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## Research Article

### NO 'HONOUR' IN KILLING: A SOCIO-LEGAL ANALYSIS

**Shikha Dhiman<sup>1</sup> and Tania Singh<sup>2</sup>**

<sup>1</sup>Department of Laws, Panjab University, Chandigarh

<sup>2</sup>Rajiv Gandhi National University of Law, Patiala (Punjab)

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#### ABSTRACT

Honour killing means the issue of killings of couples who marry within the same sub-caste or against the wishes of their parents. Immediate attention needs to be paid in this area which is one of the neglected areas. Law needs to be used as a weapon in bringing about a social change. What is needed is a firm decision by the government for a separate law. There is paucity of research studies in this area. The networking of the police, judiciary, government, non-governmental organizations, human rights activists, sociologists, social workers, and psychologists is to be done in order to mitigate this social evil. Honour killing cannot be accepted in the name of culture or tradition. Honour killing is unjust and inhumane action. It is crime against mankind. The murderer of that type deserves severe punishment. Hence it is needless to say that lot of efforts need to be made in order to mitigate this problem lest the problem goes out of control.

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#### INTRODUCTION

Man is affiliated to the society not only socially but psychologically as well. The socio-cultural customs dominantly control the psychological behaviour of the man. In every society, there are certain aspects of social behaviour patterned according to the status and role of various members of the society which are considered by the society as forbidden and if executed, are acknowledged as defiance and dishonour. The punishments in these cases obviously vary from society to society as per the nature and extent of the defiance and dishonour. The phenomenon of honour killings is the outcome of that socio-psychic milieu of typical societies where certain patterns of the behavior of human beings, particularly the females, are recognised as marking dishonour to their families and communities and the lost honour is reimbursed by killings them. Honour killing is the homicide of a member of a family or social group by other members, due to the belief of the perpetrators that the victim has brought dishonour upon the family or community. The perceived dishonour is normally the result of one of the behaviours or the suspicion of such behaviours like: dressing in a manner unacceptable to the family or community, wanting to terminate or prevent an arranged marriage or desiring to marry by own choice, especially if to a member of a social group deemed inappropriate, engaging in heterosexual acts outside marriage and engaging in homosexual acts etc.

Honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric and feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous and uncivilised behaviour. Honour killings have become common place in many parts of the country, particularly in Haryana, western Uttar Pradesh, and Rajasthan. Often young couples who fall in love have to seek shelter in the police lines or protection homes to avoid the wrath of kangaroo courts.

##### *Honour Killing In India*

As per census 2011, around 41% India is below the age of 20 and half the population is in the age of 20-59. Only 9% is above the age of 60. The aspiring techno save India is making strides towards modernity but the shackles of social practices tried to govern their life style and choices. Cupid is blind but the guardians of caste and honour cannot be blind to the dilution of caste morality when it takes place. Freedom of life and freedom of love cannot be tolerated in a civilized society and therefore, young people are to be punished mercilessly. Caste still means a lot to large number of people. Feudal lords are reigning from North to South and from Punjab to West Bengal. The feudal lords, whether they are 'khaps' in Punjab, Haryana and Western UP or 'Shalishi' in West Bengal or 'Katta panchayats' in Tamil Nadu, they are the agents of social tyranny. Dr. Ambedkar said, "Political tyranny is nothing

\*Corresponding author: **Shikha Dhiman**  
Department of Laws, Panjab University, Chandigarh

compared to and a reformer who defies society, is a much more courageous man than a politician who defies government.” Young lovers are sacrificing their lives in the name of honour killing whereas there is nothing ‘honourable’ in ‘honour killing’ and they are nothing but barbaric and brutal murders by the bigoted persons with feudal mindset. The young generation is defying social norms and attaining new heights. They are unable to accept the golden rules perpetuated by community courts or council or kangaroo courts or the shackles of caste. Such killings result from the perception that the defence of honour justifies killing a person who dishonour their own clan or family.

Many people feel that they are dishonoured by the behavior of the young men and women, who are related to them or belonging to their caste because they are marrying against their wishes or having an affair with someone and hence they take the law into their own hands and kill or physically assault such persons or commit some other atrocities on them.

Honour killing is not the phenomena prevalent in India but can be seen in the whole world. According to Honour Based Violence Awareness Network, there are 5000 honour killings internationally per year out of which 1000 honour killings occur in India and 1000 in Pakistan. Even though Article 21 of the Constitution of India provides the right to life and personal liberty, Section 3 of The Indian Majority Act, 1875 gives the right to a person to make his own decision governing his/her life when he/she completes the age of 18 years and Hindu Marriage Act, 1955 fixes the age of marriage as 18 years for girls and 21 years for boys and prescribes the conditions of a valid marriage under Section 5 of the Act, but the intolerance of so called custodians of society still continues.

Right to life means the right to live with dignity, right to livelihood, right to education and right to health and so on. However, the interpretation through judgments does not particularly comprise the right to marry the girl or boy of one’s own choice but it is implied that it is included that right to live with dignity corroborates the same. Honour Killings are considered as brutal crimes of homicide under the Indian Penal Code 1860. Honour killing amounts to homicide and murder because the acts are done with the intention of murdering the victims as they have purportedly brought dishonour upon the family. The perpetrators can be punished as per Section 302 of the IPC. The members of the family as well as community can also be prosecuted under Section 302 of IPC for instigating suicide those who transgress the so called norms of the community. Law Commission in its Report also recommended to bring a bill to provide for, in the interest of protecting individual liberty and preventing victimization, prohibition of unlawful assemblies and other conduct interfering with the freedom of matrimonial alliances in the name of honour and traditions and for the matters connected therewith or incidental thereto.

### ***Selective Case Studies on Honour Killing***

Recent times has seen a spat of cases in the name of Honour Killing but the honour killing hogged the attention of nation, particularly in Northern India with the murder of Manoj and Babli in the khapland of Haryana on 15<sup>th</sup> June 2007. They both left the village on 6<sup>th</sup> May 2007 and got married at Chandigarh on 7<sup>th</sup> May 2007. Mother of Babli, lodged an FIR against Manoj

and his family members for abduction of Babli on 26<sup>th</sup> May 2007. Manoj filed an application for pre-arrest bail on 12<sup>th</sup> June 2007. On 15<sup>th</sup> June 2007, Babli got recorded her statement under section 164 of CrPC before the learned CJM that she married Manoj on her own volition and residing at Chandigarh. The learned Court directed that Babli and Manoj be escorted by two police officials in roadways bus to Chandigarh. The couple was dropped at Pipli bus stand. They took another bus to Chandigarh. The relatives of Babli chased them, took out them from bus and killed them. Treating it as rarest of rare case, the Court of Session awarded death sentence to 5 accused and different sentences to 7 others. The mother and sister of Manoj fought a long battle for justice. On appeal, the Hon’ble Punjab and Haryana High Court acquitted 1 accused and convicted the death sentence to 25 years actual life imprisonment on the ground that the case was based on circumstantial evidence.

In *Jeet Ram & Another v. State of Haryana* on 25<sup>th</sup> January 2003, the ghost of honour killing swallowed three teenagers-Venod, Suman and Satish. There was no eye witness of the crime because in honour killing, most of the time silence is the language of community and neighbourhood. The only eye witness was Poonam, sister of Venod (the deceased), who was aged 9 then and was playing in the street with other children when all the three were done to death. Poonam was not joined in the investigation but she was summoned in the court under Section 311 of the Criminal Procedure Code, 1973. She was 11 years of age when summoned. She was held to be competent child witness and based on her testimony, two accused, i.e. Father of Suman and first cousin of Satish were sentenced to life imprisonment. The Judgment of Trial Court was upheld.

In the case of *Bhagwan Das v. State (NCD) of Delhi*, Bhagwan Das on 15<sup>th</sup> May 2006 killed his daughter Seema because she had left her husband Raju and was living in an incestuous relationship with her uncle. The conviction and sentence of death awarded by the Trial Court was upheld upto the Hon’ble SC and the SC held that ‘killings’, for whatever reason, come within the category of rarest of rare cases and therefore deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behavior. All persons who are planning to perpetrate ‘honour’ killings should know that the gallows await them.

Further, in *Ashok Kumar Todi v. C.B.I.*, 30 year old Rizwanur Rahman, computer graphic trainer had to sacrifice his life on 21<sup>st</sup> September 2007 for marrying Priyanka Todi. From the day one, police turned the death as suicide on rail tracks. On 16<sup>th</sup> October 2007, the High Court of Calcutta ordered investigation by CBI. According to the CBI probe, cause of death was suicide. CBI charged father, paternal and maternal uncle of Priyanka Todi and 2 police officers for abetment to suicide of R. Rahman. On 13<sup>th</sup> October 2008, SC stayed the proceedings of this case on the petition of Ashok Todi for chargesheeting him.

The latest case of Nitish Katara, an MBA graduate and the son of an IAS officer came into limelight again when the Hon’ble SC awarded the convicts a 25-year jail term and a 20-year term for the brutal murder on 3<sup>rd</sup> October 2016. On 16<sup>th</sup> and 17<sup>th</sup> February, 2002, Vikas and Vishal Yadav abducted Nitish Katara from a wedding function in Ghaziabad at late night.

They allegedly disapproved of Nitish's intimacy with their sister Bharti. On 31<sup>st</sup> March 2002, Uttar Pradesh police filed a charge sheet in the murder case. On 22<sup>nd</sup> April 2002, Vishal and Vikas were arrested from Madhya Pradesh. On the same day after victim's mother, Neelam Katara feared miscarriage of justice, SC directed that the case be transferred from a Session's Court to be heard by a competent court of similar jurisdiction in Delhi. On 23<sup>rd</sup> November 2002, separate trial was launched against third accused in the murder case, Sukhdev Pehalwan, who was arrested in 2005. On 23<sup>rd</sup> April 2003, Court summoned Bharti Yadav, who had been in the U.K. since the death of Nitish Katara, for recording her statement. On 25<sup>th</sup> November 2006, after three years of unheeded notices and summonses, Bharti Yadav returned to India after the court threatens to declare her as a proclaimed offender. In December 2007, prosecution determined Bharti's alleged closeness with Nitish as Vikash and Vishal's murder motive. On 2<sup>nd</sup> April 2008, the Trial Court began hearing Nitish Katara murder case on day-to-day basis. On 23<sup>rd</sup> April 2008 the trial came to an end. On 30<sup>th</sup> May 2008 the Court found Vikas and Vishal guilty and sentenced them to life in prison. On 12<sup>th</sup> July 2008, the third accused, Sukhdev Pehalwan was sentenced to life imprisonment too by the Delhi Court. On 2<sup>nd</sup> April 2014, the Delhi High Court upheld trial court verdict of life terms for Yadav brothers and contract killer Sukhdev Pehalwan. On 6<sup>th</sup> February 2015, Delhi HC awarded Vikas and Vishal life terms of 25 years without remission and Sukhdev Pehalwan got 20 years life imprisonment without remission. On 9<sup>th</sup> October 2015 the Supreme Court declined plea by Neelam Katara to award death sentence to the Yadav duo. On 3<sup>rd</sup> October 2016 the Supreme Court awarded a 25-year jail term to Vishal Yadav and a 20-year term to Sukhdev Pehalwan.

### **Parliamentary Debate**

On July 2009, in Rajya Sabha, attention motion saw members across the party line demanded a separate law for honour killing. This demand was declined by the then Home Minister, Shri P. Chidambaram. The issue of honour killing was raised on 5<sup>th</sup> August 2010 in the Lok Sabha, by Shri Gurudas Dasgupta requesting the Home Minister to make a statement thereon. The then Home Minister, Shri P. Chidambaram admitted that "Honour Crimes are acts of violence, usually murder, mostly committed by family members predominantly against female relatives, who are perceived to have brought dishonour upon the family. Honour killings are rooted in antiquated traditions and social values."

Trying to shift the responsibilities on State government and terming it simply as law and order problems, the then Home Minister made a statement that, "As per seventh schedule to the Constitution, 'Police' and 'Public Order' are the State subjects and therefore, the State Governments/ UT Administrations are primarily responsible for the prevention, detection, registration, investigation and prosecution of crimes including that of 'honour killings'. Ministry of Home Affairs has sent a detailed advisory dated 4<sup>th</sup> September 2009 to all States/UT Governments wherein States/UTs have been advised, inter alia, to make comprehensive review of the effectiveness of the machinery in tracking the problem of violence against women and to take appropriate measures to curb the violence of women's rights by so called 'honour killings'. Government is

also actively considering a separate law in order to tackle the crime of 'honour killing'".

Shri Gurudas Dasgupta refuted the statement of the then Home Minister by saying that, "It is not a crime against women alone. Young men are being hanged. It is not only women but it is mostly dalit women who are being victimized. The poor downtrodden are the real victims. Let us not, therefore generalize it as a general problem, also not generalize it that the State governments have to do the needful. Let us not outsource the responsibility because the Central government has the responsibility and because it is the crime against dalits, it is a crime against women and it's the crime against human civilization".

In his speech, Shri Gurudas Dasgupta also referred the case of Manoj and Babli and pointed out that, "Not even the death penalty that we issue in the Karnal Court, awarding capital punishment to five and life imprisonment to one, has deterred the surge of incidents in India because family honour is being trembled down; because religious sentiments is being hurt".

He termed honour killing as a colossal human problem. He also referred Rizwanur's death in his debate in Lok Sabha by terming it as "bolt on the dignity of West Bengal." He called the government to act decisively and put the people behind the bar for honour killing and not to create a situation where the face of India is put to shame before the community of nations. The Debate was concluded with the assurance of the then Home Minister that the following issues would be considered by the government:

1. Examine whether honour killing could be defined separately in the Indian Penal Code.
2. Examine whether a provision could be made to treat the caste panchayat or khap panchayat as accomplice in the caste and prosecute the leading members of the panchayats.
3. Examine whether at some point of time in the trial, the onus of proof may shift to the accused and whether a provision to that effect could be made in the Evidence Act.
4. Examine whether the Special Marriage Act needs to be amended to provide for quicker registration of special marriages.

### **Draft Bills**

In 2010, Union Law Ministry came up with set of recommendations called, 'The Indian Penal Code and Other Laws Amendment Bill'. The recommendations were referred to group of ministers on the ground that the recommendations would do more good than harm. In August, 2010, the legal cell of the All India Domestic Women's Association (AIDWA) headed by Kirti Singh, in Consultation with many women's organizations and individuals drafted a comprehensive law entitled, 'The Prevention of Crimes in the name of Honour and Traditions Bill' and gave it to the government.<sup>1</sup> The Bill defines honour crimes in relation to a violation of rights of the couples. It reads, "All persons including young persons and women have the right to control their own lives, a right of association, movement and bodily integrity. Every men and

<sup>1</sup> Retrieved from <[http://new.nic.in/PDFFiles/Bill\\_against\\_honour\\_killing\\_crimes.pdf](http://new.nic.in/PDFFiles/Bill_against_honour_killing_crimes.pdf)> visited on 16.12.2016 at 01:29 p.m.

women have right to choose his/her own partner in marriage or otherwise and any action listed below to prevent the exercise of this right shall amount to an offence under the provisions of the bill." The provisions of this bill was supported by the National Commission for Women, then headed by Girija Vyas. After formation of the NDA government, legal cell of AIDWA met the then Law Minister. In August 2015, his ministry sent a letter stating that they are still awaiting for the response of the State governments on the recommendations of the Law Commission. As of now, 27 States and UTs have supported the Law Commission recommendations for a bill to prevent honour killing as per the statement of the then Law minister. NDA government Law Minister is of the opinion that the subject falls in the concurrent list, so deliberation with State is necessary.

### **International Instruments**

**United Nations Convention on the Elimination of all forms of Discrimination against Women (CEDAW 1979)**-The provisions of CEDAW can be used to argue that the tradition and practice of punishing individuals for ill-informed ideas of dishonoring the family, is essentially institutionalized discrimination against individuals and creates a legally binding obligation for India, as a State party to the convention, to take all measures to end all forms of the practice of honour killing. It also ensures that all discrimination against women in matters relating to marriage and family relations are eliminated thereby providing them with the equal right to enter into marriage with their free and full consent as enumerated in Article 16 of the Indian Constitution. This is because some of the informal decision making bodies functioning on customary laws, such as khap panchayats, are refrained from enforcing their dictates, and intrusive with the right of individuals to choose their spouse.

**Universal Declaration of Human Rights, (UDHR 1948)**- It affirms the principle of the inadmissibility of discrimination and inequity and proclaims that all individuals are born free and equal in dignity and rights and freedom set forth therein, devoid of any kind distinction including distinction based on sex. Prejudice and discrimination against women is an obstacle to their participation in the political, social economic and cultural life and hampers the growth and prosperity of society. All crimes against honour, including honour killing are gross violations of the rights enumerated in the declaration. All human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the declaration irrespective of sex. Women are entitled to enjoy the "right to life, liberty and security of person" and also the "right to be free from torture or cruel, inhuman and or degrading treatment". Therefore Honour Killing violates Article 3 and 5 of the said Declaration.

1. **International Convention on Economic, Social and Cultural Rights**- State Parties have to take all steps to ensure the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Crimes of honour that involve sexual violence, mental violence or physical or mental torture obstruct the right of women to enjoy the highest attainable standard of health. India, as a State Party, is therefore legally obligated to ensure that individuals and victims of crimes of honour are able to avail this

right.

2. **Beijing Platform for Action (BPFA 1995)**- It recognises that the "human rights of women include their right to have control over and decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence". The Beijing Platform for Action on Women's Human Rights calls upon States to "take urgent action to combat and eliminate violence against women, which is a human rights violation resulting from harmful traditional or customary practices, cultural prejudices and extremism".

Crimes of honour may involve the violation or abuse of a number of human rights which include the right to life, liberty and security of the person; the prohibition on torture or other cruel, inhuman, or humiliating treatment or punishment; the ban on slavery; the right to freedom from gender-based discrimination; the right to privacy; the right to marry; the right to be free from sexual abuse and exploitation; the obligation to amend customs that discriminate against women; and the right to an effective remedy. All these above mentioned rights violate the Human Rights Act (1998). Honour Killings are a clear violation of human rights and States necessarily need to protect individuals from such violations. Two major UN documents call for the 'elimination' of honour killing. The concept of elimination appears in the Declaration on the Elimination of Violence against Women (1993) and in Working towards the Elimination of Crimes against Women Committed in the Name of Honour (2003). But the eradication of any such phenomenon like honour killing requires a serious intervention in the status quo. Equal gender relations have not yet been achieved and violence still exists in the name of honour. The whole system in itself is patriarchal and insensitive. It has been rightly stated in the UN Declaration on the Elimination of Violence against Women: "Violence against women is a manifestation of historically unequal power relations between men and women, which have led to discrimination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men".

However constitutional law and international provisions fail to tackle with this menace. It also fails to give justification as to why such a crime is rampant even in the contemporary times when there are abundant provisions for the protection of individuals. It is strange that even after the provisions of CEDAW and various human rights provisions to eliminate violence against women; individuals continue to be the victims of murders in the name of honour.

### **Role of Judiciary to Curb the Evil**

Prevention is better than cure. The courts in India are leaving no stone unturned to prevent the honour killing of young couples. Where legislature fails, judiciary steps in. Many ways and means are devised to save young people from the wrath of honour killing. Young couples are approaching all the High Courts under Section 482 of Code of Criminal Procedure seeking directions to the State government and the police

authorities to protect their life and personal liberty and to provide adequate security. They are feeling endangered from their own loved ones for a number of reasons and one of the main reasons that invites the wrath and rage of parents and relatives is for marrying against their wishes. The High Courts all over India are issuing directions to the police authorities to provide adequate security for young couples for considerable time or till threat to their life is waned. Hon'ble Punjab and Haryana High Court has gone a step further. Taking serious views of threat to life and liberty of young couples and considering that enforcement of right to protection of life and personal liberty is a Fundamental Right, Punjab and Haryana High Court on 31<sup>st</sup> of March 2010 in a Criminal Writ Petition constituted a committee to suggest the ways and means for enforcement of rights guaranteed under Article 21 of the Constitution of India. Interim directions were issued guaranteeing liberty to couples who have married against the wishes of their parents to approach District and Session Judges in the states of Punjab and Haryana as well as the Union Territory.

On 25<sup>th</sup> of July 2012, in *Asha & Another v. State of Haryana & Others*, the police officers were directed to deal sternly with persons who threaten such couples. Mediation cells were also ordered to be opened in the office of Commissioner or SSP to guide the parents, relatives and young couples. Gram panchayats were also ordered to be counseled. It was also directed that there should be publicity of the protection centers by issuing advertisements in the media. Legal service authorities were also directed to provide legal services to the needy couples. A committee consisting of DC, SSP and District Social Welfare Officers is to be constituted to ensure that the directions of the High Court are followed. The landmark judgment in this case was that initially runaway couples would be provided shelter in protection homes for 10 days. During the said period, the threat perception is to be rebut by the committee. The period of shelter can be extended by the committee to the view of threat perception to the young couples. During first 10 days, no boarding and lodging charges will be paid by such couples but for a longer duration of stay, the committee is to determine reasonable charges or to what extend fees stayed.

In this case it was ordered that the runaway couples can approach any District or Session Judge, District Commissioner and SSP of any district of State of Punjab and Haryana and the Union Territory irrespective of their state of residence.

Hundreds of young couples are benefited by this order of the High Court as the requisite order for protection of their life and liberty is being passed at the district level itself. As a result of this order young couples are getting legal assistance free of cost in the State of Haryana, better known as 'Khapland'. In 2010, when the protection homes were set up by the State of Haryana, the number of persons getting police protection, commonly called the runaway couples was 366 and the number swelled to 1,465 couples in 2014. There is a rise of 200% runaway couples in Haryana.

## **CONCLUSION**

Yet in spite of the increase in the number of crimes in the name of honour, judgments and expressions of outrage in courts across India, successive governments have displayed criminal

negligence in their approach to these crimes. There is no definition of the crime, no legal recognition of the various aspects of the crime, no protections legally afforded to couples in self-choice partnerships, no measures to prevent such crimes, no accountability and no punishment. And additionally, since there is no legal recognition of the crime, there are no statistics available. In the records of the National Crime Records Bureau, such crimes do not exist.

From the denial of existence of honour killing in India by Shri S.S. Aluwalia, the then Indian representative at UN's Humanitarian and Cultural Committee discussing the Social Rapporteur's report on violence against women to agreeing by 21 States and Union Territories to frame laws on honour killing, we have come a long way to recognize that not only honour killing exists in India but also a separate law is needed to curb its manics. As intolerance is increasing in the various sections of the society, so is inter se relations. Fathers are killing their daughters for coming home late without knowing the reason or believing the version of his own daughter.

There is an urgent need to implement the provisions of 242<sup>nd</sup> Report of Law Commission of India within the ambit of honour killing. Not only honour killing is done on the ground of self choice but all acts of the youngsters and women from which the parents, relatives or other persons feel enraged and indulge in acts of homicide should be included. Thus, the scope and definition of the phrase 'honour killing' needs to be enlarged in the statute to include all acts which lead to elimination of the lives of harbinger of change in social norms, mostly by their own parents and relatives.

A separate statute to punish the crime of honour killing should be made a living reality. It will not only act as a deterrent against elements in the society who indulge in honour killing but also by making it a separate offence, it will help to collect data by National Crime Reports Bureau (NCRB). Presently, no data is collected regarding honour killing by NCRB because its not treated as a separate offence but is covered under murder. The prospective victims of honour killing are not concerned with the nuances of the law whether the subject of honour killing falls in the state list (the stand of UPA government in Lok Sabha on 5<sup>th</sup> August 2010) or the concurrent list (the stand of NDA government in reply to AIDWA). They simply aspire protection of their life to lead a peaceful and dignified life of their own choice. If in the year 2016, we succeed in framing the law treating honour killings as a separate offence than murder, it will be a tribute to Dr. B.R. Ambedkar, who brought landmark changes in customary Hindu Law by codifying the same, as this year we celebrate his 125<sup>th</sup> birth anniversary. It will also be a tribute to all those faceless uncounted youth, recognized and unrecognized Indians who lost their life to the senseless and hollow idea of perpetuating family values.

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