

Redefining Honor'ism': Problems And Prospects With Prosecuting The Perpetrators U/S 300, IPC

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Introduction -

Under the wide scope of crimes which are taking place in the present time, the honour crime is emerging at a very rapid pace and it is perhaps the most heinous in all of them. In the present time there is no separate law which is governing these types of crimes. This category of crime still falls in the category of murder and the reason behind being that its elements are overlapping with the requirements of murder as defined under the Indian Penal Code.³ But when we analyse the crime of honour killing in entirety, it can be noticed that it has certain unique features which make honour killing even more heinous than murder. It can be easily differentiated from the normal form of murder as in the case of honour killing the victim is usually not a third person but rather belongs to the accused's own family member or social group member. The perpetrator in many cases of honour killing is either a brother or a father of a female victim whose cultural role initially was supposed to be protecting the victim from any harm. If we try to look at the criminology behind these crimes or the mental element of these crimes we will find that the perpetrator in these crimes has not been motivated by any economic reasons and is purely fuelled by the abstract desire to bring back the honour to the family by eliminating the family member who brought dishonour.

It can be very well observed that this perceived dishonour is commonly a result as the male member of the family feels that he has lost control over the behaviour, especially the sexual behaviour of a female counterpart of the family. In many rural

³ Section 300 - Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —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 injury as aforesaid.

societies, where the value of education is lower than that of family status, the ideal of masculinity is underpinned by a notion of 'honour'- of an individual man, or a family or a community- and is fundamentally connected to policing female behaviour and sexuality.⁴

This crime is not limited only in the cases of marriages against the will or the preferred spousal choices. It varies from the amount of control exercised ranging from the choice of clothing to the choice of preferred spouse. Prima facie these policing could be around arranged marriages, preferred spousal choices, and extramarital relationships, out of caste marriages or even minor objections to obscene clothing.⁵ On a broad scale we can say that the mental element generates in these crimes because of the reason of 'regulation over sexuality'.

The present paper mainly emphasises on the gender based valance which took place within the family itself mainly focusing on 'honour killing'. The above types of crimes are mainly associated with the concept of honour and shame, and basically are the genesis of regulation over sexuality. Until recently, such crimes largely escaped national scrutiny and, it is argued, to some extent still do, because they are often viewed as "traditional or cultural practices"⁶, outside the scope of accepted state intervention.

We can say that in most of the cases the violence develops during the regular interval, it starts from trifling benefits and then slowly advances to more belligerent forms of control. In the words of Radhika Coomaraswamy these 'Regulation' of such behaviour may in intense cases involve terrible unswerving aggression- including- 'Honour Killing', perhaps the most overt example of the fierce control of woman

⁴ Radhika Coomaraswamy - Violence against women and _crimes of honour', UN special Rapporteur.

⁵ Rosie Dimano and Andrew Chung .Inside the Shafia murder trial. A Toronto Star Publication

⁶ Radhika Coomaraswamy, 'Violence Against Women and Crimes of Honour' in Lynn Welchman and Sara Hossain, *'Honour': Crimes, Paradigms and Violence Against Women* (Zed Books 2005).

sexuality- as well as indirect restrained control exercised by intimidation of force or the withdrawal of family benefits and security.⁷

There is a need of understanding the rational and the psychology behind such type of crime. The non-availability of a strict and cogent definition can be considered as a major reason behind the increment in such types of crimes. The need of the time is to provide the specific definition and the new legislation to deal with the above mentioned category of crime which can help in the reduction of these violence's.

Along with it we also have to look into the differences between the crime of honour killing and criminal offence of homicide. It is important because till now there is no separate law to deal with the problem of honour killing, they are being treated under the sub-set of homicide. The main aim of any punishment is to reform the criminal and the society. For the very same purpose it is important to understand the mental element and psychology behind such type of crime. So if we understand the difference between the homicide and honour killing, it can be easily justified that there is a need of separate legislation to deal with the problem of honour crime.

Honour -

Before understanding what is honour killing it is very important to get oneself clear with the concept of honour, *what does honour means?* In the modern society it is very hard to introduce the concept and meaning of honour in the context of honour killings. One of the problems is that the term honour is mostly associated with other things in a positive sense and this is the reason that there was opposition in use of the word honour due to its frequent interchangeable positive attributions.

The term Honour is derived from the Latin word *honos* which is an abstract concept of a perceived quality of worthiness, respectability and moreover the perceived standing of an individual in large social bodies such as schools, neighbourhoods, cities or nations. But none of the meanings seem conducive to encourage or support the assumption that honour is associated with the right to kill in order for its

⁷ Radhika Coomaraswamy –Violence against women and ‘_crimes of honour’, UN special Rapporteur

preservation, neither do they inspire any violent conduct in situations where the honour of the individual is at stake.

Honour is an abstract concept entailing a professed quality of worthiness, uprightness and respectability that affects both the social status and the self-evaluation of an individual or establishment such as a family, school, etc. Going by the above explanation we can state that individuals (or institutions) are assigned importance and stature based on the harmony of their actions with a specific code of honour, and at the very same time with the moral code of the society at large.

If we look into the history of the European context the term honour signifies the meaning loyalty and decency to which killing formed an essential element of such a code of loyalty. Over there i.e. in western civilization it is considered as proper to form a duel in order to protect the honour.

Samuel Johnson⁸, in his *A Dictionary of the English Language* (1755), defined honour as having several senses, the first of which was "nobility of soul, magnanimity, and a scorn of meanness." The above mentioned honour derives from the apparent virtuous conduct and personal integrity or honesty of the person attached with it. On the other way, Johnson also gave another definition of honour in association to "reputation" and "fame"; to "privileges of rank or birth", and as "respect" of the kind which "places an individual socially and determines his right to precedence." This sort of honour derives from the amount of power or is the consequence of power and it cannot be said much as a function of moral or ethical superiority. In the end and most importantly honour is also defined in respect of sexuality. It is said that honour has customarily been linked to "chastity" or "virginity", or in case of married men and women, "fidelity". Many do believe that honour should be seen more as an expression, or set of possible actions, than as a code.

⁸ English writer who made lasting contributions to English literature as a poet, essayist, moralist, literary critic, biographer, editor and lexicographer.

If we talk in the social context we can say that, honour as a code of behaviour defines the duties of an individual within a social group. Margaret Visser⁹ observes that in an honour-based society "*a person is what he or she is in the eyes of other people*".¹⁰ If we emphasise on the code then it can clearly be said that the code of honour entirely differ from the code of law, also if we look at its social perspective and relationship with the justice in that honour remains implicit rather than explicit and objectified.

Many people perhaps confuse between the honour and dignity, but there is a clear difference between both of them and they can be clearly and easily distinguished with each other. On one hand dignity can be said to a self-discipline that require you to be a decent individual, on the other hand honour can be said to that interior sense which drives the dignity, and in some is strong enough to bring a person down if that sense of honour is ever damaged. We can say that dignity is internal in nature whereas honour is external.¹¹ Dignity is basically how you treat yourself, how you interact with yourself whereas honour is how you interact with the outer world, how you interact with others. Dignity has everything to do with your own expectations of how you should carry and present yourself, while honour dictates things like treating people fairly and justly. Honour is about meeting your obligations, satisfying your duties, and keeping your sworn word.

In the modern times especially in the west we can say that the concept of honour appears to have been declined. If we talk in the individual context we can say that conscience has replaced it and if we talk in the social context it is the rule of law which cane said the one which has taken place or replaced honour.¹²

⁹ Philosophical and social writer from south Africa.

¹⁰ Doris, Jim (2003-01-05). "A conversation with Margaret Visser: diagnosing that feeling of helplessness". Catholic New Times. Retrieved 05-11-2017

¹¹ A Dictionary of Medieval Terms and Phrases, Christopher Corédon, 2004, D.S. Brewer, Cambridge, ISBN 1-84384-023-5

¹² Ignatieff, Michael (1997). The Warrior's Honour: Ethnic War and the Modern Conscience. New York, New York: Henry Holt and Co.

We are mainly concern with the definition of honour in respect of sexuality. Honour in this particular case can be related to the faithfulness or the belief which can be demonstrated by continuing loyalty and support. In the very simple words we can say that in the case of sexuality, honour frequently relates to fidelity. To preserve the honour means to preserve the virginity of the unmarried ones and to preserve the exclusive monogamy in case of the remaining population that is the married ones. Further there are conceptions that honour vary widely from culture to culture; even there are some cultures which regard honour killings of members of one's own family (mostly female) as justified if the individuals have "ruined the family's honour" by marrying with her or his own choice against the family's wishes, or even by becoming the victims of rape in cases of female member. In the western world these honour killings are seen as a way of controlling female sexuality.¹³

Honour killing -

Before understanding honour killing it is important to understand crime of honour. The definition of crime of honour is very straightforward,¹⁴ because it encloses wide range of crimes which are culture specific. It can be defined as -

“one of a range of violent or abusive acts committed in the name of ‘honour’, including emotional, physical or sexual abuse and other controlling and coercive behaviours, such as forced marriage and female genital mutilation, which can end, in some extreme cases in suicide or murder.”¹⁵

Till now there is no perfect definition of honour crime. There were many attempt made in this respect and one among them is of the Human Rights Watch. It defines honour killing as-

¹³ "Honour killings of girls and women". Amnesty International library. Amnesty International. 1999-08-31. Retrieved 07-11-2017.

¹⁴ Lynn Welchman and Sara Hossain, “‘Honour’, Rights and Wrongs’ in Welchman and Hossain, *‘Honour’* (n 1).

¹⁵ Hannana Siddiqui, ‘There is no ‘Honour’ in Domestic Violence, Only Shame! Women’s Struggles Against ‘Honour’ Crimes in the UK’ in Welchman and Hossain, *‘Honour’* (n 1), 263.

Honor killings are acts of vengeance, usually death, committed by male family members against female family members, who are held to have brought dishonour upon the family. A woman can be targeted by (individuals within) her family for a variety of reasons, including: refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce – even from an abusive husband – or (allegedly) committing adultery. The mere perception that a woman has behaved in a way that "dishonours" her family is sufficient to trigger an attack on her life.¹⁶

If we have a look in the history we can say that honour killing is product of the social groups which have a hard belief in the patriarchal model of the society. These killings cannot be equated to the crime of homicide and there is a qualitative difference between homicide and honour killing.

Honour killing by definition is considered as a cultural crime. The reason behind this is that it can be committed only by the person for whom issues of private and domestic honour are of serious concern.

These types of crimes are distinctively governed by the specific logic of an honour culture.¹⁷ The uniqueness of this culture is that it has an emblematic or typical understanding of the term shame and honour which exists in the patriarchal society. These meanings may seem unfamiliar and inexplicable at the first look from the viewpoint of foreign culture.

Michael Kurkiala, put forward the scenario of honour killing under this type of logic and understanding –

....if a woman refused to comply with the rules set down by her cultural community, her „immoral behaviour“ contaminated the whole family. If other strategies to make the women comply failed, the only remedy was for her male relatives to kill her in order to protect the

¹⁶ "Violence Against Women and 'Honor' Crimes". *Human Rights Watch*.

¹⁷ Mikael Kurkiala, –Interpreting Honour Killings: The Story of Fadime Shindal (1975-2002) in the Swedish Press, *Anthropology Today*, Vol 19, No. 1 , February 2003, pp. 6-7,6.

family honour. Thus, the murders were culturally sanctioned and designed to uphold a specific moral order.”¹⁸

In a well-built patriarchal society there is a different manner in which ‘honour’ is measured. It is not measured with the worthiness of a man, rather it depends on the amount of control that is exercised by the man over the women. If we look into the words of Kamla Bhasin and Ritu Menon, most men and women we spoke to agreed that honour, for losing and preserving, is located in the body of women.¹⁹

Honour killing can be defined as a crime where a woman is killed “either prevent or repair perceived violations of male or familial honour.”²⁰ There is another definition by Amnesty international, it defines honour killing as the crime of killing a female relative of the family by the family member especially man, when it is believed that the act of that particular female relative has brought the shame and dishonour to the family.²¹

Origin and development of Honour Killing -

Historically there are no conclusive and definitive proofs and explanations regarding the origins of ‘honour killings’. There are not substantive documents or documentaries which can provide you the conclusiveness on the origin of honour killing. The scholars of the south Asian continent claim that the practice of honour killing firstly originated in Balochistan with various Baloch tribes and due to the migration of these tribes to various other countries it spread in those countries. The colonial record which can be found on then Baloch tribes of Balochistan clearly talks

¹⁸ Mikael Kurkiala, –Interpreting Honour Killings: The Story of Fadime Shindal (1975-2002) in the Swedish Press, Anthropology Today, Vol 19, No. 1 , February 2003, pp. 6-7,6.

¹⁹ K Bhasin and R. Menon, BORDERS AND BOUNDARIES, Kali, New Delhi p.58.

²⁰ Uma Chakravarti, ‘From Fathers to Husbands of Love, Death and Marriage in North India’ in Welchman and Hossain, ‘Honour’ (n 1), 308.

²¹ Amnesty International, ‘Pakistan: No Progress on Women’s Rights’, September 1998. AI Index: ASA 33/13/98.

about the custom of honour killing.²² These documents or records also talk about the particulars who were allowed to raise the allegations against the female class and mention the evidence which was required in these cases for granting the possible punishments.

If we talk about the Indian and Pakistani region, there is a possibility that this custom was adopted over here in the later part. There is a recent incident of 2008 when Israr Ullah Zehri, a politician of Pakistan belonging to Balochistan, came forward against the five women belonging to the Umrani tribe by defending the honour killings by a relative of a local Umrani politician. Israr Ullah Zehri also defended the honour killings in the parliament of Pakistan and suggested the other legislators not to make a fuss about the incident and the prevailing concept or practice of honour killing. He said, "These are centuries-old traditions, and I will continue to defend them. Only those who indulge in immoral acts should be afraid."²³

It can be said that although the origin of honour killing cannot be contented as a conclusive one and it might be disputed, but we can clearly see the plausibility of the occurrence of honour killing and the reason being the prevailing patriarchal societies and the reducing status of the female in the society.

The honour killing is mainly and commonly misconceived and considered as an exclusively Islamic practice. But if we look back in the history we can find that the laws promoting the violence against the female for the purpose of social autonomy can be found in the Assyrian law codes dating back to 600 BCE and even in the codes of the Hammurabi. If we talk about ancient Rome, over there the father used to be the head of the family and they were given the responsibility to maintain the

²² Sohail Akbar Warraich. 'Honour Killings and the law in Pakistan'; during the British Colonial period, District Magistrate/ Collectors would compile gazettes to provide basic information about the area, its geography, history, climate, population, customary practices of the tribe, families in the district, etc. These gazettes served as guidebooks for the administration.

²³ Hussain, Zahid (2008-09-05). "Three teenagers buried alive in 'honour killings'". Times Online (London)

culture. They were provided with the legal power over the family. They even have the power of the life and death of these members and they were punished if they failed in their duties. The head of the family i.e. father used to be penalized if any female relative of his violates of the sexual code and he fails to take any violent action against them.²⁴

If we have a look on the reports of the United Nations Special Rapporteur on violence against women which were published in 2002 and 2003, and the other available data we can say that the honour killing is not restricted only to the Muslim Communities, infect it has established its root in all the communities.²⁵ It is very important to realize and make oneself aware with the cross-cultural element of honour killing. It is very broad and cannot be defined and restricted in the ambit of any region, class, caste or religion. Thus, if we are having the view or goal of reducing and preventing such crimes the stereotyping these crimes to certain ethnic group or religion seems counterproductive to the achievement of such goal.

There is also a belief that the origin of the concept of killing just for the purpose of preserving and preventing one's honour mainly derives its origin in the ancient desert tribes where the females were considered as the repository for the family's honour. In these ancient tribes honour which was also used to be termed as Ghairat, used to be closely related with one's position in society, or we can say their *izzat in*

²⁴ Jane F. Gardner, *Women in Roman law and society* (Bloomington, IN: Indiana University Press, 1986)

²⁵ Honor killings take place in countries including Brazil, Denmark, Egypt, Iraq, Israel and the occupied territories, Jordan, Kuwait, Lebanon, Morocco, the Netherlands, Pakistan, Qatar, Sweden, Syria, Turkey, and Yemen (Report of the United Nations Special Rapporteur on violence against women (2002), Report of the United Nations Special Rapporteur on violence against women (2003)). See also Rana Husseini, *Murder in the Name of Honor*, Oxford, UK: One World Publications, 2009. According to Bettiga-Boukerbout honor killing also took place in Italy. Maria Gabriella Bettiga - Boukerbout, *Crimes of Honour in the Italian Penal Code: An Analysis of History and Reform*, in - *Honour Crimes*, eds Lynn Welchman and Sara Hossain, op. cit., pp. 230-244, 235.

the society, which is determined by the amount of wealth and property associated with a particular person.²⁶

At that time females were considered as the property of male part of the family (Father, husband or any other male relative of the family). These properties i.e. females were valued according to their reproductive capabilities and were available for the male to purchase them through a dowry. Through this culture women became an instrument in which male makes the investment towards his honour and standing in the community, and in return they get a legitimate right of compensation for damages to their honour and for restoring his honour. These acts lead to the increment and the development of honour killing.²⁷ Men would kill women to hide their shame, publicly demonstrate their power, and avoid being considered “socially impotent” and *beghariat* (without honour) by their community.²⁸

Honour killing in India -

This section of the paper aims to highlight the existence of the acts of disgraceful honor killings even in a rapidly developing country like India in the 21st century. To quote Fadia Faqir, “*The use of violence to maintain privilege is not a neoteric phenomenon, rather it is historically entrenched, and has turned gradually into ‘the systemic and global destruction of women, with the institutionalization of patriarchy over the centuries’.*”²⁹ However, it is difficult to trace down the very first instance of honor killing due to lack of distinct recognition to such killings with murder. Though the concepts of ‘*maryada*’ and ‘*ghairat*’ in many Indian cultures clearly dictate about the presence of certain regulations especially upon female behavior.

²⁶ Honor Based Violence Awareness Network. “Historical Overview”, International Honour Based Violence Resource Centre. <http://honour-killings.com/history/> (accessed November 3, 2017)

²⁷ Vitoshka Diana, “The Modern Face of Honour Killing: Factors, Legal Issues, and Policy Recommendations.” *Berkely Undergraduate Journal* 22, no. 2 (2010)

²⁸ Ruane, Rachel. “Murder in the Name of Honor: Violence against Women in Jordan and Pakistan.” *Emory International Law Review* 14, no. 3 (2000): 1523-1580

²⁹Faqir 2001

Lately, the issue of honor killing has gained unanimous pull after its recognition by the National Crime Records Bureau (NCRB) in 2014³⁰ and the stern yet lenient approach of Indian judiciary in dealing with such complicated social issues. To illustrate a few cases – In *Vikas Yadav v. State of U.P.*³¹, the deceased Nitish Katara was in love with Bharti, a politician's daughter (sister of VikasYadav). Nitish and Bharti were attending a common friend's wedding in February 2002 when they accidentally crossed paths with VikasYadav and his cousin in the party. The accused, VikasYadav and Vishal Yadav along with a friend, abducted Nitish and mercilessly assaulted him to death with a hammer and later, set him aflame and threw him alongside a highway. This extremely atrocious act of Bharti's brothers is cruel and barbaric in the truest sense. The Court said that crime was committed in a planned and cold blooded manner with the motive that has emanated due to feeling of some kind of uncalled for and unwarranted superiority based on caste, yet the prime perpetrators Vikas and Vishal Yadav were imprisoned for 25 years only.

On another instance, in June 2007, the decomposed bodies of Manoj and Babli were found in a canal in Hisar, Haryana. The deceased had committed the "so called crime" of marrying each other against the orders of the KhapPanchayat, whereby they were compelled to accept each other as brother and sister due to the limitations of the gotras. The deceased were vehemently fed pesticides and were smothered to death by Babli's relatives. M. Jeyapaul J.³², stated that "*Even in the 21st century such a shameful act of hollow honour killing is perpetrated in our society. We feel that it is really a slur on the fine fabric of the Indian society.*" Yet again, the High Court did not find the case to be a suitable application of the Rarest of Rare Doctrine and denied to grant death sentence to the accused.

³⁰<http://www.thenewsminute.com/article/india-needs-separate-law-tackle-honour-crimes-activists-demand-govt-listening-62382> (last accessed on Nov 01, 2017)

³¹(2016) 9 SCC 541.

³²Chanderpati v. State of Haryana, Criminal revision No.2173 of 2010

There have been innumerable instances of honour killing whereby a father along with his friend had raped and killed his own daughter for she eloped and married a man outside her community³³; where a young Dalit man when married to an upper caste girl, was murdered with help of sickles and machetes while the girl managed to survive the death row; where a couple had brutally and mercilessly murdered their own daughter and set her on fire for marrying against their will. These are only a few instances out of the hundreds of incidents taking place annually. However, there is a glut of cases that go unreported due to the social factor associated to such cases. One of them being the case of Rohtak couple, Dharmendra Barak and Nidhi Barak, where in the girl was lynched by her own family and the boy was publicly beheaded by the Nidhi's family. Nidhi's father has been recorded stating that he has no regrets and might do it again, if the situation demands so. Whereas, the boy's family did not even file the police complaint. One of their neighbour states, "If my daughter did this, I would have killed her with my bare hands, no matter what happens to me."³⁴

Reports and statistics -

If we talk about the available data on honour killing in India, there is not much data available under this head. These cases are covered under the broad head of homicide and violence against women. To identify them separately in year 2014, the National Crime Records Bureau had recognized honour killing as a separate cause/motive for murder. After this recognition the very first data which comes forward was very shocking, it brings out that *India has registered an almost 800 percent rise in the number of killings in the name of "honour" reported last year (i.e. 2014-2015), according to a statement by Junior Home Minister Hansraj G Ahir to India's parliament.*³⁵ The absence

³³<http://www.dnaindia.com/mumbai/report-dna-exclusive-17-year-old-raped-killed-by-father-his-friend-1914231>

³⁴NDTV news channel. Deepshikha Ghosh, September 20, 2013

³⁵<http://www.aljazeera.com/news/2016/12/india-sees-huge-spike-honour-killings-161207153333597.html>, last accessed on 02/10/2017 at 9:10 am

of a particular definition of Honour Killing in the criminal legislations can be considered as the major reason behind this. Moreover, the situation has worsened in the past few years, noting an increasing trend in village councils run by unelected elders promoting conservative, anti-women values in the name of preserving Indian culture and tradition³⁶. This is the result of still existing biasness and the belief in patriarchal system in our society.

It is the case all over the world. In the year 2016, Pakistan grasped the attention of the world, when it witnessed a high-profile murder case, a widely acclaimed social media star was relentlessly strangled to death by her own brothers. The accused stated that "*she had brought dishonour*" and "*do not regret*" their acts; this is one of the 5000 cases of honor killings that happen every year in the world. Further, a more deplorable thing is that out of the 5000 cases, 1000 cases are from India alone.³⁷ The brutal murders of Arushi Talwar³⁸, Nitish Katara³⁹ and Manoj-Babli⁴⁰ still haunt millions of women who are willing to exercise their right to choose to whom to marry. These abominable crimes are committed in the name of preserving honour of the family or women and we should hang our heads in shame when such episodes take place even in the 21st century.

The surge could partly reflect more willingness by people to report such crimes, which many still consider just punishment for women and men who defy communal customs by marrying outside of their religion, clan, or caste. But mainly the victims of honour crime are women's. Often the perpetrators are relatives seeking to punish young couples for bringing "shame" to the family.

³⁶Annie Raja of the National Federation of Indian Women, in an interview to Times Now

³⁷<http://hmv-awareness.com/>

³⁸ CBI v. Rajesh Talwar & Anr., R.C. No.1(S)/2008/SCR-III/CBI/NEW DELHI

³⁹VikasYadav & Anr. v. State of U.P., (2016) 9 SCC 541 (India).

⁴⁰ Smt. Chandrapati v. State of Haryana &Ors. Criminal Revision No.2173 of 2010.

Though police are now asked to count these killings separately, the lack of a separate law defining such crimes means some police officers still record them in the larger murder category and do not investigate the cases further. Killings in the name of honour are still common enough among Hindus and Muslims to regularly make newspaper headlines in a country where most marriages are arranged by families.

There are countries where there is very less rate of such crimes. We have to have a look into their system and understand their mechanism, so that it can be implemented in our country also. In 2003, London's Metropolitan Police set up a specialist task force unit to investigate honour killings. The Metropolitan Police estimate that there are around twelve 'honour killings' per year in the UK.⁴¹

It will not be wrong to say that honour killings represent only "the tip of the iceberg in terms of violence and abuse perpetrated against women in the name of honour."⁴² The area of crime against honour and violence against women is very broad. The study in the social cohesion report⁴³ shows that honour killings and domestic violence are "not isolated practices but are instead part of a self-sustaining social system built on ideas of honour and cultural, ethnic and religious superiority."

Although there is no separate data available under the head honour killing but we can understand it by looking at the statistics of crime against women. The chart below clearly shows the image of the areas in India where these crimes are increasing at a very rapid pace.

⁴¹ Bennetto and Judd, 2004; R.Cown, 2004; BBC News Online, 22 June 2004.

⁴² Centre for Social Cohesion, *Crimes of the Community: Honour-based Violence in the UK* (2nd edn, 2010).

⁴³ Centre for Social Cohesion, *Crimes of the Community: Honour-based Violence in the UK* (2nd edn, 2010).

CASES REGISTERED UNDER CRIME AGAINST WOMEN DURING 2015 (All India 3,27,394)



If we look into the crime related to the sexual offences or on the crime which may be linked to the honour related crime, we can notice there is a slight hike in these crimes in the year 2015 as compared with 2014. The below presented data from NCRB will make the picture more clear.

Table – 5(A)
Crime Head-wise Cases Registered under Crime against Women during 2011 - 2015 and Percentage Variation in 2015 over 2014

Sl. No	Crime head	Year					Percentage variation in 2015 over 2014
		2011	2012	2013	2014	2015	
1	Rape#	24,206	24,923	33,707	36,735	34,651	-5.7
2	Attempt to Commit Rape*	-	-	-	4,232	4,434	4.8
3	Kidnapping & Abduction of Women	35,555	38,262	51,881	57,311	59,277	3.4
4	Dowry Deaths	8,618	8,233	8,083	8,455	7,534	-9.7
5	Assault on Women with Intent to Outrage her/his Modesty	42,968	45,351	70,739	82,235	82,422	0.2
6	Insult to the Modesty of Women	8,570	9,173	12,589	9,735	8,685	-10.8
7	Cruelty by Husband or His Relatives	55,135	1,06,527	1,18,865	1,22,877	1,13,403	-7.7
8	Importation of Girl from Foreign Country	80	59	31	13	6	-53.8
9	Abetment of Suicide of Women	-	-	-	3,734	4,060	8.7
A.	Total IPC Crime against Women	2,19,142	2,32,528	2,95,896	3,25,327	3,14,575	-3.3
10	Commission of Sati Prevention Act	0	0	0	0	0	0
11	Indecent Representation of Women (P) Act	453	141	352	47	40	-14.9
12	The Dowry Prohibition Act	6,619	9,038	10,709	10,050	9,894	-1.5
13	Protection of Women from Domestic Violence Act	-	-	-	426	461	8.2
14	Immoral Traffic (Prevention) Act	2,436	2,563	2,579	2,070#	2,424	17.1
B.	Total SLL Crime against Women	9,508	11,742	13,650	12,593	12,819	1.8
	Total(A+B)	2,28,650	2,44,270	3,09,546	3,37,922	3,27,394	-3.1

*Newly included crime head; # Exclude child rapes registered under the section 4 & 6 of Protection of Children from Sexual Offence Act 2012 which published separately in Chapter-6.

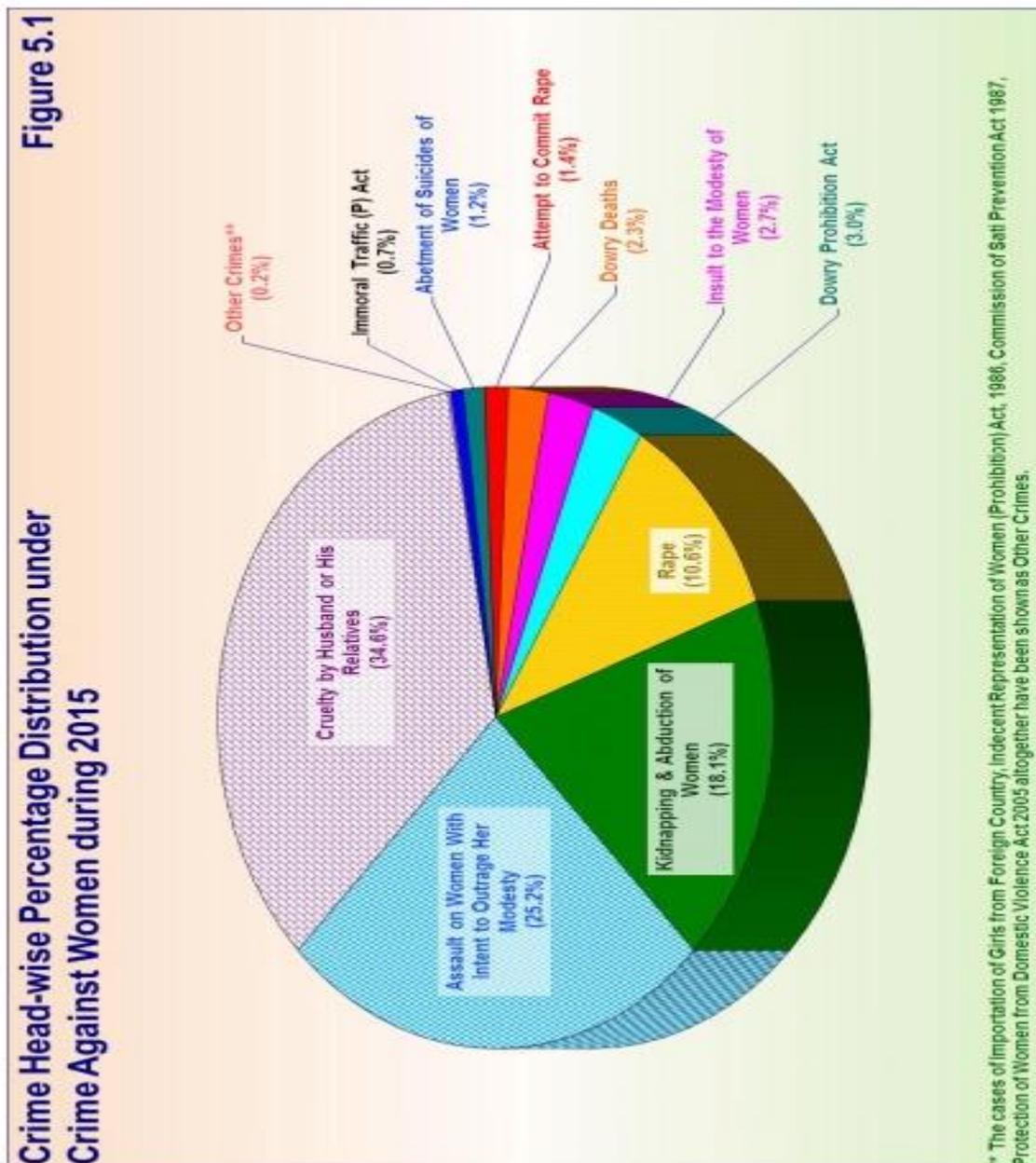
Another interesting fact to notice is that the crime against women as compared to the total number of crime under IPC has decreased in the year 2015, but the incident of honour killing has raised by 796 %.

Proportion of Crime against Women (IPC) towards Total IPC Crimes

Sl. No.	Year	Total IPC Crimes	Crime against Women (IPC cases)	Percentage to Total IPC Crimes
1	2011	23,25,575	2,19,142	9.4%
2	2012	23,87,188	2,44,270	10.2%
3	2013	26,47,722	2,95,896	11.2%
4	2014*	28,51,563	3,25,327	11.4%
5	2015*	29,49,400	3,14,575	10.7%

***Number of crime heads have also increased from 11 to 14 in 2014 & 2015 in the revised proforma .

The next table shows the percentage wise distribution of crime against women. This table shows the distribution of crime among the different categories.



By the above presented data it is very clear that there are still the cases of crime against women which exists in the society, not only existing at the same time they are also increasing year by year. If we talk about the crime against women related to honour, it can be concluded that there is a huge hike in this category of crime. And lastly the data already shows that if we talk about honour killing in particular, there is also a hike of approx 800%.

Cultural relativism and human right -

"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes" states the Apex Court in *Lata Singh v. State of Uttar Pradesh*⁴⁴. The right to choose a life partner at the time of marriage constitutes an integral part of women's' right of self-preservation, which is enshrined by not only Indian laws but majority of the International Conventions, Declarations and Protocols fall in line by emphasizing that women's consent and choice in the matters relating to marriage should be weighed and prohibit resultant violence against them due to the difference of opinion in these matters.⁴⁵

The purpose of human rights law is to protect individuals against abuses perpetrated by the state and its officials, abuses committed by private actors (including violence against women) have traditionally been excluded from the ambit of international human rights law.⁴⁶ Thereby, Article 16⁴⁷ of Universal Declaration of

⁴⁴ AIR 2006 SC 2522

⁴⁵VishwanathJyothi, Palakonda C Srinivas, "Patriarchial ideology of honour and honour crimes in India" January- December Vol. 6 (1&2): 386-395

⁴⁶Rebecca Cook: 'State responsibility for violations of women's human rights', (1994) 7 Harvard Human Rights Journal 125, 127.

⁴⁷ (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

Human Rights (UDHR) explicitly affirms the notion of free will of marriage for people who have attained majority, while Article 2⁴⁸ prohibits discrimination and Article 7⁴⁹ provides for equality before law. Moreover, an illegal act which violates human rights and is not ... imputable to a State (for example, because it is the act of a private person...) can lead to the international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it.⁵⁰ Furthermore, International Covenant on Civil and Political Rights (ICCPR) in Article 26⁵¹ prohibits discrimination; whereas Convention on the Elimination of All forms of violation against Women (CEDAW) defines "discrimination against women" as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁵²

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

⁴⁸Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

⁴⁹All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

⁵⁰Velasquez Rodriguez case, Inter-American Court of Human Rights, judgment 27 July 1988, (Ser. C, No. 4), para. 172-4.

⁵¹All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁵² Art 1 CEDAW

Quoting Martha Naussbaum, *“For many, if not most people, marriage is not a trivial matter. It is a key to the pursuit of happiness, something people aspire to – and keep aspiring to, again and again, even when their experience has been far from happy”*.⁵³ Thus, in a society with special emphasis to the Indian society, honor killings are a result of contravention of the normative rubrics of the society; though, ironically, the personal laws in India discouraged *sagotra* marriages (they do not explicitly bar *sagotra* marriages) and the past does not happily approves of inter-caste marriages-yet the penal laws do not criminalize either of them, still young couples flouting these norms tend to become a prey of the demonic societal norms. “Honor is thought to reside primarily, but not exclusively, in the bodies of women and is maintained through female chastity, virtue, and subdued body language, dress, and demeanor. Individual honor is usually subsumed to family and religious or caste community honor, which, typically, is maintained through restrictions on women’s movements, opportunities, and life choices.”⁵⁴

Culture entails recognition that all human beings live in a world that is created by human beings, and in which they find meaning; and the culture of patriarchal violence is, thus, universal.⁵⁵ Susanne Moller Okin⁵⁶ claims that the patriarchy is a worldwide phenomenon that decreases the women’s possibilities to make choices in life. Whereas, ‘cultural relativism’ is a theory which asserts that there is no absolute truth, be it ethical, moral, or cultural, and that there is no meaningful way to judge different cultures, because all judgments are ethnocentric.⁵⁷ And, the most important

⁵³ (2010:668);

https://www.academia.edu/5386926/Honor_Killings_Human_Rights_and_Indian_Law

⁵⁴Bond (2012: 12).

⁵⁵SahindalShahrazadMojab and Amir Hassanpour, The Politics and Culture of "HonourKilling": The Murder of Fadime <http://journals.msvu.ca/index.php/atlantis/article/viewFile/1373/1219>

⁵⁶Okin, Moller Susan (1999), “Is Multiculturalism Bad for Women?” Princeton University Press, New Jersey, pp. 14.

⁵⁷Gellener cited in Zechenter, 1997:323.

idea countering relativism and multiculturalism is human rights as the purpose of human rights law is to protect individuals against abuses perpetrated by the state and its officials.

Homicide and honour killing -

Under the wide scope of crimes which are taking place in the present time, the honour crime is emerging at a very rapid pace and it is perhaps the most heinous in all of them. In the present time there is no separate law which is governing these types of crimes. This category of crime still falls in the category of murder and the reason behind being that its elements are overlapping with the requirements of murder as defined under the Indian Penal Code.⁵⁸ We are not denying that the crime of honour killing and criminal offence of homicide shares many of the elements among them, but it is necessary to look on the other side also. It is important to bring into notice that there are many important distinctions between the two offences. If we analyse the crime of honour killing in entirety, it can be noticed that it has certain unique features which make honour killing even more heinous than murder. Hence both the crimes should be treated separately and in a different manner. If we look into the crime of homicide, there is a well settled and established jurisprudence as it is well understood by the western world but on the other hand the concept of honour crime is a newly evolving concept (relatively) and there is no settled law on this as compared to that on the criminal offence of homicide.

⁵⁸ Section 300 - Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —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 injury as aforesaid.

If we talk about the Indian jurisprudence we can easily figure out that there are mainly four elements of crime -

1. Mens Rea;
2. Preparation;
3. Actus Reus; and
4. Injury.

The above mentioned are the four elements of any crime. The main two out of them being the mental element and the material element, so we have to differentiate the crime of honour killing and criminal offence of homicide by keeping the above mentioned elements in our mind.

The very first difference is related to the mental element i.e. mens rea aspect of the crime. If we talk about the criminal offence of homicide, they are usually motivated by the strategic benefits or some monetary benefits. Whereas the offence of honour killing is mainly motivated by the desire to take back the revenge and achieving the lost honour. The sole objective of honour killing is to eliminate the person who is responsible for bringing the dishonour.

This misappropriated thinking is a part of the perpetrators tradition and stamped into him from the very beginning. Such engraved delusional thinking is so rigid, that instead of the dynamic nature of the society it remains at the same place. It is not affected by the changing and developing nature of the society and person around. The person with such thinking remains attached to the old values that he was initially raised with.⁵⁹

These delusional thinking can be considered as a reason or cause that we are still having such orthodox practices. The mens rea in such type of offences is of such a huge level that it takes years of time in structuring and developing itself. Therefore, we can say that the mens rea of these crimes of honour is much higher as compared

⁵⁹ AALI(2001) Choosing a Life..... _Crimes of Honour' in India: the Right to If, When and Whom to Marry, a Ciew from Uttar Pradesh and Rajasthan, available at www.soas.ac.uk/honourcrimes.

to the mens rea involved in other type of regular offences of valance which takes place against the women.

The second difference between the crime of honour killing and that of the criminal offence of homicide is the shared relationship between the victim and the perpetrator. Usually what happens in the criminal offence of homicide is that the perpetrator is the third person or the stranger to the victim, but in the case of crime of honour killing it is not the case. Over here the perpetrator and victim usually belongs to the same family. Here the perpetrator is usually shares the family relation with the victim, upon whom there is the liability of guardianship and care of the victim. One of the unique elements of honour killing can be seen over here and it is the sudden reversal in the role of the caretaker. This is one of the reasons why honour killing is considered as more heinous than any other violent crime against the women, as in such crime one relative is standing against the other and as a result the whole atmosphere of the society is degrading.

The third point on which we can distinguish honour killing from homicide is that until and unless honour of the community, family or society is degraded or affected by the act of the victim which can be considered as shameful or dishonourable conduct, such crime does not takes place. The family or the community involve in the retaliation or killing or in valance against women.⁶⁰ The crime of honour killing emphasizes a stronger need of external pressure from the society. For example these crimes do not take place in instances like wearing short clothes. Although it might be considered as a shameful act, but the degree of shame which is caused due to this act action does not necessarily require severe intervention on the part of the society as a whole. What happens in such cases is that the wrongdoer is just blamed, mocked or ridiculed.⁶¹

⁶⁰ Recep Doğan .Is Honor Killing a —Muslim Phenomenon! Textual Interpretations and Cultural Representations Journal of Muslim Minority Affairs (September 2011), 31 (3), pg. 423-440

⁶¹ Ahmed Abou-Zeid, —Honour and Shame among the Bedouins of Egypt!, in Hnour and Shame, ed. John George Peristiany, op. cit., pp. 243-260,247.

But some severe crime takes place such as rape or adultery they are treated in the different manner. It is so because the usually bring shame not only to the victim and perpetrator but also to their relatives. Therefore it is considered that these acts stain the collective honour of the group. This in return is responsible for the development of the required mens rea and the extreme reaction of violence or killing in order to achieve the lost honour.

The last distinction which can be traced out between the crime of honour killing and homicide is that in case of honour killing the perpetrator solely cannot be held responsible. In these cases the perpetrator does not act on his sole motivation, rather he is forced or fuelled by the entire family or social group, relatives and in case of rural setting even by the desire of the local village. So this is the thing which needs the attention that the perpetrator should not be solely held liable but at the same time each and every person who fuelled him should be made liable for the abetment and incitement of such crime.

These are the main distinction between the crime of honour crime and criminal offence of homicide. These distinctions clearly show why these two offences should be treated separately and in a different manner. The psychology behind the commencement of both types of crime is different and there should be a different law to regulate them.

Suggestions and Recommendations -

The vilest of crimes are committed in the name of defending the honour of the family or women and we should hang our heads in shame when such incidents take place in India in the 21st century.⁶² Such crimes include battery, torture, mutilation, rape, forced marriage, imprisonment within the home and even murder. These crimes are intended to protect the family honour by preventing and punishing women for allegedly violating community norms of behaviour, particularly sexual behaviour. Women have been abducted, arrested or raped and are often blamed for

⁶² P. Chidambaram, Parliamentary Speech (Aug 5, 2010).

shaming their families. These crimes are often collective and premeditated⁶³ and thus, it is not enough to condemn these crimes without developing specific strategies to prevent their occurrence.⁶⁴

The existing legal provisions do not tend to suffice the purpose of depriving the society from the evil of honour crimes. There is a dire need of a separate legislation for this multi-dimensional social crime, as it shall present clarity for the law enforcement agencies, as it was witnessed in the case of dowry deaths. Dowry deaths and Honour killings stand on the same pedestal when it comes to the mental element of the crime and similarly, tend to differ from homicide per se. The Criminal Law (Second Amendment) Act, 1983 (46 of 1983) amended the Indian Penal Code, 1860, Code of Criminal Procedure, 1973, Indian Evidence Act, 1972 and the Dowry Prohibition Act, 1961 with the intention of protecting wives from marital violence (cruelty to married women), abuse and extortionist dowry demands.⁶⁵ Before the enactment of the Criminal Law Amendment Acts, 1983 and 1986, dowry deaths were dealt with under Section 302 of the Indian Penal Code i.e. murder or under Section 306 i.e. abetment to suicide⁶⁶, yet the amendments made in 1983 brought certainty and a stern attitude while dealing cases of dowry deaths.

In the same manner there is a need of separate legal provision to deal with the crime of honour killing. This provision should contain the definition of honour killing so as to fix its ambit and in order to avoid the misuse of this particular provision.

⁶³<http://shaktivahini.org/public-interest-litigation-on-honour-killings-filed-in-supreme-court/>

⁶⁴Abdullahi Ahmed An-Na'im, 'The Role of 'Community Disclosure' in Combating 'Crimes of Honour' Preliminary Assessment and Prospects' in Welchman and Hossain, 'Honour' (n 1), 64.

⁶⁵MadhuKishwar, 'Laws against domestic violence: Underused or abused?' Available on, <http://www.manushi.in/docs/184-law-against-domestic-violence.pdf>, as visited on 02 Nov.2017

⁶⁶Ashmol V., "Dowry Harassment And The Indian Penal Code: A Search For New Imperatives" available on <http://www.jiarm.com/JUNE2015/paper23102.pdf>

Conclusion -

This paper has tried to explore the crime against honour, in particular the crime of honour killing. The discussion above in the various chapters has shown that there is no particular definition of honour and the meaning of honour is often confused and debated. But in respect of understanding the honour killing the meaning of term honour must be taken only in its original context displaying the undeveloped elements which are different and not noticed by the western cultures. Once we gone in the elaborated discussion about the origin and meaning of the term honour, it became easy to trace out that honour is deeply embedded in a patriarchal society. In these patriarchal societies the whole focus is on the male members of the society and they have their entire social framework around the regulation and control of female sexuality. Now the situation is changing, as the women rights are getting reorganization in the modern world and but it will take around hundreds of year in the transformation of the framework.

Since the time in ancient we have witnessed the development and evolvment of laws, but unfortunately majority of them are not in the favour of women. This policy of framing of law leads to the subordination of women and put the male member in the position from where they can easily regulate the behaviour of women. Although the development of law is taking place but painfully the process is very slow. The legislation also thinks twice before making any law which is against the custom of the place because this step may lead to their political suicide. The reasoning given by the village level police and local courts is that they themselves are the part of the society and are not in the position to bring the change single handedly.

The need of the hour is to balance integration and incorporation. There is requirement of a specific and cogent definition of both the terms honour as well as honour killing. We have to start paying attention on the mental element which leads to such crimes and should frame are law accordingly.