

# **CULTURAL CRIMES: THE LAW AS IT IS AND THE LAW IT OUGHT TO BE**

**Justice Sarvesh Kumar Gupta\***

Cultural Crimes though bounded by two small words but the real meaning of these words is very unpleasing to know. This article focuses on one of the most abhorable cultural crimes in India that is Honour Killing. An honour killing is the murder of a member of family by the members of the same family or by social group, due to the belief that the person has brought dishonour or disrepute upon the particular family, cast or community. This belief is formed due to many reasons e.g. desiring to marry by his or her choice, engaging in extra marital relations, engaging in homosexual acts etc.

But besides, it's short and crisp meaning as above, Honour killing is just not a murder of a person but conveys a much extended connotation. When there is a single honour killing it is just not an end of the life of a human but it is a butchery of humanity. It's a death of dignity of an individual. Cultural crimes directly negate the preambular propositions of our constitution which are in fact the Supreme and indeed sacrosanct law of the land. In other words they violate those rights of people which are unflinching and unshakable. These right have been held to be non negotiable by the Hon'ble Supreme Court in catena of cases. In the celebrated case of *Keshvananda Bharti v. State of Kerela*<sup>1</sup>, the then Hon'ble Chief Justice Sarv Mittra Sikri remarked that "It seems to me that the Preamble to our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in preamble" This remark certainly reinforced the preambular propositions viz. securing 'Justice', 'Liberty', 'Equality', 'Fraternity', 'Dignity of Individual' etc. to all the citizens of India. Alas! The ghastly cultural crime of Honour Killing instantaneously narrows these constitutional guarantees in a crude and cruel form.

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\* Hon'ble Judge, High Court of Uttarakhand at Nainital

<sup>1</sup> AIR 1973 SC 1461

## **THE LAW AS IT IS AND THE LAW IT OUGHT TO BE**

Cultural Crimes are not the product of current society only, rather the reason for their emergence in this modern society can be traced many years back. The law also existed even in the ancient times but it remained unsuccessful to resolve these kinds of crimes. The laws of Manu for example say that “He who commits murder must be considered as the worst offender, more wicked than a defamer, than a thief, and that he who injures with a staff”<sup>2</sup>. In ancient and medieval times most of the social groups were so stiffly bound in social customs and prevailing rituals that even the breaking of family-made-rules were construed as a wrong itself. The awful practises of Caste discrimination, Unequal recognition of women, Sati practise, Child Marriage etc. were present. It was hard even to think to break the prevailing customs and rituals. One could not enter into the solemn relationship of marriage at his or her own sweet will till the members of the family or society consented. People were largely illiterate and gender discrimination prevailed. These practices were rampant until some of the great social reformers like Raja Ram Mohan Roy, Dyanand Saraswati, Ishwar Chandra Vidya Sagar etc. arose and paved a new way to the society in this regard. They opened new vistas of modernity and rationalization to people and taught them to be a real human and understand the values of humanity. They floated the message that every individual sharing the breath is equal and possesses one’s own dignity. Society took a giant leap from past to present and crafted the strict laws for the betterment of its own. Nonetheless, some of the sections of society remained reluctant to new social developments and today Honour Killing is practised in those very sections of society. These sections have been unable to accept the developments and have guarded their family roots and archaic traditions.

In India, Section 302 (Murder, 307 (Attempt to Murder), 34 (Common Intention) of the Penal Code are the only existing laws to deal with the crime of Honour Killing. But originally these provisions of the code never envisaged the problems of cultural crimes. They were neither debated nor legislated to deal with crimes like Honour Killing. These laws weigh the honour killing within the framework of the language meant for the offence as defined in these sections. But if we see from a wider

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<sup>2</sup>Laws of Manu 8.345

outlook than one can ascertain that Honour Killing is just not that type of offence but rather the same offence with more gravity. It is a deep rooted problem directly relating to the mind and hearts of people living in a particular society. The 'law it is' here demands to be changed in the 'law it ought to be'.

It is not so that the Indian Judicial System is insensitive and feeling immune from this problem. In *Lata Singh v. State of U.P. & Another*<sup>3</sup>, the Supreme Court while delivering its judgement had expressly stated that 'honour killing' is wholly illegal. In the very same case it was also opined by Hon'ble Justice Markandey Katju that under no circumstances, one could be allowed to take the law into his own hands by committing violence or giving threats of violence to the couple concerned.

Similarly in *Bhagwan Das v. State (NCT) of Delhi*<sup>4</sup> while delivering the judgment a bench of Hon'ble Justice Markandey Katju and Hon'ble Justice Gyan Sudha Mishra held that "in our opinion, honour killing, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilised behaviour. All persons who are planning to perpetrate 'honour' killing should know that the gallows await them". Justice Katju further said that "There is nothing 'honourable' in honour' killing and they are nothing but barbaric and brutal murders by bigoted persons with feudal minds."

In India, the thing which startles all and sundry is that Honour Killing is not limited to only rural or backward areas. Cases of Honour Killing have been reported even in national capital Delhi and some mega cities also. It is general presumption that these localities are more literate and developed than others. It is shocking to know that almost 1000 deaths in the name of honour killing are committed in India every year. This raise

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<sup>3</sup> (2006) 5 SCC 475

<sup>4</sup> Criminal Appeal No. 1117 of 2011 @ SPECIAL LEAVE PETITION (CRL.) No. 1208 of 2011

<sup>5</sup> [http://articles.timesofindia.indiatimes.com/2010-07-04/india/28273812\\_1\\_honour-killings-marriages-heinous-crime](http://articles.timesofindia.indiatimes.com/2010-07-04/india/28273812_1_honour-killings-marriages-heinous-crime)

<sup>6</sup> A Human rights and Health priority. United Nations Population Fund. [www.unfpa.org/swp/2000/english/ch03](http://www.unfpa.org/swp/2000/english/ch03).

serious questions on the capability of the law of the land to deal with the problem. 'The law it is' and 'the law ought to be' again comes in a state of fluster and flux and revolves around only the muddy legislation and judiciary.

Another aspect is that Honour Killing is not a problem just in India. This problem exists in countries like Turkey, Pakistan, Egypt, Jordan and a few others also. It has more taken a shape of an international issue. The United Nations Population Fund (UNFPA) estimates that almost 5000 deaths in the name of honour killing are committed every year in the world. The Centre for Egyptian Women Legal Assistance (CEWLA) in Egypt is a leading NGO fighting for the cause of honour killing. Here it is surprising to note that in some other countries the penal provisions are much mild for man while being harsher to woman in woman specific crimes. Article 17 of the Egyptian Penal Code allows judges to decrease the sentence given in the case of murder when they decide that the condition of the murderer requires so. Such reductions reach as little as six months that could also be spent during the trial. Therefore the murderer can escape from being imprisoned and walk free. Even in Article 277 of Egyptian Penal Code says that a man's adulterous act is considered as such only if it takes place in the marital home and he could face a sentence of six months of prison while a woman would receive a sentence of two years imprisonment. The Constitutionality of both the articles has been challenged by the activists in Egypt<sup>7</sup>.

The issue has been raised on the global podium of United Nations also. On October 24, 2002 at the 57<sup>th</sup> session of United Nations General Assembly Third Committee, the UN Resolution on "Working towards the Elimination of Crimes Committed in the name of Honour"<sup>8</sup> was passed. The resolution strongly advocated against any of these crimes committed against women in the name of honour. Further, the resolution stressed the need of strict and active laws to prevent it from spreading. But what is the reason why we are still unable to eradicate this evil from our society? Even on active look by renowned world organisations issued has not been settled yet.

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<sup>7</sup> Fatma Khafagy, Honour Killing in Egypt, 2005 P. 4

<sup>8</sup> A/RES/57/179.

In India, The National Commission for Women (NCW) has written to the Union Government that the basic cause for Honour Killing is maintaining patriarchal power in the families and communities by denying women basic and internationally recognised rights to make autonomous decisions about issues such as marriage, divorce etc. ‘Cultural Crimes’ is not such a problem which can be eliminated just by enacting the hard laws. There are many examples where hard laws have remained incompetent to resolve this problem. Hard Laws can only reduce the number of killings; they can never change a human heart or his feelings. In other words they cannot remove this kind of evil completely from the society until the society is ready to change the ever persisting old age values.

## **CONCLUSION**

Cultural crimes tend to turn a free world into a bounded one. The ‘law it is’ and the ‘law ought to be’ must possess one thing in common i.e. it must hold the ability to get rid of socially sponsored crimes without breaking the fine fabrics of society. Cultural crimes have to be abolished but not at the cost of true culture itself. From Indus Valley Civilization to 21<sup>st</sup> century humans have worked for their betterment and making world a better place. Cultural Crimes like Honour Killing are a living testimony of the failure of legal system and belie common man’s expectation from law. Cultural Crimes are the crimes against that composite culture and principle of unity in diversity (*Hindu Muslim Sikh Isai, Aapas Main Hain Bhai Bhai*) which India is proud of. Honour Killing breaks down that unique culture which India has preserved and nurtured from thousands of years. It can be concluded that humans have still a long way to go to curb out these problems. The law ‘it is’ and the law ‘ought to be’ can only reduce these crimes but in order to completely eradicate the acts honour killing we need to broaden our outlook, our thinking.

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