

Erasing Honour: Legislative silence, Judicial inconsistencies and the Constitutional failure of India's Criminal Law Framework

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ABSTRACT

Honour killings in India constitute group forms of violence meant to have a punitive effect on people mostly young women and couples who practise autonomy in their choice of love, marriage, sexuality, or social identification. Such actions serve as cruel means of imposing caste orders, patriarchy, and communal obedience, which are often organized or authorized by the families, caste council, and village affiliations. Though the procedure is abhorrent to society, the law system still takes such killings as normal murders and this way the structural, conspiratorial and discriminatory nature is obscured. The main issue is the issue of doctrinal and institutional silence. The Indian Penal Code or Bharatiya Nyaya Sanhita does not specify honour killing as an aggravated offence, nor does it acknowledge the concept of group responsibility, nor does it require that motive based investigation and sentencing. This gap compromises deterrence, the prosecution tactics, and constitutional obligations of equality, dignity, and individual freedom, especially to women and marginalised groups. This paper aims at redressing these gaps by a stringent statutory examination, subtle constitutional interpretation and comparative interaction with foreign legal paradigms and international human rights outlooks. It argues that India has the legal and moral responsibility to enshrine honour killings as a particular offence. Thereby, the paper provides a proposal for rights-responsive, principled and socially responsive criminal justice in which the Indian jurisprudence can be made congruent with the international norms and principles of gender equality and human rights.

INTRODUCTION

The Honour killings in India are not acts of personal rage, but organised violence, which is accepted collectively by the community to impose caste boundaries, gender norms, and even control intimacy and marriage. Nevertheless, the criminal law of India continues to apply the general law of murder, attempt, and conspiracy to these crimes in disregard of the special motive of the crime, its group character and caste patriarchal foundations. The lawmaking

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silence that is reflected in the Bharatiya Nyaya Sanhita of 2023 makes honour killings a lawful blind spot that deprives the phenomenon of honour killings of the status of institutionalised violence. As a result, the criminal process is unable to apprehend the systematic involvement of families, caste councils and power structures in the locality and does not provide any special liability or protection to vulnerable victims. This exclusion has compromised the equality, non-discrimination, autonomy, and dignity guarantees under Articles 14, 15, and 21 of the Constitution⁸⁸² and is incompatible with India's international human rights obligations⁸⁸³. The constitution is also complicit, not just through omission, but through its failure to name, list, and address honour killings as these wrongs in a different form.

This paper is aimed at discussing the problem and questioning whether the existing and proposed criminal law in India effectively addresses the issue of honour killings. The paper provides by a close examination of the Bharatiya Nyaya Sanhita and its connectivity with the Indian Penal Code that legislative silence and a motive-free writing of laws removes the systemic nature of honour crimes. It next examines the disjointed court efforts to address honour killings based upon constitutional principles by identifying the weaknesses of the case-by-case determination in cases where the statutory acknowledgement is not explicit. The paper will use comparative legal history and reflect on the Indian treaty obligations to propose a specific reform agenda: proclaim honour killing a special aggravated offense, implicate collective and institutional liability, integrate preventive and protective measures, and stage criminal law according to a rights-oriented, socially accountable, and constitutionally faithful conception of justice.

CONCEPTUAL FRAMEWORK: CONCEPTUALISING HONOUR KILLINGS

In India, honour killings are a unique and highly entrenched type of violence directed at the policing and punishment of perceived infractions of socially approved norms of caste, gender, sexuality and community honour⁸⁸⁴. They are not sudden explosions of individual indignation, but effects aimed and usually well thought-out performances committed to supposed violations

⁸⁸² INDIA CONST. arts. 14, 15, 19, 21

⁸⁸³ Convention on the Elimination of All Forms of Discrimination against Women arts. 2(e), 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13

⁸⁸⁴ Law Comm'n of India, *Report No. 242: Prevention of Interference with the Freedom of Matrimonial Alliances (in the Name of Honour and Tradition)* 1–7 (2012)

of collective identity and status. The common victims are young women and men who claim their independence in issues of marriage, sex or intimate choice, by marrying outside caste, religion or kinship, by refusing the arranged marriage, or by defying the patriarchal/ familial demands of obedience. What is meant by the individual agency in these cases is rather a denial of the honour of the family and community, rather than a right⁸⁸⁵.

These are often carried out by close relatives who are parents, siblings, uncles, or other members of kin, including Khap Panchayats, caste councils, or village elders, who often encourage, approve, or even justify the actions of the perpetrators⁸⁸⁶. These organisations act as extra-judicial institutions that facilitate conformity either by social boycotts, threats, coercion and, on a more extreme level, using coordinated violence. Killing is, therefore, punitive as well as performative in that it is supposed to neutralize the perceived blemish to family or community status by removing the object of defiance and to provide a bigger statement that rebellion against caste and gender hierarchy will not be accepted. Within this meaning, honour killings can be discussed as a form of collective social control, in which violence is justified as the key cost of maintaining tradition, purity, and status⁸⁸⁷.

Honour killing is also different from generic homicide in terms of its motive, its structure, and its role. Neither personal hatred nor the pursuit of personal profit is the main reason, but the need to protect the norms established in the community and put the alleged deviance back in its place. These crimes are usually planned in groups: several subjects are involved in the planning and execution, facilitation, or justification of the murder and these can be either family members or community leaders. This group aspect provides honour killings with a qualitatively new nature as compared to isolated instances of interpersonal violence. The offenders often use cultural or traditional defence asserting that they are protecting the old traditional ways or preserving the reputation of the family hence covering crime with the culture of legitimacy and moral obligation⁸⁸⁸.

⁸⁸⁵ Anuja Agrawal, *Chaste Wives and Prostitute Sisters: Patriarchy and Honour in India*, 31 *Econ. & Pol. Wkly.* 3129, 3131–33 (1996)

⁸⁸⁶ *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192, ¶¶ 2–5 (India)

⁸⁸⁷ Anuja Agrawal, *Chaste Wives and Prostitute Sisters: Patriarchy and Honour in India*, 31 *Econ. & Pol. Wkly.* 3129, 3131–33 (1996)

⁸⁸⁸ Uma Chakravarti, *Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State*, 28 *Econ. & Pol. Wkly.* 579, 579–85 (1993)

There is also a caste and gender oppression manifested in the phenomenon. Women are also discriminated against in pursuing sexual autonomy, rejecting arranged marriages, or even having partners of other caste, religion or even community. Men marrying across caste or religion, in support of them, may also become targets since they are seen as subverting the social order. Honour killings, therefore, work to uphold endogamy, thereby perpetrating patriarchal dominance over female bodies and decision-making as well as caste demarcation. They can only be interpreted as deviant crime activities, but they are methodologies to maintain the status quo and resist the voice of the opposition to create a system of structural inequality. Nevertheless, honour killings are not accepted as a separate type of criminal offence in Indian criminal law, which is not based on these peculiarities. In general provisions addressing murder, attempt to murder, and criminal conspiracy, such acts are prosecuted under general provisions regarding murder, attempt to murder, and criminal conspiracy (e.g. by Sections 302, 307, and 120B IPC and such equivalent)^{889 890}. It is this doctrinal silence that obliterates the motivation of honour killings: its conspiracy-oriented motive and orientation. It reduces their cultural, symbolic, and systematic aspects to a generic account of personal crime, seen by inviting the courts and investigators to see them not as the expressions of institutionalized power of the caste and gender hierarchy, but as lone incidents. Due to this, the structural nature of the violence is lost, information about honour-motivated crimes cannot be trusted, and the legal intervention does not consider the actual nature of the damage.

There is also a limitation posed by the judiciary's lack of statutory recognition to implement constitutional principles in practice coherently and robustly⁸⁹¹. In the absence of a special legal category identifying and characterising honour killings, the frequency of the general homicidal provisions is strained to accommodate interwoven structural fashions of family and institutionalised violence. This complicates the systematic coverage of the greater social harm suffered by honour killings - like the curtailment effect on the quality of inter-caste and inter-faith relations, the strengthening of patriarchal subjugation, and the perpetuation of caste stratifications. In practice, this leads to unequal adjudication and sentencing, as well as a failure to fully vindicate constitutional rights to equality, non-discrimination, autonomy, and dignity under Articles 14, 15, and 21 of the Constitution⁸⁹². A conceptual strict grip on honour killings,

⁸⁸⁹ Indian Penal Code, 1860, §§ 120B, 300–302, 307 (India)

⁸⁹⁰ Bharatiya Nyaya Sanhita, 2023, §§ 61–62, 103, 109 (India)

⁸⁹¹ *Shafin Jahan v. Asokan K.M.*, (2018) 16 S.C.C. 368 (India)

⁸⁹² INDIA CONST. arts. 14, 15, 21

in other words, the context of positioning its location among the interverging systems of caste, patriarchy and community control, is thus a critical requirement to the implementation of successful legal change. It offers the analytical basis of codifying honour killings as a specific aggravated offense, developing motive-sensitive and group-liability clauses, and developing preventive and protective measures in response to the structural conditions under which such violence occurs⁸⁹³. Criminal law can only go beyond an obsession where individual killing is treated as an end in itself to a more social order in which honour killings are created, rationalised and normalized.

STATUTORY ANALYSIS: INDIAN PENAL CODE AND BHARATIYA NYAYA SANHITA (2023)

Indian Penal Code (IPC), a colonial codification of the criminal law introduced in 1860⁸⁹⁴, does not have any direct provision on honour killings. These crimes fall under the general clauses; the major ones include Section 302 (murder), Section 307 (attempt to murder), and Section 120B (criminal conspiracy)⁸⁹⁵. Although these provisions allow punishment, they are substantively neutral to the unique motive, collective form and socio-cultural situation that characterizes honour killings⁸⁹⁶. This lack of an aggravated classification/motive-based offence category creates a large doctrinal gap: it collapses systematically patterned, group-based violence into the pattern of ordinary homicide, eliminating its systemic nature and enforcing the fiction that these are generally just isolated homicide instances of personal violence⁸⁹⁷. This general-offence method is especially inappropriate with honour killings, which are criminal acts not often made individual. They are usually long-term enforcement measures, which are approved or coordinated by family members, caste councils, or other community organisations⁸⁹⁸. The motive is not personal spleen, but even supposed restoration of honour by the destruction of so-called disobedience. By the subsumption of this type of act under generic homicide law, the IPC does not consider the symbolic and performative aspects of honour killings and the conspiratorial and institutional components of the practice⁸⁹⁹. This

⁸⁹³ Law Comm'n of India, *supra* note 1, at 45–58

⁸⁹⁴ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

⁸⁹⁵ *Id.* §§ 302, 307, 120B

⁸⁹⁶ Shahnaz Khan ed., *Honour Killing: Theoretical and Legal Perspectives* 45–48 (2014)

⁸⁹⁷ United Nations Office on Drugs and Crime, *Global Study on Homicide 2019* 61–63 (2019)

⁸⁹⁸ Lynn Welchman & Sara Hossain eds., *Honour Crimes, Paradigms, and Violence Against Women* 29–33 (2005)

⁸⁹⁹ *Id.* at 40–42

dogmatic silence does not allow the law to directly tackle the caste, gender and communal hierarchies which facilitate and justify such violence and it does not permit the creation of specialised modes of inquiry, evidential assumptions, or sentencing policies attentive to the communal character of the damage⁹⁰⁰.

These limitations have been reproduced in much of the Bharatiya Nyaya Sanhita (BNS) as a proposed alternative to the IPC, released publicly in 2023 as a shape-shifted criminal code aimed at being modern and constitutionally-consistent⁹⁰¹. The clauses which refer to murder, attempt to murder, and conspiracy over crime-between-other-crimes - inter alia Sections 101, 109 and 61 - are essentially renumbered and slightly updated versions of IPC Sections 302, 307 and 120B, with no explicit mention of honour-motivated violence⁹⁰². The BNS fails to define honour killings as an offence, fails to provide aggravated liability where the motive is the enforcement of caste, patriarchal or communal norms and fails to refer to collective entities like khaps or caste panchayats in instigating, assisting or sanctioning honour killings⁹⁰³. By still reducing these murders as mere murders, the BNS once again does not capture the structural, symbolic and group-based shape of these murders.

This omission stands out especially in the light of espoused constitutional guarantees of equality, non-discrimination, personal liberty, and dignity portrayed in Articles 14, 15, and 21 of the Constitution of India⁹⁰⁴. A legal system that denies the categorisation and identification of honour killings as a form of localised and exacerbated ill in the form of a wrong is structurally inadequate in the ability of vindicating these guarantees⁹⁰⁵. The absence of a specialized offence category makes the judiciary much less able to implement the constitutional morality systematically: it is limited to institutional implementations of general, motive-neutral laws, which do not oblige the court to address the casteist, patriarchal, and communal aspects of the violence⁹⁰⁶. The silence of the BNS is therefore an indication of a wider legislative reluctance to address the fact that in many settings the honour crimes still enjoy considerable

⁹⁰⁰ United Nations Human Rights Council, *Report of the Special Rapporteur on Violence Against Women*, U.N. Doc. A/HRC/35/30 (2017)

⁹⁰¹ *Bharatiya Nyaya Sanhita*, Bill No. 173 of 2023 (India)

⁹⁰² *Id.* §§ 101, 109, 61

⁹⁰³ Law Commission of India, *Prevention of Interference with the Freedom of Matrimonial Alliances (in the Name of Honour and Tradition): A Suggested Legal Framework*, Report No. 242 (2012)

⁹⁰⁴ India Const. arts. 14, 15, 21

⁹⁰⁵ Dipak Misra ed., *Constitutional Morality in India* 122–26 (2019)

⁹⁰⁶ *Id.*

cultural legitimacy in that the normative of small groups within the community will be privileged over the rights of individuals.

These deficiencies had already been identified in the 242nd Report of the Law Commission of India and a specific statutory reform had been proposed⁹⁰⁷. It suggested implementing a certain clause making illegal killings and violence in honour of individuals or groups, and providing a tougher punishment due to their aggravated, conspiratorial, and collective nature⁹⁰⁸. The Commission also recommended the acknowledgement of the place of informal bodies and of families as the sources of the organised nature of these crimes, and demanded legal means that would better reflect the organised character of these crimes. Whilst this is the recommendation of experts, there were no amendments to the statutes, either in the IPC or in the later drafted BNS. This law failure also points to the ineffectiveness of the current system as a deterrent tool and also as a tool of administering justice commensurate to the constitutional and social harms caused⁹⁰⁹.

Combined, the IPC and the Bharatiya Nyaya Sanhita display a longstanding incompleteness in doctrines and are showing the legal blindness to honour killings as a specific form of structural violence⁹¹⁰. The fact that even now the caste and gender hierarchies that underlie these types of homicide are left unaddressed demonstrates a lack of readiness to confront them, and thus... the perpetuation of a formally neutral, yet substantively unaware, criminal law⁹¹¹. Substantive change in statute is also badly required, not only of prosecutorial efficiency and equal treatment, but also to restate the constitutional promise of equality, independence, and humility⁹¹². Recodification of honour killings, as a specific aggravated crime with explicit due attention to motive, group responsibility, as well as institutional, would be an important step in the direction of having a principled, rights-based, and socially answerable criminal justice system in India.

CONSTITUTIONAL ADJUDICATION AND MORAL FRAMEWORK

⁹⁰⁷ Law Commission of India, *supra* note 11

⁹⁰⁸ *Id.*

⁹⁰⁹ National Crime Records Bureau, *Crime in India 2022* (2023)

⁹¹⁰ Ranjana Kumari ed., *Violence Against Women in India* 85–90 (2000)

⁹¹¹ *Id.*

⁹¹² India Const. arts. 14, 15, 21

Indian judiciary has been at the forefront in defining honour killings as serious infractions of the constitutional rights, which have acted where the legislature has failed to give direct statutory acknowledgement. In a system in which honour killings are regarded as caused by common killings, courts have sought to come up with this doctrinal gap, under constitutional interpretation where this violence is seen to violate the provisions of equality, non-discrimination and choosing whether or not to kill under Articles 14, 15 and 21 of the Constitution⁹¹³. By so doing, the courts have been attempting to challenge such types of violence, which are often justified as a cultural or customary practice, by placing them under the greater test of constitutional morality. This way, the honour killings are re-axilised as part of personal or family conflict and the Constitution is presented as the gauge by which the social norms, such as the ones perpetuated by caste and masculine authority, are evaluated.

This philosophical path becomes evidently voiced in *Shakti Vahini v. Union of India*⁹¹⁴, where the Supreme Court in reaction to increasing levels of honour-based violence, has described honour killings as being barbaric and contrary to the principles of the constitution. Based on Article 21, which stated that the most essential aspect of liberty in intimate relations is personal autonomy, the Court opined that the right to union was part of the liberty, privacy, and dignity and as such any attempt to intrude on the personal liberty of intimate affairs by the family members, social groups or unofficial organizations such as khap panchayats amounted to a direct aggression on constitutional rights. To put this principle into effect, the Court came up with elaborate guidelines to state authorities, which included preventative and protective services such as safe houses, twenty-four-hour helplines and district-level special cells to provide prompt response to threats against couples. *Shakti Vahini* vehemently sought to establish a connection between honour-motivated violence, especially one that includes caste considerations, and the breach of equality under Article 14 and the ban on discrimination under Article 15 to make honour killings a constitutional evil in need of a systematic, rights-based response.

This interpretation is not something that appeared in a vacuum, but a development of previous judgments with the well-known example of *Lata Singh v. State of Uttar Pradesh*⁹¹⁵, under

⁹¹³ India Const. arts. 14, 15, 21

⁹¹⁴ *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192 (India)

⁹¹⁵ *Lata Singh v. State of Uttar Pradesh*, (2006) 5 S.C.C. 475 (India)

which the Supreme Court upheld the right of consenting adults to enter into intermarriages across the caste boundaries as a major restatement of their constitutional freedom. At that, the Court dismissed the concept of any legitimate family or community authority to decide on behalf of an adult woman on the choice of spouses as legal, as all threats, harassment, and violence against inter-caste couples were discussed as criminal, entirely unlawful, and representative of feudalistic mentality. It instructed the police officials to secure such couples and convict anybody who threatens or assaults them by denoting that the mediocre condemnation based on caste or prejudice should not supersede the rights of individuals. In as much as Lata Singh did not explicitly pressurise the need to establish a distinct statutory offence of honour killing, it established a very robust normative basis, in that it defined honour-based violence as a caste oppression, and it placed the safety of inter-caste couples in the assurances of equality and personal freedom.

The case was continued to be analyzed in *Vikas Yadav v. State of Uttar Pradesh*⁹¹⁶, a case of the killing of a young man over a relationship that was offensive to caste sentiments, in the State of Uttar Pradesh. When the Supreme Court affirmed the life sentence against the culprits, it emphasized that it was not an impulsive act of personal hatred that led to the crime but was rather a procedural and symbolic exercise of caste honour. The court recognised that honour killings are necessarily communal and symbolic so as not only to punish a specific couple but to discourage others who will break caste and gender conventions. Focusing on this extended social role, the Court effectively considered honour killings as enhanced versions of homicide, which deserved a higher condemnation and punishment, despite being obligated to use the overall provisions of the Indian Penal Code.

Nevertheless, this liberal jurisprudence also reveals the limits of structural intervention of judicial action when it is not supplemented by legislation. No offence against honour killing is enacted in parliament, and as a result, prosecution is brought using generic murder and conspiracy statutes, which fail to capture the element of a motivational concept prevalent in such acts, namely the whole-group aspect⁹¹⁷. In the absence of a constitution, the lower courts would use constitutional morality unequally, and the jurisprudence would be in a disjointed

⁹¹⁶ *Vikas Yadav v. State of Uttar Pradesh*, (2016) 9 S.C.C. 541 (India)

⁹¹⁷ Indian Penal Code, No. 45 of 1860, §§ 299–302, 120-B

state, ensuring that only selective reform in the statutes can translate this constitutional vision into a uniform protection against the victims.

INTERFACE BETWEEN INTERNATIONAL LAW AND INDIAN LEGAL SYSTEM

The lack of a defined statutory offence of honour killing in India is not just a national legislative oversight but also a violation of all the full requirements of the India-bound international human rights. Being a signatory of the Convention on the Elimination of All Forms of Discrimination against Women⁹¹⁸, and as a signatory of the Universal Declaration of Human Rights⁹¹⁹, India has to implement legislative, administrative, and judicial actions to prevent, prosecute, and eliminate gender based violence even in the undertext of promoting culture, custom, and honour of the community. Honour killings, a disproportionate number of which are perpetrated against women, girls and individuals within marginalised communities who insist on autonomy over matters of marriage and sexuality do adhere well within this category of gender based and intersectional violence and thus should receive a special legal response other than be subsumed within more generic homicide laws.

These obligations are provided by CEDAW with concrete content. Article 2(e)⁹²⁰ obliges States Parties to eradicate discrimination of women by any individual, organisation, or enterprise; which automatically involves regard of private actors, including family, caste councils and community informal organisations which organize or reward honour based violence. This is a provision that not only binds states against discrimination, but also against any legal, social and cultural set up that allows or condones such violence. Article 5(a)⁹²¹ also entails that states alter social and cultural patterns on the grounds of stereotyped gender roles or notions of female chastity or family honour, which are the exact standards that honour killings are aimed to instil. The fact that India is still using motive blind homicide provisions as opposed to a distinct offence that refers to and addresses honour based violence, is thus an indication of a massive disparity between India CEDAW commitments and its national criminal law.

⁹¹⁸ Convention on the Elimination of All Forms of Discrimination against Women art. 2(e), Dec. 18, 1979, 1249 U.N.T.S. 13

⁹¹⁹ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948)

⁹²⁰ Convention on the Elimination of All Forms of Discrimination against Women, supra note 1, art. 2(e)

⁹²¹ Id. art. 5(a)

Even though the Universal Declaration of Human Rights is not a treaty in its own right, it relates foundational norms upon which subsequent human rights instruments and customary international law should be interpreted. Article 3⁹²² acknowledges the right to life, liberty and security of person whereas Article 16⁹²³ acknowledges the right of men and women to marry freely and consensually without restriction on grounds of race, nationality and religion. Honour killings is a direct infringement of these rights as it punishes people, many of whom die, due to the exercise of freedom to select a partner or develop intimate relationships with people of another caste, religion, or community. By allowing this treatment of such killings as typical murders, without attending to their discriminatory purpose and communal nature, the legal system will not satisfy the substantive values of equality and autonomy contained within the universal human rights system and undermine the expressive role of criminal law as an instrument of changing repressive social norms.

The more particular legal responses to honour based violence are not only viable but have a normative significance in a way that is demonstrated by comparative practice. The Crimes Act of 2016 that amended the Criminal Law (Amendment) Act 2016⁹²⁴ in Pakistan ended a notorious loophole that had enabled authors of honour killing to escape severe penalties due to family forgiveness under the doctrine of qisas and diyat of the Islamic Criminal Law. In making life imprisonment a mandatory sentence even where the family of the victim claims to have forgiven the man, and by making the honour killings appear more like a crime against the state, Pakistan reinforced the collective responsibility in gender based violence and the privatisation of the control over the lives of women was dismissed. Jordan has also revised Article 98 of the Penal Code⁹²⁵ to constrain judicial indulgence in so called crimes of honour and limit the capacity of the courts to recognise honour as a reducing element in the sentencing system although some of its provisions such as Article 340⁹²⁶ are still in existence and continue to attract criticism.

Even though the United Kingdom convicts honour killings as standard homicide laws, the country has made substantive measures to acknowledge honour based motives in both

⁹²² Universal Declaration of Human Rights, supra note 2, art. 3

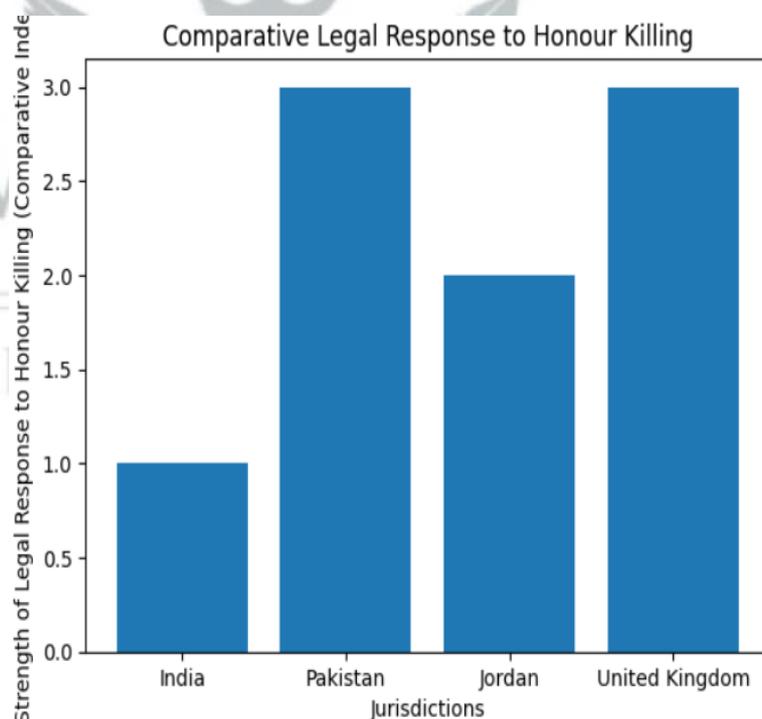
⁹²³ Id. art. 16

⁹²⁴ Criminal Law (Amendment) (Offences in the Name or on Pretext of Honour) Act, 2016 (Pak.)

⁹²⁵ Penal Code No. 16 of 1960, art. 98 (Jordan), as amended

⁹²⁶ Id. art. 340

prosecutions and sentencing regimes. The Crown Prosecution Service has published specific information on honour based abuse, highlighting its collective and coercive character and urging prosecutors to preempt those factors in court⁹²⁷. Sentencing rules consider an honour based motive to be an aggravated factor; a penalty is warranted, which should be higher and the fact that trust, premeditation and a group were involved in the matter, and this was a serious breach of trust, is a consideration. The case of high profile prosecutions, including the killing of Banaz Mahmood and Shafiea Ahmed, has strengthened the idea that honour does not in any way reduce culpability but rather makes these types of crimes especially repugnant⁹²⁸. The legislative silence that remains in India is therefore an abhorrent blow to its own constitutional promises as well as its international credibility.



*Comparative legal treatment of honour killings across jurisdictions*⁹²⁹

SCHOLARLY INTERPRETATIONS AND CRITICAL EVALUATION

⁹²⁷ Crown Prosecution Serv., Honour-Based Abuse and Forced Marriage: Legal Guidance (U.K.)

⁹²⁸ See R v. Ifthikhar Ahmed & Ors (Banaz Mahmood case) [2007] EWCA Crim 2109 (U.K.); R v. Shafiea Ahmed's Parents [2012] EWCA Crim 434 (U.K.)

⁹²⁹ United Nations Office on Drugs and Crime, *Global Study on Homicide 2019* (comparative analysis of honour-related killings and legal responses across jurisdictions)

The scholarly literature on the subject of honour killings in India demonstrates that there is a general agreement on two fundamental aspects: first, that these are structural, rather than sporadic, acts of individual violence; and second, that the current system of criminal law is structurally ill-adapted to its nature. Although there is growing concern in the condemnation of honour-based violence by the courts, the aspects criticised in scholarly literature are the lack of statutory specificity and the ineffectiveness of general homicide clauses to capture the cultural, conspiratorial, and symbolic aspects that allow honour killings to be differentiated as such, as opposed to ordinary murder. The five peer-reviewed and scholarly sources that are discussed below shed some light on the doctrinal, sociological, and international law aspects of honour killings and jointly emphasise the need to implement specific legislative changes⁹³⁰. “Honour Killings in India and Beyond: A Global Perspective”, Mohd. Samiulla and Ratnesh Kumar Srivastava theorise honour killings as a supranational ideology based on patriarchal and caste-based ideologies. They also contend that the Indian and the international legal systems have not been able to sufficiently discourage such offenses since they are reluctant to go the full throttle and tackle culturally approved violence. Based on the CEDAW, the UDHR and other human rights documents, the authors conceptualize honour killings as evident erosions of international legal standards and describe the gap that exists between the formal political agreements in the treaties and their domestic application. The comparative lenses of their approach place the legislative silence in India in a context of global tendency towards half-hearted or half-baked commitment and makes the codification an even stronger solution in keeping the domestic criminal law in agreement with international commitment in treaty-based obligations⁹³¹.

The article by Aradhana Sahu titled “Honour Killing in India: A Critical Study has taken a multidisciplinary approach and has merged sociological and legal criticism analysis”. Sahu anticipates the contribution of informal institutions at least khap panchayats and caste councils to the legitimisation and orchestration of honour-based violence, and demonstrates how these institutions shape themselves into extra-judicial regulators of caste and gender norms. She claims that the provisions of general murder in the Indian Penal Code do not uphold the normative inadequacy of honour killing insofar as it is aimed at using symbolic and structural

⁹³⁰ See generally Mohd. Samiulla & Ratnesh Kumar Srivastava, *Honour Killings in India and Beyond: A Global Perspective*, 5 Int'l J. L. Mgmt. & Human. 112 (2022)

⁹³¹ Convention on the Elimination of All Forms of Discrimination Against Women arts. 2(e), 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13; Universal Declaration of Human Rights arts. 3, 16, G.A. Res. 217 (III) A (Dec. 10, 1948)

aspects to instigate caste endogamy and patriarchal regulation, and not solving personal conflicts⁹³². The article, though not attempting a detailed reconstruction of the doctrines, is an empirical and thematic treasure in showing how much legitimacy honour killings tend to have in society, and why the enforcement of the law needs to specifically refer and address this culturally ingrained form of violence.

“Is Honour Killing or Prejudice? Masking the Real Threat”, Vasava Bhagvati Mahendrabhai and Siya Gupta formulate a normative relations story of caste-based and gender based hate crimes, known as honour killings. This, they argue, is because the Indian Penal Code and the Bharatiya Nyaya Sanhita (2023) do not identify the motives and cooperative processes that determine honour killings, nor do they assume that generic homicide schemes can be adequate⁹³³. The authors base their argument on constitutional morality and propose motive-based classification, aggravated sentencing, and honour killings as crimes against the constitutional 14, 15, and 21 guarantees of equality, non-discrimination, and personal liberty⁹³⁴. The reason is that their argument is similar and close to the thesis of the current paper, particularly in its focus on the need to stop honour killings as structurally inclined crimes and not as improvised acts of interpersonal violence.

In their article, “Indian Framework Against Honour Killing”, by Rajat Tomar and Nidhi Sharma, the authors provide a narrowly scoped doctrinal description of the IPC and the Bharatiya Nyaya Sanhita in the prism of honour-based violence. The authors condemn the lack of an aggravated category of honour killings and emphasize how informal forms of community organization can facilitate such offences⁹³⁵. In spite of their brevity, their discussion makes the case that judicial silence creates prosecutorial uncertainty and inconsistency in judicial decision-making procedures. The article provides additional evidence in support of the demand to have a certain statutory pattern that would be consistent with the constitutional principles and would be able to direct the investigation and sentence.

⁹³² Aradhana Sahu, Honour Killing in India: A Critical Study, 3 Indian J. L. & Just. 45 (2019); Indian Penal Code, No. 45 of 1860, Acts of Parliament, 1860 (India)

⁹³³ Vasava Bhagvati Mahendrabhai & Siya Gupta, Is Honour Killing or Prejudice? Masking the Real Threat, 4 Indian J. L. & Legal Rsch. 221 (2023); Bharatiya Nyaya Sanhita, No. 45 of 2023 (India)

⁹³⁴ India Const. arts. 14, 15, 21

⁹³⁵ Rajat Tomar & Nidhi Sharma, Indian Framework Against Honour Killing, 2 J. Legal Stud. & Rsch. 78 (2021)

In his lectures, “Addressing Honour Crimes: Legal Perspectives in India”, G. Ranjith Kumar combines constitutional and international law approaches to discuss why the existing approach to honour killings in the Indian criminal justice system should be changed. He appeals to CEDAW, the UDHR, and to other international norms to emphasize the fact that it is the positive duty of India to make culturally condoned violence criminal, and is the responsibility of the government of India to protect the autonomy of individuals in marriage and love⁹³⁶. Kumar also considers more practical enforcement issues, saying the general penal law is poorly placed to reflect the symbolic and conspiratorial qualities of honour murders and that such an inappropriateness damages not only deterring but also protecting the lives of victims. His analysis supports the comparative/strand and treaty-based component of the argument proposed in the present paper and boosts the argument that the harmonisation of domestic law with international human rights obligations must be statutory in recognition of honour crimes. Combined, the contributions of these scholars reveal key weaknesses in the Indian criminal law system in the areas of doctrinal, procedural and normative strengths in dealing with honour killings. They all agree on the opinion that legislative silence makes the honour-based violence both invisible and untreatable according to the law, undermines the significance of judicial reactions, and does not recount any constitutional law or international statutes⁹³⁷. The current paper builds upon this literature, and it suggests more practical legislative measures, such as a specific offence, aggravating liability, and preventive measures, to operationalise constitutional morality, increase prosecutor clarity, and promote the rights and dignity of the victims of honour-based violence.

REFORM PROPOSALS AND LEGISLATIVE RECOMMENDATIONS

The fact that no special statutory framework currently exists to deal with honour killings under Indian criminal law is not only a failure of statutory legislation but a total constitutional silence - one that allows structural violence to be compounded within the inadequate protection of generic prosecution of killings. The honour killings are not individual deviance but they are scripted dramas of caste dominance, patriarchal control and communal coercion. It is error to prosecute them with murder in ordinary so as to confuse the symptom with the disease. India needs no consolidation on the decks. It needs an architecturally sound, multi-statute

⁹³⁶ G. Ranjith Kumar, Addressing Honour Crimes: Legal Perspectives in India, 7 J. Indian L. Soc’y 133 (2020)

⁹³⁷ Law Comm’n of India, *Prevention of Interference with the Freedom of Matrimonial Alliances*, Report No. 242 (2012)

codification that involves criminal law, constitutional guarantees, protective statutes as well as institutional accountability in real interaction with one another⁹³⁸.

I. Codification Under the Bharatiya Nyaya Sanhita — Naming the Crime

The primary and most basic reform is the introduction of a special clause into the Bharatiya Nyaya Sanhita, 2023, that identifies, recognises, and makes honour killing a separate crime punishable by law. Similar to the Indian Penal Code that it substituted, the current BNS incides honour killings, bringing them under Section 101 (murder) and 103 (culpable homicide), in the process depriving the crime of its ideological and structural nature⁹³⁹. An honour killing should be defined in a new section, tentatively called Section 101-A BNS, as:

“Any act of deliberate murder, assistance in murder, or grievous death of a person based on the ground of real or suspected violation of castes, and neighborhood, religious, or gender standards, such as the transportation of the right to pick a marital and/or intimate partner, where such action is executed or endorsed by two or more people in a family, kin group, caste panchayat, or community organisation.”

This definitional architecture is one which achieves a very important thing; it replaces motive-neutrality - the myth that all murders are equal - with ideological motive as a constitutive factor of the offence, just as hate crime legislation does in other comparative jurisdictions like the United Kingdom in the Criminal Justice Act, 2003 or in Canada in Section 718(2) of the Criminal Code⁹⁴⁰. This is the doctrinal course that Indian law must pursue. More importantly, the provision should spread criminal liability to include the immediate perpetrator. Based on the conventional paradigm of Section 48 BNS (common intention) and Section 49 BNS (common object), the responsibility is supposed to be entrenched into statutes and collective criminal responsibility should be clearly deemed and the involvement of khap panchayats, family councils, and community endorsers whose moral authorisation is a commonplace ritual before the actual killing⁹⁴¹.

⁹³⁸ Law Comm'n of India, *Prevention of Interference with the Freedom of Matrimonial Alliances*, Report No. 242 (2012)

⁹³⁹ Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 101, 103, 48, 49 (India); Indian Penal Code, No. 45 of 1860 (India)

⁹⁴⁰ Criminal Justice Act 2003, c. 44 (U.K.); Criminal Code, R.S.C. 1985, c. C-46, § 718(2) (Can.)

⁹⁴¹ Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 48, 49 (India)

II. Aggravated Sentencing-The Law Must Reflect the Weight of the Crime

Even in the case where murder convictions are achieved, the present sentencing system lacks a system to classify individual passion crimes as opposed to collective ideological enforcement crimes. This distinction is not merely symbolic, it is constitutionally mandated⁹⁴².

Reform here must operate at two levels. First, Honour killings that fall under the planned Section 101-A, be met with aggravated punishment, with a sentence term of life imprisonment without remission penalty, which can only be given in rare and exceptional cases under the death penalty construct as articulated in *Bachan Singh v. State of Punjab* (1980)⁹⁴³. The Supreme Court in *Shakti Vahini v. Union of India* (2018) already characterised honour killings as "the summary execution of the choice", judicial language that intrinsically supports aggravated classification⁹⁴⁴.

Second, sentencing principles applied in the *Bharatiya Nyaya Sanhita* need to be revised in order to add motive as a statutory aggravating factor, and the courts, upon sentencing, must document their findings on the ideological nature of the offence. This would put the Indian sentencing jurisprudence on the same plane as the constitutional mandate in Article 21 that the deprivation of life should be proportional to the seriousness of the infraction, in a holistic sense⁹⁴⁵.

III. Prototype Legislative Provision — Draft Architecture

The following structure is proposed as the scaffolding for a dedicated Prevention of Honour-Based Violence Act or, alternatively, as a self-contained chapter within an amended BNS:

1. **Definition Clause** — Defining honour killing, honour-based violence, implicated persons (direct perpetrators, abettors, sanctioning bodies), and protected characteristics (caste, community, religion, gender, sexual orientation, marital choice).
2. **Offence and Punishment Clause** — Establishing the distinct offence with graduated punishment: life imprisonment (minimum) for the principal offender; rigorous imprisonment of ten to fourteen years for abettors and community sanctioners; mandatory fine payable as compensation to the victim's estate.

⁹⁴² India Const. arts. 14, 15, 21

⁹⁴³ *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684 (India)

⁹⁴⁴ *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192 (India)

⁹⁴⁵ India Const. art. 21

3. **Protective Orders Clause** — Empowering designated courts to issue ex parte interim protection orders, residence orders, and relocation assistance upon prima facie satisfaction of threat, drawing procedural inspiration from the PWDVA framework⁹⁴⁶.
4. **Mandatory Reporting Clause** — Imposing a duty on police officers, district magistrates, health professionals, and school authorities to report credible honour-based threat situations, with penal consequences for wilful non-reporting.
5. **Institutional Accountability Clause** — Providing for the registration, monitoring, and where necessary, dissolution of caste panchayats and community bodies that issue diktats promoting honour violence, with criminal liability for office-bearers.
6. **Presumption Clause** — Establishing a rebuttable presumption of honour-based motive where the victim had recently contracted or announced an inter-caste, inter-religion, or self-chosen marriage, shifting the evidential burden to the accused to disprove the motive.

These reforms, taken together, construct not a patchwork of amendments but an integrated legal ecosystem, one in which criminal law names the offence, sentencing law reflects its gravity, protective law anticipates its occurrence, constitutional law anchors its legitimacy, and institutional law dismantles the community structures that perpetuate it. Codification is a constitutional imperative. The state's obligation under Articles 14, 15, and 21 is not discharged by prosecuting honour killings after the fact under provisions designed for altogether different crimes. It is discharged only when the law looks the phenomenon directly in the face, names it, criminalises it, prevents it, and in doing so, declares unambiguously that in the Republic of India, no tradition, no caste, and no family holds the authority to extinguish a life that dared to choose freely⁹⁴⁷.

CONCLUSION

Honour killings in India represent far more than a failure of individual conscience, they are the calculated instruments of a structural order that subordinates personal autonomy to the imperatives of caste endogamy, patriarchal dominance, and communal conformity. That Indian criminal law, even in its most recent reformulation through the Bharatiya Nyaya Sanhita, 2023, continues to prosecute these deeply ideological acts under motive-neutral homicide provisions

⁹⁴⁶ Protection of Women from Domestic Violence Act, No. 43 of 2005 (India)

⁹⁴⁷ India Const. arts. 14, 15, 21

is not a procedural inconvenience but a constitutional betrayal. It renders invisible the very architecture of violence, the family councils, the khap panchayats, the communal endorsers, that transforms individual killing into a systemic instrument of social control.

The judiciary has endeavoured to fill this legislative void, repeatedly affirming that honour-based violence is antithetical to the constitutional guarantees of equality, dignity, and personal liberty enshrined in Articles 14, 15, and 21. Yet judicial pronouncements, however eloquent, cannot substitute for legislative clarity. Constitutional morality must be translated into statutory certainty, into defined offences, graduated punishments, protective mechanisms, and institutional accountability, if it is to afford meaningful and uniform protection to the vulnerable.

India's obligations under CEDAW and the UDHR further demand nothing less. The codification of honour killing as a distinct aggravated offence is therefore simultaneously a doctrinal necessity, a constitutional imperative, and an international legal obligation. Until the law names this violence for precisely what it is, structured, ideological, and collective, it remains, however inadvertently, complicit in its perpetuation.

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