

KILLING IN THE NAME OF HONOUR : A CHALLENGE TO DEMOCRACY

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Our constitution derives strength from unity in diversity. It is termed as the modern '*Dharma shastra*'. However, there has always been daunting challenge of preserving the political unity of a heterogeneous society. It is clearly mentioned in our constitution- The Fundamental Rights- the basic Right to Equality, Prohibition of Discrimination on the grounds of religion, race, caste, gender, place of birth and Right to Freedom which includes speech and expression, assembly, association, movement, residence, right to practice any profession/ occupation and most importantly Right to Life and Liberty!

The functioning of the traditional panchayats pose a threat to our democracy. It is believed and often talked about that the court, the legal procedures are difficult to approach for a common man. Now this has been imposed by the traditional panchayats in such a manner that the laws are not sensitive to the sentiments, customs and values of the village. It gives a picture that the law is made such- that it is not linked to the grassroots problems, issues and concerns and hence justice is delayed and denied.

Analyzing different cases, reports and interviews (during my Ph.D) it was found that the state very much works and decides on the basis of giving importance to patriarchy and caste kinship and keeping it intact especially when marriage is concerned. Though its role is to support human rights and give preference to legality, uphold the law of the land, but in reality it is not so. It has acted against the principle of justice and egalitarian principles, by supporting the powerful and the dominant and not paying heed to the weak and the vulnerable (women and dalits). The mere fact that a woman being an adult is suppressed brutally if she decides to make a choice or decides to choose her partner, her socio-legal rights are taken away, even her right to live is dependent and is left at the mercy of the caste and honour of the family, village and community.

Hence there is conflict between the ideas of state and that of the legal authority and humane principles (individual). The attitude, perception of the people in general and the law authority (judges, lawyers) in particular, poses a question, a challenge to equality before law and the notion of equality between a man and a woman.

The girl or the boy or the couple transgressing the traditional norms and customs and marrying against the wishes of their parents is punished. The legal forces, the police, the judiciary and even the politicians- all play a role. These, who have to protect the law and life and right of the individuals, because of the vote bank politics, the transfers and other related problems, mould their role and decide only in favour of the powerful and the majority- usually the upper caste.

Yet another discrepancy is of the fact that why such law is there, that a woman can have consensual sex if she is 16 years or above, but actually when it happens, it is not accepted. Not only it stands unaccepted, it is brutally suppressed by other sections and laws overriding it. So why only in the first place this law is there.

Another thing which is contradictory is the fact that in the name of honour, a woman is made to stand guilty from all angles, she is called by names, her sexuality, moral values are questioned and she is blamed from all spheres, yet the boy is also punished in severe manner. Firstly the consent of the woman is nullified in whichever way possible and then the man is punished. This again proves patriarchy and control over women which cannot be taken by any other man just like that. Legal laws are in conflict with moral and ethical principles.

In most of the cases where the judgments disapproved the mutuality and mutual consent of the man and woman, it clearly gave importance to traditional norms, cultural beliefs and attitudes, moral and ethical values of the

village, society and family as a whole and not that of the two as a married couple individuals with their own rights and dignity.

Marriage solemnized under SMA or marriage by civil registration has its own set of procedures which has its own positives and negatives:-Firstly the couple has to submit age proof and residence proof of their own as well as names and addresses of three witnesses. Secondly, it then sends registered notice to the parents of the couples, informing them about their marriage. Now this shows an ambiguous role of the state where on one hand the couple ran away from their house and decided to marry with their choice without their parents' consent and here by informing their parents, which will not be taken positively by them of course and would be an obstacle for the couple. Hence it might lead to obstruction in the marriage. So rather than playing the role of a facilitator, guiding and protecting the couples, it kind of puts them in danger.

The fact that the lower caste – Dalits have approached National Human Rights Commission – in cases of atrocities/ adversities has been a change to be noticed. They are now becoming aware about their rights – socio-legal and have gained courage to fight for the same.

Respondent are also aware that registration of marriage is now compulsory. Also, under the court marriage or registration of marriage, social and religious ceremonies are not that important. It comes under Special Marriage Act, 1954 wherein the couple informs the state and seeks permission that they want to marry. However, along-with their proof of residence and proof of age they even have to submit/ furnish names and address of three witnesses- who would come to witness their marriage. Following this, the court then sends notices to the parents of the couple to be married informing them about the same. So again, we can say that the whole purpose of the legal right of the individual comes under the purview of social pressure, control and social sanction.

The judgments and decisions of the court for inter caste marriage has varied- time and again, as per political pressure or power and dominance of patriarchy and caste. But nevertheless a few successful cases show that there is definitely a possibility of change. Also a positive step was taken by the Supreme Court of India when it declared and admitted that inter caste marriages and inter community marriages are beneficial for national growth and national integration and are in national interest. It further instructed the law enforcement agencies to protect and safeguard the couples who married with their own choice outside their caste. It also said that any kind of violence and harassment and opposition to these marriages would be punishable under law.

So the need for a change has been realized and recognized. The only drawback is that like other laws, this one also needs to be implemented strictly and effectively. Because the ground reality is very different, wherein the elopement and runaway cases have been dealt with ultimate violence, resistance and ended in trauma. So both societal acceptance /societal change along with strong implementation of laws has to go hand in hand to respect human dignity, life and see a social change in this perspective. Also, a separate law is needed for honour killings- it has to be recognized as a social problem (like *sati*).

A very interesting fact - there is a lot of discrepancy in legal terms as well. If we notice the legal age of marriage is 18 years of females and 21 for males. But Sec 375 under IPC lays the age of consent for sexual intercourse which is 16 years for unmarried females and 15 years for married females. So here we seen an apparent discrepancy between the marriageable ages (legal and non-legal ones) wherein Sec 375 accepts the non legal age and not only this, it also says that the marriage (below 18 years) if has consent of the guardian does not stand void. So when this comes into picture, it clearly means that if the guardian is present and approves of the marriage, it is legal but if the girl takes her call and gets married according to her choice then it becomes legal.

So, not only from socio psychological perspectives, there is gender bias from legal point of view too. One needs to question the difference between the legal marriage age of girls and boys. Why is it that the legal marriageable age for a girl is 18 years and for boys it is 21 years even though biologically both attain maturity/ puberty at around same age? It is not just conflict between the young generation and the old but this has also brought into picture the conflict between beliefs and practice. Women are considered to be inferior to man in every possible manner.

Another interesting fact while proving the age of the girl in runaway cases, many a times the birth certificate of the school issued by the school is also considered to be invalid as it is said that the date recorded verbally without any proof and medical or otherwise (certified by hospital or municipality). And hence it can be manipulated, so if the guardian wants to prove that the girl is a minor (at the time of runaway/ elopement, there is no record to prove her majority (18 years) so easily. Even the birth certificate and school certificate which is otherwise universally accepted does not stand valid in such situations (interview with DSP). Of course there are

techniques to test and establish the age through medical tests, testing the bone or the ossification test, bone age or even the dental age test. The ambiguity and manipulation proving the age of the girl through various sources mostly gives the advantage to the parents/ guardians rather than the girl.

Citing a number of cases from Punjab , Haryana, Chowdhry (2009) says, 'the stand taken by the court in various cases reveals that it considers only marriage as a legitimate form for sex and the only marriage it recognizes is one that has the guardian's sanction and blessings. This is a patriarchal norm of marriage and female sexuality'.

Also if the couple is caught and claims to be married it becomes very difficult for them to prove their marriage if it is in Arya samaj mandir or anywhere, when it comes to the police and judiciary. In such cases if the marriage has not been solemnized properly after following all rituals, or if the witnesses turns hostile etc., then also the boy is convicted. The boy in such cases (runaway cases/ elopement) is not supported by his family either. They only try to make him understand and leave the girl especially in cases of inter caste marriages. And on top of this if the girl turns hostile then it becomes a serious offence with severe punishments. Nevertheless the family only concentrates on the boy and tries to get him free as soon as possible. In most of the Inter-caste marriages where a boy belonged to a lower caste (the *dalit*) and girl belonged to upper caste, it was usually the boy who was convicted of either rape and kidnapping or both. And mostly no lawyers take up such cases.

In the 21st century, after so much change and development, where the women are coming out for jobs, the SC's are taking advantage of the reservation opportunity, technically- in legal and economic aspects- the vulnerable group that is the lower caste and the females are not at the receiving end but are still suppressed in matters of marriage and honour. Phrases used esp. for girls- *moo kaala hogaya*, *izzat lut gayi*, *naak katwa di*. The irony is that there are no phrases for the one who raped or for the one who killed. Is this humanity? Is this justified?

Also, after the data collection and reviewing articles/ observing cases- it can be said that apart from implementation of laws (esp. pertaining to human rights and honour killings) , there is a need for change and sensitization of social/ community mind set- as this has tremendous involvement leading to resistance and acceptance of the situation. For a long term and sustainable change, change in outlook is important not only by the family members but also by the whole community. Some kind of social reform plan is needed. Like earlier, widow remarriage and *sati* was also challenged and faced tremendous outrage but nevertheless led to a social change in our society.

My question is- even after such hard talks and being tough on paper too perhaps, have the cases of lynching/ atrocities of victims reduced? The fear, the resistance has only taken a toll. Every other day one incident is reported- read and seen in newspaper and news channels. A major breakthrough is required- like in the case of abolition of *sati*. Like in a case in 2010 where Haryana court sentenced 5 men to death for the honour murder of the young couple while giving a life sentence to the head of the *khap* panchayat that ordered their death (Shaktivahini, 2013; 2012)

Even after all this, it will be a long drawn battle. The battle of resistance and acceptance! Inter caste marriages have been on a rise. And so the torture and physical pain, abuse, killings, atrocities. But it has not deterred the young generation in wilfully deciding whom to marry. Every inter caste marriage begins with a rebellion- a conflict against patriarchy, caste, orthodoxy and a fear of pushing the caste boundaries, challenging caste norms, traditions. Many have paid price for that by facing brutality, lynching, rape and even at the cost of their lives. But it has not stopped. The contentious inter caste marriages are still taking place and are on a rise.

It is also noted that a historic change has taken place wherein the *khap* panchayats in Haryana has allowed intercaste marriage within 42 villages falling under its jurisdiction, however no such demand or change is been recognized or welcomed in western Uttar Pradesh till now (Ravinder, 2004). Moreover, the change that has taken place is only for the upper castes and no marriage alliance where there is one *dalit*/SC and one upper caste will be welcomed or accepted.

In-fact, a fear/tension is there that relaxing one rule might lead to a demand or even might raise expectations to relax other norms and rules. Rising cases of intercaste marriages in the form of elopements and runaway marriages suggests that there is an unsaid demand/ expectation to relax caste endogamy rules too.

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