

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 3 | Issue 4

---

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [editor.ijlmh@gmail.com](mailto:editor.ijlmh@gmail.com).

---

# Case Comment: Shakti Vahini V. Union of India and Others

---

KIRTI JAGGI<sup>1</sup> AND DARSHNA NAIR<sup>2</sup>

## ABSTRACT

*In Jat community, gotra or clan is considered to be parallel to lineage forming an exogamous unit. Many incidents of couples being brutally killed by the all-powerful “Khap Panchayats” constituted by the diktats of the patriarch for entering into intra-gotra marriages came to limelight in North India. In the garb of guardians of community honour they not only forced the wedded couples to return to the community fold but also committed heinous crimes. So, it was a matter of further research as to why killing for honour had become a common and accepted phenomenon in North western villages of India and where the existing law lacked in curbing this social evil.*

## I. FACTS

Shakti Vahini (an NGO) has filed the present writ petition under Article 32 of the Constitution of India seeking directions to Central and State government to take preventive actions and to submit National Plan of Action and State Plan of Action for combating honour killing crimes. Furthermore to direct State government to create special cells in each district which couples can approach for safety purposes. Besides, prayer seeks to issue writ of mandamus to State government to launch prosecution in cases of honour killing and take necessary steps to ensure such crimes are dealt with iron hands.

## II. ISSUES

- Whether the right to choose one's life partner is a recognised right under the Constitution of India and if that being so is the Government of India taking necessary actions to safeguard the same?
- Whether the law of the land recognises informal institutions such as Khap Panchayat for delivery of justice and is the present law proficient enough to check and curb the conservative practices conducted by such institutions?

---

<sup>1</sup> Author is a student of Fairfield Institute of Management and Technology, India.

<sup>2</sup> Author is a student of Fairfield Institute of Management and Technology, India.

### **III. CONTENTIONS OF PETITIONER**

- Petitioners citing recent instances contended that honour crimes reflect a gruesome phenomenon where the more a woman moving in physical frame has no individual autonomy more is the masculine dominance accentuated in the family establishing a fragile thread of family honour.
- It was contended that the Khap Panchayats showing disregard to the constitutional provisions cultivated an inviolable power to punish any person who tries to stigmatize their community. Since the police and administration have not taken any cognizance of the issue, basic human right is treated insignificantly by this collective.
- Article 21 which provides for protection of life and liberty has been unceremoniously removed in the North Western India, where families and community mobs subscribe to honour killing without the slightest pangs of conscience.
- The rejoinder filed by the petitioner highlighted that although some States formed an Action Plan according to the notice issued by this Court on 22.06.2010, yet they have failed to effectively implement the same in letter and spirit. Therefore, the petitioner urged for formulation and implementation of effective guidelines to curb the menace of honour killing.

### **IV. CONTENTIONS OF RESPONDENTS**

- In the counter affidavit filed by the respondents it has been put forth that as police and public order are State subjects falling under the concurrent list of the Constitution, prior to taking a policy decision consultation with the Governments of the States and Union Territories is a sine qua non.
- It further contended that pursuant to the order of the SC, a Bill titled 'The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill' has been recommended in the 242nd Law Commission Report to which majorly positive responses were received from states/UTs.
- It has been submitted that the State Governments have issued systematic advisories for preventing and curbing the menace of honour crimes. It was also asserted that all States are determined to take pre-emptive, protective and corrective measures whenever any individual case comes into highlight.

## V. JUDGMENT

The 3-judge bench of Supreme Court delivered majority judgment authored by CJI Dipak Mishra on 27.03.2018.

The Court stated that assertion of choice is an inseparable facet of liberty and dignity thereby crushing it in the name of class honour can have a chilling effect on the society. The brutal treatment in eliminating the life of young who have exercised their choice to get married against the wishes of elders is not countenanced by the sea of liberty and under our compassionate Constitution. Since, the court perceived that the parties do not dispute on the sporadic happenstance of such events and spoke collectively against it; the court has regarded its duty to be sensitive and to act as guardians of the right of citizens.

The bench considered it suitable to refer to the 242<sup>nd</sup> report of Law Commission of India which displayed the destructive effect of the crime and its impact on the right of choice of an individual. The commission highlighted how these communities punish young couples based on their perception of community honour which leads to transgression of constitutional rights.

The Court adverting to pronouncements that adjudicated the list of said nature displayed the dismay of Courts while dealing with such issue, few of them are-

In *Asha Ranjan v. State of Bihar*<sup>3</sup>, the court held that it is the legitimate right of woman to choose her life partner which is recognized in the Constitution under Article 19 and 21. The same right cannot give way to the concept of honour killing as such has no legitimacy even if it is practiced by collective group of people.

In *Lata Singh v. State of U.P.*<sup>4</sup>, the Court directing the administrative authorities to institute stern actions against the village elders enunciated that India is a free and democratic country where a major has right to choose whom they want to get married to. If his/her parents do not approve of the same the maximum they can do is cutting off social relations but if they threaten or instigate acts of violence on the couple, they deserve cruel punishment for their feudal-minds.

In *Arumugam Servai v. State of Tamil Nadu*<sup>5</sup>, the court remarked Khap Panchayat's practice as illegal which needs to be ruthlessly stamped out. It directed administration that besides instituting criminal action against the offenders the State government has to immediately suspend the SSP and Magistrate of the district and advance against them departmentally if they did not prevent the crime having prior knowledge of it or if they did not apprehend the criminals

---

<sup>3</sup> (CRL)Writ-Petition Nos132 of 2016

<sup>4</sup> Writ-Petition( Cr.) 208 of 2004

<sup>5</sup> (2011) 6 SCC 405

after the incident had taken place.

It was emphasized that any kind of torture or ill treatment that declines the right of choice of any individual relating to marriage or love, is illegal and cannot be allowed for existence. Additionally, an intervention, challenging the findings of the petitioner and the respondents on behalf of several Khap Panchayats, was filed urging that the proposed bill is a futile exercise aiming only to harass the well-meant gatherings of local communities. The Court rejecting most of their arguments observed that the State does not recognize any informal institution for delivery of justice as only a polity controlled by rule of law can be accepted. The Court observed that 288 cases of honour killings were recorded by National Crime Records Bureau from 2014 to 2016. Therefore, Khap Panchayat cannot dent the right to choose by taking law in their hands.

The Court also referred to the Council of Europe Convention on Preventing and Combating Violence against Women that asserts honour killing as an unacceptable justification for crimes that will not diminish criminal liability of any person.

It is worth mentioning that certain codifications which came into existence to remove social menaces like “Dowry” and “Sati” were essential for maintaining our Constitutional ethos. Since there cannot be an assail on human dignity the court recommended the legislature to bring law specifically covering honour killing.

Based on the principles of certain cases and suggestions filed by senior counsel and Union of India the court issued **preventive, remedial and punitive measures** vis-à-vis sensitizing law enforcement agencies, recording further Khap Panchayat discussions, ensuring effective investigation along with departmental actions against negligence, providing security to the couple in any instance of inter-caste marriages.

Followed by the issuance of such constructive guidelines the Court disposed of the writ petition directing the executive and the police administration of the concerned States to carry out the same within six weeks.

## **VI. CASE COMMENT**

Shakti Vahini is a much celebrated judgment which sternly dealt with the barbaric acts of honour crime and went down to lay specific guidelines. But as we all know that merely issuing guidelines without actual implementation makes all the efforts turn out to be vain. Similarly, the same guidelines was never translated into reality which can be inferred from a petition filed

by Delhi Commission for Woman (DCW) named as ‘DCW V. Union of India and others’<sup>6</sup>. The petition aimed at protection of couples who are victim of honour crimes and efficient implementation of the guidelines framed in Shakti Vahini V. Union of India. Thus, it has to be kept in mind that each such reported case signifies the victory of a sinister agency over the basic human rights which ultimately sabotages the progression of the society.

\*\*\*\*\*

---

<sup>6</sup> 27.03.2018