICLE 226)

FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS.

6. DIRECTIVES PRINCIPLES OF STATE POLICY

TWO SECTIONS DENOTES FROM THE STATE POLICY PROMOTES JUSTICE AND EQUALITY.

ARTICLE 39 (A) PROMOTES JUSTICE AND EQUAL OPPORTUNITY

ARTICLE 39(F) ENSURES PROTECTION OF YOUTH AGAINST EXPLOITATION

ARTICLE 51(A) UNDER THE FUNDAMENTAL DUTIES ENCOURAGE CITIZEN TO RENOUNCE PRACTICES DEROGATORY TO THE DIGNITY OF WOMEN.

ROLE OF JUDICIARY

LANDMARK JUDGEMENTS:

1. LATA SINGH V STATE OF UTTAR PRADESH (2006)

PRINCIPLE:

RIGHTS OF THE ADULT WOMEN TO MARRY A PERSON OF HER CHOICE

KEY OBSERVATIONS:

1. INTER CASTE MARRIAGE ARE IN NATIONAL INTEREST.
2. FAMILY MEMBERS THREATENING OR HARASSING COUPLES MUST FACE CRIMINAL PROSECUTION.
3. ADULT INDIVIDUALS HAVE THE FUNDAMENTAL RIGHTS UNDER ARTICLE 21 TO CHOOSE THEIR LIFE PARTNER.

2. ARUMUGAM SERVAI V STATE OF TAMILNADU

PRINCIPLE:

CONDEMNATION OF KHAP PANCHAYATS.

KEY OBSERVATIONS:

1. KHAP PANCHAYATS ARE ILLEGAL BODIES.
2. THEY CANNOT INTERFERE WITH MARRIAGES BETWEEN CONSENTING ADULTS.
3. HONOR KILLING IS BARBARIC AND SHAMEFUL.

3. BHAGWAN DASS V STATE (NCT OF DELHI)

PRINCIPLE:

HONOR KILLINGS IS ONE OF THE RAREST OF THE RARE CASES

KEY OBSERVATIONS:

1. HONOR KILLING IS NOTHING BUT COLD BLOODED MURDER.
2. SUCH CRIMES DESERVE THE SEVEREST PUNISHMENT.
3. COURTS MUST TREAT HONOR KILLING AS AGGRAVATED FORM OF MURDER.
4. SHANTHI VAHINI V UNION OF INDIA

PRINCIPLE:

PREVENTIVE, REMEDIAL, AND PUNITIVE GUIDELINES.

KEY OBSERVATIONS:

1. CONSTITUTIONAL MORALITY MUST PREVAIL OVER SOCIAL MORALITY.
2. ISSUED DETAILED DIRECTIONS:
 - SAFE HOUSES FOR COUPLES
 - PROTECTION OF POLICE IMMEDIATELY
 - PREVENTIVE STEPS AGAINST UNLAWFUL ASSEMBLIES
 - ACCOUNTABILITY OF DISTRICT ADMINISTRATION.
5. SHAFIN JAHAN V ASHOKAN K.M

PRINCIPLE:

AUTONOMY AND CHOICE IN MARRIAGE.

KEY OBSERVATIONS:

1. THE RIGHT TO CHOOSE A LIFE PARTNER IS INTRINSIC TO ARTICLE 21.
2. COURTS AND PARENTS CANNOT SUBSTITUTE THEIR DECISION FOR THAT OF AN ADULT WOMEN.
6. NAVTEJ SINGH JOHAR V UNION OF INDIA

PRINCIPLE:

CONSTITUTIONAL MORALITY OVER SOCIAL MORALITY

KEY OBSERVATIONS:

1. INDIVIDUAL DIGNITY AND AUTONOMY ARE PROTECTED BY THE CONSTITUTION.
2. SOCIAL DISAPPROVAL CANNOT JUSTIFY DENIAL OF FUNDAMENTAL RIGHTS.
7. ASHA RANJAN V STATE OF BIHAR

PRINCIPLE:

RIGHT TO CHOOSE A PARTNER IS A PART OF PERSONAL LIBERTY.

KEY OBSERVATIONS:

1. THE SUPREME COURT RECOGNISED THE IMPORTANCE OF INDIVIDUAL AUTONOMY IN MARTIAL DECISIONS.

PATTERNS IDENTIFIED:

1. CASTE –CENTRIC PATTERNS:

- INTER CASTE MARRIAGE AS PRIMARY TRIGGER.
- SAME GOTRA MARRIAGES

2. GENDER BASED PATTERNS

- WOMEN ARE PRIMARY TARGETS
- PATRIARCHAL CONTROL

3. RELIGIOUS PATTERN

- INTER FAITH MARRIAGES

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