

Analysis of Caste-Based Honour Killings with Special Reference to Tamil Nadu

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Abstract

The menace of inhumane barbaric crimes such as caste-based honour killings has been part of our society for a long time which is a blot on the dignity of an individual. Even though the NCRB statistics have only reported some of the cases, many cases regarding this go unreported, according to civil society organisations. Such crimes are common in our country and continue to pose a threat to the lives of individuals and the societal fabric at large. Despite various landmark judgments by the Supreme Court of India yet, the directions are not followed in spirit. Also, the Law Commission Report 2012 namely, Prevention of interference with the freedom of matrimonial alliances (in the name of honour and tradition): A suggested legal framework, to a great extent has been overlooked by the lawmakers in the State Legislature of Tamil Nadu. The researcher looks into diverse instances of honour killings that have taken place in the State, and other factors that impact the perpetrators' criminal behaviour, the role played by the judiciary and the state machinery. The research goes ahead to suggest specific measures to be taken on behalf of the State, which justifies the requirement for a sui-generis law towards preventing and combating honour killings while improving the livelihood of the survivors.

KEYWORDS: Autonomy of Individuals, Caste Crimes, Criminal Justice System, Honour Killing, Human Rights.

Introduction

While the country was reeling from the pandemic induced by the novel coronavirus, individuals who dared to assert their autonomy and choices, continue to struggle with caste along with the deadly virus². Even before one could recover from the shock of this phenomenon at large, the connivance of the State in aiding this crime by not taking any substantive attempts due to a lack of political will to prevent this crime is a blot on the Constitutional values³. While our Constitution has guaranteed normative equality of rights and dignity to the people in light of democratic notions, the ground reality is riddled with inequality and oppression⁴, which brings the undemocratic nature of our society at large. This is nothing but the result of a historical struggle between two different ways of life, one being emancipatory and the other being oppressive, which has transformed through various forms. At present, the conflict is between the constitutional order (guided by constitutional morality) and the caste order (guided by dominant societal morality). The former regards honour killing as a crime to be faced with sanction. While the latter regards inter-caste love as a crime to be faced with sanctions⁵.

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2 *Honour killings are on the rise in State: NGO*, THE HINDU (Jan. 8, 2021), <https://www.thehindu.com/news/cities/Madurai/honour-killings-are-on-the-rise-in-state-ngo/article33531924.ece> (last visited Sep 15, 2022).

3 Sanhati Banerjee, *Honour Killing: India's Own Pandemic Of Casteist Patriarchy*, FEMINISM IN INDIA (May. 6, 2020), <https://feminisminindia.com/2020/05/06/honour-killing-indias-pandemic-patriarchy/> (last visited Sep 15, 2022).

4 Arvind Narrain, *Constitutionalism at 72*, GAURI LANKESH NEWS (Jan. 26, 2021), <https://gaurilankeshnews.com/constitutionalism-at-72/> (last visited Sep 15, 2022).

5 *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

Honour killings or crimes are not accurate expressions but are used to describe those events of harassment and violence against individuals who have married or have intentions to marry beyond their caste boundaries, which is opposed by the members of the family or community they belong to. These crimes are rooted in the belief that dishonour has been brought to the community or family. Both women and men fall prey to this evil. Such crimes also occur in foreign countries to those women who seek autonomy over their lives⁶.

The National Crime Records Bureau (NCRB), until 2013, did not have honour killing as one of its motives for murder. Only after 2014 it was recognised and added. According to NCRB reports, there were 28 cases in 2014, 251 cases in 2015 and 77 cases in 2016, where honour killing was the motive for murder and culpable homicide not amounting to murder⁷. But these records do not confirm the reality, where many incidents go unreported without being part of any official record. For an unstarred question raised by Thol Thirumaavalavan in the Lok Sabha in 2019, about the details of honour killings reported in the country during 2018, the Minister of State for Home Affairs answered that it is the NCRB that publishes information on crimes. Such reports are available only until 2016⁸. The lack of adequate data regarding honour killings reflects the miserable State of affairs where the crime is neither prevented nor acknowledged. Evidence, an NGO after field works, has stated in its press release dated November 2019 that there were 195 incidents of honour killings in Tamil Nadu during the past five years⁹.

The first honour killing case in Tamil Nadu was reported in 2003, in a village in Cuddalore, where Murugesan belonged to the Dalit community, and Kannagi belonged

to the Vanniyar community, entered into marriage. The family members of the woman and others forced the couple to drink poison, burnt them, and framed it as suicide, which was taken up after the involvement of various civil society members. Over time, several witnesses had turned hostile due to the lengthy timeline of the case proceedings¹⁰, due to which the merits of the case got diluted to a larger extent. After around 18 years, in September 2021 the Special Court for SC/ST Act cases in Cuddalore district imposed the death sentence on one person and sentenced the other twelve people to life imprisonment. The Madras High Court in June 2022, commuted the death sentence to life imprisonment, also acquitted two convicts of all charges, set aside one life sentence to two years imprisonment and upheld the life imprisonment of the remaining nine people¹¹.

Another case that sent shock waves across was the violence that happened in Dharmapuri, followed by the death of Ilavarasan, who belonged to the Dalit community. He, along with Divya, belonging to the Vanniyar community, eloped and got married in 2012. After this, due to pressure from the community, the father of the woman committed suicide. This was followed by the violence unleashed over three Dalit colonies in that locality where hard-earned possessions, books, jewels, houses, and other things were set on fire and looted. This resulted in the large-scale destruction of property and left hundreds of people homeless. The following year in the aftermath of a habeas corpus petition filed by the mother of Divya, she returned to visit her mother and eventually stayed there. She also stated that she would not return to live with Ilavarasan. After this, Ilavarasan was found dead near a Railway track in Dharmapuri¹². While the State and others alleged this

6 S.M. Afzal Qadri, Ahmad Siddique's Criminology, Penology and Victimology (Eastern Book Company 2017).

7 Honour Killings, PIB Delhi, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1540824> (last visited Sep. 15, 2022).

8 Lok Sabha Unstarred Question No. 2609, <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2019-pdfs/ls-09072019/2609.pdf> (last visited Sep. 15, 2022).

9 *Enact law to stop honour killing: NGO*, THE HINDU (Nov. 22, 2019), <https://www.thehindu.com/news/cities/Madurai/enact-law-to-stop-honour-killing-ngo-madurai-nagapattinam/article30053623.ece> (last visited Aug 28, 2021).

10 Ilangovan Rajasekaran, *Elusive justice*, FRONTLINE (Mar. 13, 2020), <https://frontline.thehindu.com/cover-story/article30911095.ece> (last visited Aug 28, 2021).

11 Upasana Sajeev, *Kannagi-Murugesan Honour Killing Case: Madras High Court Commutes Death Sentence Of Brother, Acquits Two*, LIVE LAW (June. 8, 2022), <https://www.livelaw.in/news-updates/madras-high-court-2003-kannagi-murugesan-honour-killing-death-sentence-commute-201136>.

12 R. Arivanantham, *Dalit youth Ilavarasan found dead*, THE HINDU, (July. 4, 2013), <https://www.thehindu.com/news/national/tamil-nadu/dalit-youth-ilavarasan-found-dead/article4881007.ece> (last visited Aug 28, 2021).

Kavin Castro M

as suicide, the family members and other civil political organisations have contended this to be a case of honour killing. One of the forensic experts who was involved in this case had commented in 2017, “*Even if we don’t have enough to prove that Ilavarasan was murdered, we have enough to show that he did not commit suicide*”¹³. In this case, it is important to note the amount of clout a caste-based political party enjoys, which spins in venomous narratives similar to that of love jihad, where they claim that Dalit youth lure other caste women into marriage¹⁴. This is a dangerous, inhumane expression that has incited much violence against Dalits and disregards women’s agency to exercise autonomy and make their own decisions. Finally, in 2017, the CB-CID submitted the report to the Madras High Court wherein it informed that the death of Ilavarasan was a suicide and thereby the case was closed¹⁵.

Another case in this regard was the death of Gokulraj, a youth belonging to the Dalit community, for his relationship with Swathi belonging to the Vellala Gounder community. Gokulraj was found dead on June 24th 2015, and his head was beheaded near a railway track. After the autopsy was conducted and reports of the same when submitted to the police, the FIR was modified to a case of murder¹⁶. In this case, Yuvaraj, who belonged to a caste-based outfit, surrendered to the investigative

agency after absconding for more than 100 days. Before the surrender, it is also to note that, DSP Vishnupriya who was investigating the matter, had allegedly committed suicide. After which, the case was shifted to the CB-CID. In these cases, even though there was no relation between honour killing and the woman’s family, to improve one’s caste-political clout and assert their honour, these antisocial elements have been committing such crimes¹⁷. In March 2022, a Special Court for SC/ST Act cases in Madurai district convicted and sentenced ten people to life imprisonment including Yuvaraj who was sentenced to triple life imprisonment¹⁸.

The honour killings exist even all across the sub-castes of Dalits, MBCs and BCs. Hence the concept of graded inequality in the caste hierarchy remains relevant, along with the preservation of family property, caste purity and family honour¹⁹. In recent times due to the covid pandemic, individuals who have left their villages and gone to cities for livelihood have returned to the villages left with no choice rather than facing caste atrocities. In one such case, a youth belonging to the MBC community who was working in Chennai was murdered after returning to his village during the lockdown by the family members of the woman with whom he was in a relationship, who also comes under the MBC community²⁰.

- 13 Sowmya Sivakumar, *Ilavarasan’s Death Was Definitely “Not a Suicide”, Says Doctor Who Examined Body*, The Wire (Mar. 15, 2017), <https://thewire.in/uncategorised/ilavarasan-death-not-suicide-says-doctor-who-conducted-autopsy> (last visited Aug 28, 2021).
- 14 Pramod Kumar, *PMK’s anti-Dalit rant in TN resembles Kerala’s “love jihad” theory-India News*, Firstpost, FIRSTPOST (Dec. 03, 2012), <https://www.firstpost.com/india/dharmapuri-violence-why-tn-could-become-a-hotbed-for-love-jihad-543446.html> (last visited Aug 28, 2021).over an inter-caste marriage, is threatening to escalate communal hatred in the state.”,”container-title”:”Firstpost”,,”note”:.”section: India”,,”title”:.”PMK’s anti-Dalit rant in TN resembles Kerala’s ‘love jihad’ theory-India News, Firstpost”,,”URL”:.”https://www.firstpost.com/india/dharmapuri-violence-why-tn-could-become-a-hotbed-for-love-jihad-543446.html”,,”author”:.”[”literal”:.”Pramod Kumar”]”,,”accessed”:.”{”date-parts”:.”[[”2021”,8,28]]]”,,”issued”:.”{”date-parts”:.”[[”2012”,12,3]]]”}”,,”schema”:.”https://github.com/citation-style-language/schema/raw/master/csl-citation.json”}
- 15 *Ilavarasan’s death was a case of suicide: CB-CID*, The New Indian Express (Feb. 22, 2017), <https://www.newindianexpress.com/states/tamil-nadu/2017/feb/22/ilavarasans-death-was-a-case-of-suicide-cb-cid-1573409.html> (last visited Sep 16, 2022).
- 16 S. Saravanan, *Dalit youth found dead on rail track was murdered*, The Hindu, (July. 2, 2015), <https://www.thehindu.com/news/national/tamil-nadu/dalit-youth-found-dead-on-rail-track-was-murdered/article7376559.ece> (last visited Aug 28, 2021).
- 17 Ilangovan Rajasekaran, *In the name of honour*, Frontline (Mar. 13, 2020), <https://frontline.thehindu.com/cover-story/article30911076.ece> (last visited Aug 28, 2021).
- 18 Staff Reporter, *Gokulraj murder case: Madurai Special Court convicts 10, acquits five*, THE HINDU (Mar. 5, 2022), <https://www.thehindu.com/news/national/tamil-nadu/gokulraj-murder-case-madurai-special-court-convicts-10-acquits-five/article65193031.ece> (last visited Sep 16, 2022).
- 19 Ilangovan Rajasekaran, *‘Purity and honour’*, Frontline (Mar. 13, 2020), <https://frontline.thehindu.com/cover-story/article30911129.ece> (last visited Aug 28, 2021).
- 20 Ilangovan Rajasekaran, *Honour killing in the time of lockdown in Tamil Nadu*, Frontline (Mar. 13, 2020), <https://frontline.thehindu.com/dispatches/article31235723.ece> (last visited Aug 28, 2021).

In another recent case of honour killing in 2021, a boy belonging to the MBC community was hacked to death by the girl's family members who belonged to the Chettiyar caste. It had been reported by Evidence NGO that as of January 2021, there were nine such incidents of honour killing in Tamil Nadu during the past 11 months of lockdown²¹.

Causative Factors of Honour Killing

It is imperative to deal with the underlying reasons and factors that impact the perpetrators' criminal behaviour in honour killing. The rise of violence against individuals involved in inter-caste marriages can be primarily understood as a reaction to safeguarding their hegemony over women and the lower castes on the ladder of graded inequality. One reason is that the caste-based organisations call for an offensive against inter-caste marriages to increase caste polarisation to mobilise caste solidarity to increase their vote bank consolidation. The perpetrators perceive the phenomenon where individuals dare to commit inter-caste love as resistance against caste oppression. Caste is a state of mind, as stated by Dr Ambedkar is very relevant here. For the perpetrator, anything that is perceived as a threat to their caste or affects their caste has to do with a psychological-emotional mindset and especially being provocative.

Another reason is that a woman takes her own decision about her life choice in inter-caste love and marriage. It is perceived as a threat to endogamy and thereby the caste system itself²². Here, the feudal, patriarchal caste system that considers a woman's body as a gatekeeper of so-called 'honour' of the family/caste comes into play, where a relationship with a lower caste man is perceived to result in impurity. Also, the relationship is perceived to shatter the honour of the family/caste, thereby provoking the perpetrators to unleash an offensive against the individuals destroying life and property. In some cases, even if the father or family of the woman is silent, they are provoked to harm the couple or made to

feel ashamed for shattering their honour which results in suicide. This issue is connected with the notion of women as the property/chattel of men, who are devoid of exercising autonomy²³. Inter-caste marriages being considered a deviation from the endogamous arranged marriages is also perceived as a threat to their control over material wealth, which might be passed away from the caste network. Therefore, both the reasons mentioned above are essential to understand the crime of honour killing, where the caste-based organisations utilise the prevalent casteist mind-set of the people.

Some of the reasons which have enabled the inter-caste love between two individuals are the upward mobility of the lower castes, especially the Dalits, at least on a relative level, despite the persistence of asset inequality. This can be attributed to the opening of access to formal education since the British period. Also, industrialisation and urbanisation rapidly changed the agrarian relations to an extent, thereby changing the social relation between the caste groups, especially at the village levels. This opened up opportunities for pursuing education, jobs (overcoming the clutches of feudal master-slave) and paved the way for social awareness and political sensitisation. As a result, the social conditions increased the probability of a meeting or interaction between two adults from different caste groups, thereby leading to a relationship between them, especially ending in love and marriage. The change in social relations has left the dominant caste where there is no availability of both the labour class and the lower castes over whom the former could express their dominance upon. This challenged the status-quo of the dominant castes in both cultural as well as economic spheres. This loss of privilege is what has been fuelling them toward increasing hatred²⁴.

In most honour killings, apart from the caste factor, the economic status of one individual plays a vital role. When the individual has a decent economic background, the possibility of this violence is less than

21 Ilangoan Rajasekaran, *In a case of "honour killing" in Tamil Nadu, a boy from a Most Backward Caste group is hacked to death by relatives of the girl he loved*, Frontline (Jan. 8, 2021), <https://frontline.thehindu.com/dispatches/in-another-honour-killing-in-tamil-nadu-a-boy-from-a-most-backward-caste-group-is-hacked-to-death-by-relatives-of-the-girl-he-loved/article33530087.ece> (last visited Aug 28, 2021).

22 Uma Chakravarti & Maithreyi Krishnaraj, *Gendering Caste: Through a Feminist Lens* (SAGE Publications 2018).

23 Aisha Gill, *Patriarchal Violence in the Name of "Honour,"* 1 International Journal of Criminal Justice Sciences (2006), <http://www.sascv.org/ijcjs/aisha.pdf> (last visited Aug 27, 2021).

24 Stalin Rajangam, *Aanavak Kolaikalin Kaalam* (Kalachuvadu Publications 2016).

Kavin Castro M

when compared to cases where an individual hails from a lower socioeconomic status. The criminology of this honour killing, when looked at from the location of the victims, can be concluded by saying that the act of two consenting adults falling in love and marrying each other is perfectly lawful. The only crime on their part is having been born as a woman and as a lower caste. But this inter-caste love, which has become a natural phenomenon, reflects the modern way of life in a civilised society with changing status quo, ideas of love, marriage, and family. This defying of the authority of caste-patriarchal hegemony creates a psychological fear in the perpetrators, which again results in the committal of this crime²⁵.

Judicial Decisions on Honour Killing

It is relevant to ponder the decisions rendered by various courts to understand how the judiciary has dealt with honour killing. In Lata Singh's case²⁶, a division bench of the Supreme Court expressed shock over how an inter-caste couple and the family of the petitioner's husband were both lawfully and unlawfully underwent severe harassment and threat to life. By way of a writ petition, the petitioner had sought to quash the Session Trial against her husband and his family members. In this case, when the petitioner of her own free will got married to a person of another caste, the brothers of the petitioner lodged a missing person report at the Police Station after which family members of the petitioner's husband including his sisters were arrested and kept in jail (this included a one-month-old baby of one of the sisters). Apart from this, the petitioner's brothers also unleashed violence at the house of the parents of the petitioner's husband. They also took away the harvest crops and sold them, and took possession of the field forcibly. Further, they also forcibly took control of the helmet shop owned by the husband of the petitioner. The petitioner, her husband and his family members were consistently at threat of being killed by the petitioner's brothers. The petitioner had approached various authorities regarding the false accusations by the

brothers of the petitioner against her husband's family solely because she entered into an inter-caste marriage.

After the involvement of the Rajasthan State Women Commission (where she was staying away from UP apprehending threat) and the National Human Rights Commission in this case, the SHO submitted a report to the Judicial Magistrate stating that no offence was committed by any of the accused family members of the petitioner's husband, followed by the observation of Sessions Judge, Lucknow that no offence was made and none were involved in any offence, bail also was granted. After this, the petitioner's statement was recorded by the investigating officer and the CJM, Lucknow, that she got married on her own will. Despite this, the CJM passed a committal order due to a protest petition filed against the police report, questioning the mental stability of the petitioner. This is despite the fact that there was no proof to such claim of the petitioner being mentally fit, but on the contrary, the Board of Doctors of Psychiatric Centre, Jaipur, had stated that the petitioner did not have any mental illness. This was followed by the issuance of non-bailable warrants against the four family members, against which a petition was filed in the Lucknow bench of Allahabad High Court, which was pending.

It is against this set of facts, the Supreme Court had come into play its role of protecting the rights of people with scathing observations. It vindicated the petitioner, her husband, and the husband's relatives by emphasising that the "*petitioner being a major has a right to marry anyone she likes or live with anyone she likes. And there is no bar to an inter-caste marriage under any law*"²⁷. It further termed the criminal case as an abuse of the court process and the administrative machinery. It further expressed disappointment at the police for not taking action against the petitioner's brothers for their wrongs but have proceeded otherwise. The Court deemed the issue of harassment, threats and violence meted out to couples who marry outside their caste as a matter of great public concern and thus made certain general observations in this regard. It went on to

25 M S S Pandian, *Caste in Tamil Nadu - II: Slipping Hegemony of Intermediate Castes*, 48 Economic and Political Weekly 13 (2013). "After all, hegemony of any community, in the patriarchal imagination, is premised on men's ability to control 'its' women and 'protect' them from outsiders. Cross-caste love cannot but be the casualty, when caste hegemony/ masculinity is under siege."

26 Lata Singh v. State of UP, (2006) 5 SCC 475.

27 *Id.*

observe that “*caste system is a curse on the nation and the sooner it is destroyed the better... inter-caste marriages are in fact in the national interest as they will result in destroying the caste system*”²⁸.

It called for severe punishment to those perpetrating violence, threats, harassment to the inter-caste couple. It asserted that ours is a democratic country, and any individual becoming a major has the right to marry upon their own choice. The Court directed the administration and police throughout the country to ensure that individuals undergoing an inter-caste or inter-religious marriage after attaining majority are not to be harassed or subjected to violence or any threat; and the police must institute criminal proceedings and take strict action in consonance with the law, against those who commit or instigate the same. The Court, in this case, quashed the proceedings as well as the warrants issued and directed the police to ensure the individuals are not further harassed. It also directed to institute criminal proceedings against the petitioner’s brothers. It is in this case, the Court stated that “*We sometimes hear of ‘honour’ killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact, they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment*”²⁹.

The Supreme Court rendered in Arumugam’s case³⁰ after five years of Lata Singh’s case, where both these judgments were authored by the same Judge, Justice Katju. This judgement provides more insight on a large level into the aspects of the caste-based atrocities. The judgment starts with a quote from the American Declaration of Independence, where the Court laments that a section of people is still regarded as inferior by many people in our country. It states that this casteist mentality in such a modern age is one of the main hurdles to our country’s progress. The case pertains to an appeal against the judgment of the Madras High Court which had upheld the judgment of Sessions Judge, Madurai; the facts being during one altercation, the appellants

have used derogatory slurs against the complainants belonging to Scheduled Caste, and also have caused serious injuries to the latter.

The Court used this case to comment upon the discrimination faced by the Scheduled Caste (such as the prevalent two-tumbler system) and had discussed certain previous judgments that had dealt this regard. It also went on to discuss the Lata Singh judgement rendered by it. Further, the Court brought into attention the system of Khap Panchayats also known as Katta Panchayats, whose decree encourages honour killings, uphold caste oppression/ discrimination, and also interferes in the lives of individuals, especially of individuals belonging to different castes/ religion who are married or wish to get married. The Court termed these as wholly illegal, for it functions akin to kangaroo courts, which take law in their own hands.³¹

The Court gave a vital direction to all the governments and authorities to take adequate measures to prevent these atrocities. And, in case of such incidents, it called for prosecuting those responsible for the crime. Further, it directed the respective governments to immediately suspend the district level authorities and all other officials and take necessary actions against them, where; if they have failed to prevent the incident despite having prior knowledge, or, on such event, they fail to take immediate legal actions against those responsible for such crime.

In Bhagwan Das’s case³² which was pertaining to an incident of honour killing, although not due to caste, but due to the adulterous relationship between the daughter of the appellant-accused with her uncle. The Court, in this case, has upheld the conviction and also have stated that ‘honour killings’ come under the category of rarest of rare cases and can attract death punishment. The Court stated that “*Many people feel that they are dishonoured by the behaviour of the young man/woman, who is related to them or belonging to their caste because he/she is marrying against their wish or having an affair with someone, and hence they take law into their own hands and kill or physically assault such*

28 *Id.*

29 *Id.*

30 Arumugam Servai v. State of TN, (2011) 6 SCC 405.

31 *Id.*

32 Bhagwan Dass v. State of NCT, (2011) 6 SCC 396.

Kavin Castro M

person or commit some other atrocities on them.”³³ It further stated that “All persons who are planning to perpetrate ‘honour’ killings should know that the gallows await them.”³⁴

It was observed in *Vikas Yadav’s* case³⁵, that one’s honour cannot be sustained at the cost of another. Further, it stated that:

*“Freedom, independence, constitutional identity, individual choice and thought of a woman be a wife or sister or daughter or mother cannot be allowed to be curtailed definitely not by application of physical force or threat or mental cruelty in the name of his self-assumed honour. That apart, neither the family members nor the members of the collective has any right to assault the boy chosen by the girl. Her individual choice is her self-respect and creating dent in it is destroying her honour. And to impose so called brotherly or fatherly honor or class honor by eliminating her choice is a crime of extreme brutality, more so, when it is done under a guise. It is a vice, condemnable and deplorable perception of honour, comparable to medieval obsessive assertions”*³⁶.

*Shakti Vahini v. Union of India*³⁷ is one of the landmark case rendered by a three-judge bench of the Supreme Court, which substantially dealt with the issue of honour killing. In this case, the petitioner organisation had filed a writ seeking directions to the respective governments for preventing honour killings. It also called for a plan of action at the National and State level to curb such crimes. Further, it sought for the establishment of special cells in every District to provide safety and assistance to couples intending to marry or have got married. Lastly, it called for expediting the prosecution in such offences and take other further appropriate measures in this regard. In this case, the petitioners contended that “the existence of a woman in such an atmosphere is entirely dependent on the male view of the reputation of the family, the community and the milieu.”³⁸ After hearing the contending arguments,

Court has dwelled upon the 242nd Law Commission Report, which has dealt about Honour Killing. Further, the Court discussed certain previous decisions rendered by this Court, dealing with honour killing. The Court observed that honour killing is just one part of the species of honour crimes. When two adults are willing to enter into marriage, there is no need for the family’s consent, or the community or the clan. It emphasised the concept of the rule of law to have order in a society where Human Rights shall be respected. For the same, any extrajudicial system such as Khap panchayat cannot interfere with rights guaranteed by the rule of law.

Further, the Court observed that this act of honour killing “guillotines individual liberty, freedom of choice and one’s own perception of choice”. It stated that Articles 19 and 21 of our Constitution recognises and guarantees the right of two consenting adults to one another as their life partner. Further, it observed that this right could not give way to a concept of honour since the latter lacks any legitimacy. Whereas the right guaranteed has to be protected, having the sanction of constitutional law. It emphasised the role of Constitutional Courts, as a sentinel on qui vive, in guarding an individual’s liberty, which furthers the dignified existence of the individual. Dealing with the choice of an individual as an integral part of dignity, it stated that “life and liberty sans dignity and choice is a phenomenon that allows hollowness to enter into the constitutional recognition of the identity of a person”³⁹. The Court also discussed certain international human rights instruments which dealt with crimes committed in the name of honour.

Most importantly, the Court issued certain directions with preventive, remedial and punitive measures to combat honour crimes. As preventive measures, the Court called for the identification of districts where the prevalence of such crimes is high, which requires more policing, which shall prevent any illegal extrajudicial decree punishing the couple. Even in the case of any other similar meetings, it called for the attendance of police and video recording of the meeting. It further

33 *Id.*

34 *Id.*

35 *Vikas Yadav v. State of Uttar Pradesh*, (2016) 9 SCC 541.

36 *Id.*

37 *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

38 *Id.*

39 *Id.*

suggested increased cooperation among the stakeholders along with adequate sensitisation of enforcement agencies. As remedial measures, the Court called for the government to provide for those couples who have fled honour crimes with safe homes, with sustained protection throughout the entirety of the investigation period. It is here it asked the respective state governments to establish a 24-hour helpline portal to receive and register complaints, after which adequate assistance/advice and protection to the couple is provided. As punitive measures, the Court called for departmental actions to be taken and completed within the stipulated time under relevant service rules against those governmental officials/police for failure to comply with any of the directions of the Court. Such failure will be considered an act of deliberate negligence or misconduct.

In Dilipkumar's case⁴⁰, the petitioner had approached the Madras High Court seeking police protection for himself and sought criminal prosecution against certain police officials responsible for the death of his wife Vimaladevi and transfer of investigation into her death to the CBI. In this case, the Court dealing with the submission of the petitioner and contrasting submission of the respondent police, after analysing various documents, and relevant facts in this regard, have observed that the death of Vimaladevi is a case of honour killing. This judgement also brings into light how the police officials have colluded with the family members and succumbed to caste group and has in every regard acted against any basic principles of law in this case.

Another⁴¹ judgement of the Madras High Court, presided by the same Judge discussed certain aspects as a continuation of the earlier writ filed by the petitioner. The Court has extracted certain observations from the report indicating the lapses made by certain police officials. The Court also extracted a list of honour killings reported from 2010 to 2015 in Tamil Nadu, which was filed by the counsel for the petitioner. After this, the Court issued specific directions which are essential to eradicate honour killing. It called for the creation of special cells in every District which shall receive

complaints concerning harassment/ threat to inter-caste couples, including a 24-hour helpline to receive and register such complaints. It shall also monitor the status of the same. It called for the SHO of the police station to protect such couples within their limits. The special cells shall not only involve the protection of the couple and taking other actions against those who harass the couple, but also must take steps to provide counselling to the couple's parents. For the fulfilment of these, it called for the State to allocate necessary funds to eradicate the evil of honour killing and the functioning of the special cells.

This judgment in Chinnasamy's case⁴² of the Madras High Court was pertaining to a brutal daylight murder that caused shockwaves. The deceased Shankar belonging to a lower caste was murdered, and the mob attacked Kausalya, his wife. While given the caste background of the individuals and their inter-caste marriage, any prudent mind would have affirmed this as a classic case of honour killing. But the Madras High Court, which set aside the order of conviction of the Sessions Court, ended up acquitting the prime accused (Chinnasamy) in this case, the father-in-law of the deceased. The Court has observed that the prosecution has failed to prove the charges of conspiracy against the prime accused beyond a reasonable doubt. Even though a mobile phone conversation between him and the other two accused, the Court found the proof to be insufficient. Despite two eyewitnesses stating that they have seen Chinnasamy talking with the assailants, the Court rejected their testimonies on technical grounds that no test identification parade was held. It is here, that the investigative agencies should have taken utmost caution⁴³.

Further, the prosecution could not provide documentary evidence in support of the contention that, Chinnasamy had arranged a stay for two assailants in a lodge. It was also observed by the Court that the prosecution did not even get the CCTV video of the ATM. This failure to establish a clear chain of circumstances for a case of criminal conspiracy has now acquitted the prime accused. Also, the prosecution was reluctant to

40 Dilipkumar v. Government of TN, 2014 SCC OnLine Mad 7725.

41 Dilipkumar v. Government of TN, 2016 SCC OnLine Mad 2122.

42 Chinnasamy v. Deputy Superintendent of Police, Udumalpet, 2020 SCC OnLine Mad 1207.

43 Manu Sebastian, *TN Caste Killing Case : Lapses In Investigation Helped Acquittal Of Prime Accused Chinnasamy*, LiveLaw (June. 23, 2020), <https://www.livelaw.in/top-stories/tn-caste-killing-case-lapses-in-investigation-helped-acquittal-of-prime-accused-chinnasamy-158767> (last visited Aug 31, 2021).

Kavin Castro M

argue it as a classic case of honour killing sternly, and the investigation also would have been riddled with the same problem. While the previous judgments in this regard discussed had taken a proactive approach, this judgement makes no mention of the role of state machinery in dealing with cases arising out of inter-caste marriages. In this case, the Court has failed to act critically and has been unable to take into consideration the societal reality. The entire justice delivery system in the name of neutrality has buried the truth of honour killing into silence⁴⁴.

These decisions rendered by the Judiciary specifically the Supreme Court of India showcase the level of sensitivity with which it has dealt with the menace of honour killing. Since Lata Singh's case, the court has steadfastly time and again held against these barbaric crimes committed against individuals. While emphasising the choice and dignity of individuals involved in inter-caste love, it has rightly called out to cull the evil of the caste system which has been haunting the country. It rightly imposed accountability on the enforcement agencies and administration to prevent these acts or take appropriate and timely actions. The social justice and human rights wing of the police can be better trained and equipped to handle these issues. The implementation of these decisions in the right spirit is yet to see the light in terms of sensitisation of the enforcement agencies and due precaution in the prosecution of these crimes, as seen in Chinnasamy's case. The failure of the police to arrest Yuvaraj displays the succumbing of the police or state authorities to the pressure of caste groups. Public order being a subject matter falling under the State list, the State legislature is empowered to enact legislation to combat the same which shall duly acknowledge these crimes, and also effectively tackle the same.

Conclusion and Suggestions

Even though the issue of caste-based honour killing pervades across caste boundaries, the economic background of the lower caste person plays a vital role. In most of honour killings, apart from the caste factor, the class factor plays a role in receiving the wrath of the other side. This reflects the relationship between economic status and caste relations. In many cases, the

woman's mental stability in an inter-caste marriage is questioned as to her ability to make her own decision. It can be understood since the foundation of the caste system, being endogamy, is shaken as women independently decide over their life choices. Also, the flow of property and inheritance rights may now be open to mobility outside the enclosed class relations.

The police officials' and other government authorities' actions reveal to us that in most of the cases they have sided with the members of the family/ community who are perpetrating this crime. While not showing any regard for the rule of law, they act in connivance to aid the separation of the couple, which may also result in the committal of honour killing. Even after such an incident, they are not held accountable for their actions. Prolonged delay in the trial, lack of proactive measures by the state machinery, impunity of government officials, and vicious cycle of caste-based political outfits – caste polarisation, presents the picture of constitutional order struggling to outgrow the caste order, as the preventive-remedial-punitive measures mooted by the apex court remains largely only on paper.

This barbaric violence doesn't even spare their daughter, where in most cases, either the person belonging to a lower caste is killed, or the daughter is killed for bringing dishonour to the family/community, or both the couple are killed. The woman's family members usually file a missing complaint at the police station or preferably under Section 366 of the IPC. Even though the woman would have decided on her own to enter into wedlock with another person, this filling of the complaint is used as a tool to separate the couple, harass the family members of the man, and settle other scores. Further, incidents of inter-caste marriage have resulted in caste-based riots, and mob violence, leading to the destruction of life and property in the area where the couple hail from. The assertion of caste supremacy to keep intact the caste hierarchy is reflected in the physical assault and individuals being forcefully deprived of their dignity.

Some of the possible actions taken by the inter-caste couple fleeing are filling a writ at the High Court seeking mandamus for police protection for the couple, which has largely worked in favour. In the case where

44 Poongkhulali B, *TN Caste Killing Case : The Silences In Madras HC Judgment Acquitting Prime Accused*, LiveLaw (June, 2020), <https://www.livelaw.in/columns/tn-caste-killing-case-the-silences-in-madras-hc-judgment-acquitting-prime-accused-158850> (last visited Aug 31, 2021).

the family restrains one person, a habeas corpus petition is filed where the person will be produced to Court where after ascertaining the willingness/ decision of the couple, there is the possibility of the couple joining hands. It is also a fact that most times a couple flees to places away from relatives of the family, getting accommodation in some distant place.

The Judiciary herein has largely upheld the rights of individuals in this regard and has taken a consistent stand against this inhumane and illegal act of honour killing. Despite the numerous directions, guidelines, and recommendations of the Law Commission, the Legislature has however not shown any seriousness at all.

It is to note that a private member bill was introduced in the Rajya Sabha in the year 2017, as well as All India Democratic Women's Association prepared a draft bill in the year 2010. Therefore, in light of the recommendations of the 242nd Law Commission Report⁴⁵, there is a need for a sui-generis legislation to safeguard the lives of individuals from these barbaric crimes. This shall also help in identifying the motive behind the crime, which shall help address the issue. The law should clearly define what all may constitute or come under the ambit of honour killing, declare explicitly the

rights of individuals in this regard, and other measures which need to be provided by the State to those couples fearing harm and their families as well. It should place the burden of proof over the accused, which shall include the members/ caste outfits which instigate such crime. It is also important to note that a victim, even if they do not belong to SC/ST, should also be covered under the law for their betterment in compensation and speedy justice. The sui-generis legislation can be based on the recent legislation of Rajasthan ("The Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances in the Name of Honour and Tradition Act, 2019") which is a way forward. These State laws can help curbing these issues in absence of central legislation to prevent this inhumane menace in every possible way.

Further, adequate sensitisation for police officials, cooperation with other agencies/ organisations, transparent reporting of such crimes, adherence to established procedures of law to avoid acquittal of the accused, and the need for approaching such crimes, not as mere murder or assault, but as those rooted on honour and caste angle is important towards better investigation and prosecution.

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