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From Parsons to Ethnomethodology: Analysing the Indian Judicial Position on the Question of Gender in the Cases of Honour Crimes

MR RITABRATA ROY¹ AND MR SHAHZEB AHMED²

ABSTRACT

The inhuman practices of honour crimes have constantly been rattling multicultural fabric of the Indian society for ages. These practices have often sparked an ongoing debate between the gender theorists and the cultural theorists, especially in the field of academia. This debate not only concerns the analytical supremacy of either of the two theoretical frameworks, but also raises some important issues which often remain under-explored, particularly in the court of law. The question of gender is one such crucial area of analysis as far as the honour crimes are concerned. Gender, as a concept has also evolved since the 19th century, largely because of the different waves of the feminist movement worldwide. The development of the notion of gender has been significant, from primarily being affixed to an individual's biological characteristics, as touted by the theorists such as Talcott Parsons and Emile Durkheim, to being perceived as a social construction, largely by the ethnomethodologists. The Hon'ble Supreme Court of India has time and again addressed the question of gender while deciding the cases involving honour crimes, increasingly over the past two decades. In this research, by adopting a comparative and doctrinal framework, we will analyse five of the landmark cases involving honour crimes, decided by the court in the last twenty years. Primarily by comparatively analysing the language of the judgments and the choice of words in those, we will try to determine the developmental trend of Supreme Court's addressal of gender issues involved in these crimes in the light of the Parsonian and the ethnomethodological theories of gender. Our main argument is that, the court needs to urgently address issues of gender with regards to the male victims of honour crimes, as a mainstream one, rather than constantly marginalising them. In our opinion, this goal can be achieved gradually by adopting an ethnomethodological perspective of gender. Our primary findings indicate that despite its slow-paced attitude, the Supreme Court of India is gradually moving from a Parsonian concept of 'gender binaries' to a comprehensive ethnomethodological notion of 'gender as a social construct'.

Keywords: honour crimes, judiciary, gender, ethnomethodology, theory, male victims.

¹ Author is an Assistant Professor at Lloyd Law College, Greater Noida, India.

² Author is a Junior Counsel at BlackRobe Chambers, New Delhi, India.

I. INTRODUCTION AND THE CONTEXT OF THE RESEARCH

Last summer while attending an academic conference, organised in one of the lavish five-star hotels in New Delhi on *International Human Rights and its Emerging Trends*, I (author 1), had a strange experience. During the lunch break, a distinguished academician, presently heading a prestigious law school in the country, asked me about my PhD proposal. By then I had secured admission in University of Sussex for fall 2019 batch. Not being able to hide my excitement, I uttered those two words – ‘Honour Crimes’! The instant apathy on his face on hearing that, had already left me heartbroken. But what hit me really hard, was his remarks that the subject has become too old and is best suited for the cold storage of academia. This experience indeed made me introspect about the novelty of my intended research. However, six months into my PhD, now I have realized that even after dominating the academic discourses since the past few decades, the subject of honour crimes, being truly multi-dimensional in nature, still offers wide fertile scopes for conducting some novel and engaging research.

In this research article we will pilot one such comparative analytical study on the attitude of the Hon’ble Supreme Court of India on the gendered nature of the honour crimes. Admittedly, there is a plethora of engaging research already done on different aspects of the issue by luminaries worldwide, such as Aisha Gill,³ Phyllis Chesler,⁴ Nootash Keyhani,⁵ among others however, the gendered nature of the crime, within the context of judicial addressal, still remains relatively virgin.

Therefore, in this research, we would primarily be looking into the question, to what extent the Hon’ble Supreme Court of India has addressed the question of gender through its recent judgments on cases involving honour crimes? Noteworthy, that in this research we will be using the word ‘crime’ instead of ‘killing’ to expand the ambit of these violence committed in the name of family or community honour.

We will divide this research into three sections (apart from the current section). In Section 2, we will set the motion with a brief overview of honour crimes, focusing on the question of gender involved in these crimes, making it unique and distinct from the crime of ‘murder’. In Section 3, we will critically analyse five landmark judgments on honour crimes, pronounced by the Hon’ble Supreme Court in the last 20 years. In this study, we will particularly focus on

³ Aisha Gill, “Crimes of Honour” and Violence against Women in the UK’ 32 Int. J. Crim. Justice Sci. 243 (2008).

⁴ Phyllis Chesler, ‘Worldwide Trends in Honor Killings’ 17 Middle East Q. 3(2010).

⁵ Nootash Keyhani, ‘Honour Crimes as Gender-Based Violence in the UK: A Critical Assessment’ 2 UCL J.L. and J. 255(2013).

the language of these judgments to determine whether the issue of gender *per se* has been addressed explicitly or otherwise and how the trend of such addressal has evolved chronologically. Subsequently, we will present a detailed analysis of the findings, determining whether the judicial standpoint towards the *gendered* nature of the honour crimes has evolved in the last two decades. In the context of the ‘gender’ question we will premise our analysis within the backdrop of Talcott Parsons’ gender theories and the ethnomethodological approach. We will conclude the research paper (in Section. 4) with some possible recommendations leading to the possibility of further research on this issue.

We will now put forward a brief overview of the phenomenon of honour crimes and its relevance in present academia.

II. IMPORTANCE OF ‘GENDER’ IN HONOUR CRIMES?

Honour crimes are unique form of human rights violence which are frequently committed throughout the world whereby the victims are subjected to various forms of discrimination by their immediate or extended family members in the name of protecting family/community honour.⁶ The victims in these cases are perceived to have tarnished such honour through their *choices* or actions. Human Rights Watch defines honour crimes as, “honour crimes are acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonor upon the family”.⁷ According to the National Crime Bureau, between 2014-16, as many as 288 cases of honour killings were reported in India.⁸ It needs to be remembered that the number might be much lesser than that of the actual cases, mainly because of under-reporting.⁹ Furthermore, the above number only reflects the cases where the victim has died, but as we have discussed above, honour crimes have a much wider spectrum than mere homicides.¹⁰ Scholars have often questioned the role of *panchayats* and *jirgas* in instigating such crimes.¹¹ While we are in agreement with such scholarly positions, we will only limit our discussions on these roles pertaining to its representations in the Hon’ble Supreme Court judgments in question.

⁶ Wendy Aujla and Aisha Gill, ‘Conceptualizing “Honour” Killings in Canada: An Extreme Form of Domestic Violence?’ 9 Int. J. Crim. Justice Sci. 153 (2014).

⁷ Satnam Deol, ‘Honour Killings in Haryana State, India: A Content Analysis’ 9 Int. J. Crim. Justice Sci. 192 (2014).

⁸ *Shakti Vahini vs Union of India and Ors* [2018] Supreme Court of India Writ Petition (Civil) No. 231 of 2010, 7 SCC 192.

⁹ Roxanne Khan, Shamam Saleem and Michelle Lowe, “‘Honour’-Based Violence in a British South Asian Community’ 17 Safer Communities 11 (2018).

¹⁰ Brittany E Hayes and others, ‘Are Honor Killings Unique? A Comparison of Honor Killings, Domestic Violence Homicides, and Hate Homicides by Far-Right Extremists’ 22 Homicide Stud. 70 (2018).

¹¹ Pratiksha Baxi, Shirin M Rai and Shaheen Sardar Ali, ‘Legacies of Common Law: “crimes of Honour” in India and Pakistan’ 27 Third World Q. 1239 (2006).

Our research interest also lies, in the more fundamental issue of perceiving the crime as a gendered one, as is done by many scholars worldwide. Most of these literature cling on to the argument in favour of branding the crimes as gendered, because in most cases the gender of the victims is female who are victimized by their family members of the opposite gender. This position is somewhat accurately summed up by Chesler. She remarks that, “[...] the women are normally perceived to be bearer of male honour.”¹²

In our opinion, such an analytical position is marred by a couple of fundamental flaws. Firstly, it puts forward a very restricted interpretation of the concept of ‘gender’. Gender has indeed travelled a long way through the different waves of the feminist movement and its meaning has also evolved from the *Parsonian* theory of being only a mere biological connotation,¹³ during first wave of feminism to the *ethnomethodological* notion of ‘doing gender’ in the third or the supposed fourth wave of the movement.¹⁴ We will elaborate on the Parsonian theory and the ethnomethodological approach of gender in Section 3.3.

Therefore, gender, in its expanded form largely has the potential of incorporating the cases of honour crimes involving male victims within its fold. However, according to us, the aforementioned restricted biological connotations of gender, applied frequently in the mainstream honour crime literature often turn a blind eye to the increasing number of male victims.¹⁵ Therefore, our primary hypothesis is that the jargon of addressing the issue of gender (and in turn that of the male victims) by the hon’ble judiciary and prominent academicians, largely marginalises the male victims to the periphery of mainstream academia and practice.

We will now engage into a critical analysis of the five landmark cases of honour crimes that have been decided by the Supreme Court in the last two decades.

III. THE STUDY

(A) Methodology

Primarily we have adopted the doctrinal research method,¹⁶ coupled with the comparative method.¹⁷ The combination of these methods would help us to critically analyse the trend of the judicial attitude towards addressing the gender issues in cases concerning honour crimes.

¹² Chesler, *supra* note 2).

¹³ Talcott Parsons, ‘The American Family: Its Relations to Personality and to the Social Structure’, *Family, socialization and interaction process*, The Free Press(1955).

¹⁴ Candace West and Don H Zimmerman, ‘Doing Gender’ 1 *Gen. Soc.* 125 (1987).

¹⁵ Maz Idriss, ‘The Forgotten Male Victims of Honour-Based Violence’, *The Conversation* (May 10, 2020, 7:28 PM) <<http://theconversation.com/the-forgotten-male-victims-of-honour-based-violence-96041>>.

¹⁶ Terry Hutchinson, *Research methods in law* (2nd ed. 2017).

¹⁷ Geoffrey Samuel, ‘Comparative Law and Its Methodology’, *Research methods in law* (2nd ed. 2017).

For the purpose of this study, we have selected the five landmark cases, decided by the Hon'ble Supreme Court of India since the year 2000. We have used the online legal database *Manupatra* and *SCC Online* to find the judgments. It is important to note that the number of cases involving honour crimes, that have been decided in the Supreme Court is relatively limited. During our research, we used the keywords such as 'honour crimes', 'honour killing' and 'gender. During our research with these keywords, we found 19 results out of which we selected these five (which we will be analysing in this study), which have somewhat carved the trend of the judicial attitude in the context of the gender issues.

For the purpose of this study, we will analyse the cases based on the following yardsticks: -

- a. Discussions regarding the gender of the victim[s],
- b. Acknowledgement of the 'unique' nature (and patterns) of the crimes
- c. Any specific recommendations made regarding the future treatments of the honour crimes, based on its unique (if so acknowledged) nature.

One noteworthy limitation of this study is that because of the Covid-19 lockdown, we could not engage in a detailed empirical study, as originally planned, to conduct interviews with some of the hon'ble Judges who have decided these cases.

We will chronologically analyse the cases according to the year it was decided. This analytical structure will help to clearly comprehend the gradual shift in the Supreme Court's perspective regarding the question of gender while deciding the cases of honour crimes.

(B) The judgments

Case 1

In Lata Singh v. State of U.P. and Ors.¹⁸, the Court addressed an incident of violence owing to an inter-caste marriage where the Petitioner's husband and his family members were assaulted and falsely charged in criminal cases at the behest of her brothers. The brothers felt that the Petitioner's act of marrying someone from a lower caste had resulted in dishonour to their family.

The two judges bench led by Ajay Bhan J. categorically denounced the acts of violence against couples entering into inter-caste marriages. Further, the Court promoted the practice of inter-caste marriages, opining that such practices should be promoted to combat the evils of the caste system. In the context of the honour 'killings', the Court pronounced,

¹⁸ Lata Singh v. State of U.P. and Ors (2006)5 SCC 475.

*We sometimes hear of "honour" killings of [such persons] couples 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. Only in this way can we stamp out such acts of barbarism.*¹⁹

Findings

Being one of the earliest cases, concerning honour crimes in the 21st century to be argued before the Hon'ble Supreme Court of India, the *Lata Singh* judgment is indeed a significant step forward. It indeed provided a very important legal impetus towards combating two social menaces in an integrated manner, namely, the evils of the caste systems and the practice of honour crimes.

However, we need to look into the following findings on the analysis of the judgment based on the selected yardsticks: -

- a. Discussion on the gender of the victims: The Court did not engage in a detailed discussion on the victims' gender.
- b. Acknowledgement of the 'unique' nature (and patterns) of the crimes: The crux of the impugned decision revolves around the honour crimes emanating from the atrocities in the name of family honour, owing to an inter-caste marriage. Noteworthy, that the judges have restricted their interpretation of the phenomenon only to 'honour killings' rather giving it a broadened ambit of 'crimes' to include other forms of violence within its fold. Furthermore, the judges have explicitly interpreted these crimes (especially killings) as 'act of murder' under Section 300 of the Indian Penal Code (hereinafter referred to as IPC).²⁰
- c. Future Recommendations: The Court issued directions to the law enforcement authorities to take strict actions against the people who indulge in such illegal activities of instigating violence in the name of family/community honour.

Case 2

In Arumugam Servai v. State of Tamil Nadu,²¹ the Court opined on the legal status and the role of Khap Panchayats in instigating the widespread acts of violence in the name of the family honour against young couples who decide to marry against the will of their parents or

¹⁹ Id at 17

²⁰ Indian Penal Code 1860.

²¹Arumugam Servai v. State of Tamil_Nadu (2011) 2 SCC Cri 993.

the community. Categorically declaring these Panchayats as ‘kangaroo courts’, the Court laid down that these khap proceedings are wholly unconstitutional. Reaffirming his position in *Lata Singh case* Katju J. remarked,

*We have in recent years heard of 'Khap Panchayats' (known as katta panchayats in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. [...] there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal minded persons deserve harsh punishment. [...] Moreover, these acts take the law into their own hands, and amount to kangaroo Courts, which are wholly illegal.*²²

Findings

Though the judgment seems immensely plausible in providing as an effective legal means to combat the menace of honour crimes in India, however, a detailed analysis on the aforementioned yardsticks (Section 3.1.) reflects the following findings: -

- a. Discussion on the gender of the victims: There is no detailed discussion on the gender of the victims in this judgment. However, the Court acknowledged that the khap panchayats indulge in committing or instigating acts of violence including honour killings on boys and girls of different castes and religion, who wish to get married or have been married.
- b. Acknowledgement of the ‘unique’ nature (and patterns) of the crimes: In this judgement, there is no acknowledgement of the unique nature of honour crimes. On the contrary the Court has regarded these crimes as ‘murders’ under Section 300 of IPC. It is also noteworthy that the Court has further refrained from engaging into a detailed discussion regarding the types of ‘other atrocities’ that can qualify as honour crimes.
- c. Future recommendations: The Court categorically declared the khap panchayats as unconstitutional and their activities as illegal. Moreover, it directed strict criminal proceedings to be instituted against the members of such gatherings. However, the

²² Id at 16

judges did not specifically recommend the legislature to enact any specific provision in the IPC or any specific legislation regarding honour crimes exclusively.

Case 3

Bhagwan Dass v. State (NCT) of Delhi,²³ presented 'yet' another case of a gruesome honour crime in which a daughter was killed by her own father because of the perceived dishonour that she had brought to the family by leaving her abusive husband and starting to co-habit with her uncle.

This case primarily rested on the circumstantial evidence, the discussion on which forms the substantive part of the said judgment. However, in the context of the honour crimes, the Court opined for the punishment of death penalty, terming honour crimes as the 'rarest of rare' cases under Section 300 of IPC.²⁴ Katju J. observed that,

*In our country unfortunately 'honour killing' has become common place [...]
Many people feel that they are dishonored 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 the law into their own hands and kill or physically assault such person or commit some other atrocities on them.*²⁵

*Before parting with this case, we would like to state that 'honour' killings have become commonplace in many parts of the country, particularly in Haryana, western U.P., 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.*²⁶

In our opinion 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, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate 'honour' killings should know that the gallows await them.

Findings

A critical analysis on the aforementioned criteria reflects some of the interesting findings in this judgment that we have listed below: -

²³ Bhagwan Dass v. State (NCT) of Delhi (2011) 6 SCC 396.

²⁴ Indian Penal Code 1860.

²⁵ Bhagwan Dass v. State (NCT) of Delhi (2011) 6 SCC 396.

²⁶ Ibid

- a. Discussion on the gender of the victims: In this case the Court acknowledged that both men and women can be victimised in the name of family or community honour. However, the Court did not specifically enter into a detailed discussion on the issue of gender.
- b. Acknowledgement of the 'unique' nature (and patterns) of the crimes: Largely owing to the facts of the case regarding inter-caste and inter-religious marriages, the Court has somewhat confined the 'honour crimes' as one usually occurring out of a conflict concerning these often *socially-unacceptable* marriages. However, reiterating its position of support regarding the inter-caste and interreligious marriages from the *Lata Singh case*, the Court opined for promoting such socially-integrating practices.
- c. Future Recommendations: Terming the honour crimes as the 'rarest of rare' cases,²⁷ the Court has recommended the stringent punishment of death penalty for the perpetrators of such crimes. According to the judges, such punishment will act as a deterrent for anyone to indulge in such criminal acts in future.

Case 4

In Shakti Vahini v. Union of India and Ors.²⁸, the Court addressed the issue of honour crimes once again after a writ was filed regarding it by a non-profit organization direct the Union of India to adopt preventive steps to combat the perils of honour crimes. Further, it directed for special cells to be constituted to provide safe shelter to the couples who are potential victims of honour crimes.

While issuing the desired writs in favour of the appellants, the Court emphatically denounced the practice of the elders of the community to forcefully interfere into the person lives and the freedom of choice of individuals to choose their life partners. The Court observed,

When the ability to choose is crushed in the name of class honour and the person's physical frame is treated with absolute indignity, a chilling effect dominates over the brains and bones of the society at large.

The concept of honour with which we are concerned has many facets. Sometimes, a young man can become the victim of honour killing or receive violent treatment at the hands of the family members of the girl when he has fallen in love or has

²⁷ Though the Rarest of Rare doctrine is not explicitly mentioned in the Indian Penal Code, the Supreme Court in *Bachhan Singh case*, propounded the doctrine to award death penalties in those cases where depending upon the facts and circumstances, no other punishments under the laws of the land would suffice. See *Bacchan Singh v. State of Punjab* (1980) 2 SCC 684

²⁸ *Shakti Vahini vs Union of India and Ors* [2018] Supreme Court of India Writ Petition (Civil) No. 231 of 2010, 7 SCC 192.

*entered into marriage.*²⁹

*It is set forth in the petition that the actions which are found to be linked with honour based crimes are- (i) loss of virginity outside marriage; (ii) pre-marital pregnancy; (iii) infidelity; (iv) having unapproved relationships; (v) refusing an arranged marriage; (vi) asking for divorce; (vii) demanding custody of children after divorce; (viii) leaving the family or marital home without permission; (ix) causing scandal or gossip in the community, and (x) falling victim to rape. Expanding the aforesaid aspect, it is stated that some of the facets relate to inappropriate relationship by a woman some of which lead to refusal of arranged marriages. Certain instances have been cited with regard to honour crimes and how the said crimes reflect the gruesome phenomena of such incidents.*³⁰

Instances that have been depicted in the Writ Petition pertain to beating of people, shaving of heads and sometimes putting the victims on fire as if they are "flies to the wanton boys". Various news items have been referred to express anguish with regard to the abominable and horrifying incidents that the human eyes cannot see and sensitive minds can never countenance.

Further, in relation to the question of a new legislation in to deal with the issue of honour crimes or an amendment in the Indian Penal Code, the Court took note of a new Bill, named "Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework" (hereinafter referred as Honour Crime Bill) that was proposed by the 242nd Report of the Law Commission of India.

Though it is not the purpose of this research to discuss the viability of this bill, however, the definition of 'honour crimes' under this Bill is worth noting. We will discuss more about the same in Section 3.3. However, the highlight of this case lies in the following observation of the Court regarding the nature of the honour crimes,

It is necessary to mention here that honour killing is not the singular type of offence associated with the action taken and verdict pronounced by the Khap Panchayats. It is a grave one but not the lone one. It is a part of honour crime. It has to be clearly understood that honour crime is the genus and honour killing is the species, although a dangerous facet of it. However, it can be stated without

²⁹ Id at 5

³⁰ Id at 6.

any fear of contradiction that any kind of torture or torment or ill-treatment in the name of honour that tantamount to atrophy of choice of an individual relating to love and marriage by any assembly, whatsoever nomenclature it assumes, is illegal and cannot be allowed a moment of existence.³¹

Honour killing guillotines individual liberty, freedom of choice and one's own perception of choice. It has to be sublimely borne in mind that when two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognized Under Articles 19 and 21 of the Constitution. Such a right has the sanction of the constitutional law and once that is recognized, the said right needs to be protected and it cannot succumb to the conception of class honour or group thinking which is conceived of on some notion that remotely does not have any legitimacy.

Findings

The *Shakti Vahini case* is indeed a crucial milestone in India's journey of combatting the perils of honour crimes. This case yielded an array of interesting findings, some of which are enlisted below on our analytical yardsticks: -

- a. Discussion on the gender of the victims: In this case, the Court has explicitly acknowledged that both women and men can be victimized for the sake of family honour. These cases are common in situations when a boy falls in love or marries a girl without the consent of either families.
- b. Acknowledgement of the 'unique' nature (and patterns) of the crimes: In the context of the 242nd Law Commission Report regarding the proposed Honour Crime Bill, the Court has engaged into a detailed discussion on the unique nature of the crimes. The most striking aspect of this discussion is that the Court has explicitly acknowledged 'honour crimes' as the *genus* and 'honour killing' as the *species*.

Another important finding in this context was the Court's observation that the acts of honour killings breach an individual's fundamental rights of freedom of choice guaranteed under Article 19 and 21 of the Constitution of India. We will elaborate on this position in Section 3.3.

- c. Future recommendations: The Court laid down an array of preventive, punitive and remedial measures that can be found in the original text of the judgment.³²

³¹ Id at 40.

³² Ibid

Unfortunately due to restriction of space, we will not be elaborating on them in this research.

Case 5

In Navtej Singh Johar and Ors. v. Union of India (UOI) and Ors.,³³ the issue before the Court concerned the illegality of homosexuality. Therefore, even though this case did not directly deal with the issue of honour crimes yet some of the observations made regarding 'gender identity', 'sexual orientation' and 'honour crimes' is worth mentioning in the current research.

Significant observations of the Court,

i. On gender identity

*A phenomenon distinct from sexual orientation which refers to whether a person identifies as male or female. This identity' may exist whether there is "conformity or non-conformity" between their physical or biological or birth sex and their psychological sex and the way they express it through physical characteristics, appearance and conduct. It applies whether, in the Indian sub-continent, they identify as hijra or kothi or by another name.*³⁴

ii. On sexual orientation

*Sexual orientation is one of the many biological phenomena which is natural and inherent in an individual and is controlled by neurological and biological factors. The science of sexuality has theorized that an individual exerts little or no control over who he/she gets attracted to. Any discrimination on the basis of one's sexual orientation would entail a violation of the fundamental right of freedom of expression.*³⁵

iii. On homosexuality

From the aforesaid, it has to be appreciated that homosexuality is something that is based on sense of identity. It is the reflection of a sense of emotion and expression of eagerness to establish intimacy. It is just as much ingrained, inherent and innate as heterosexuality. Sexual orientation, as a concept, fundamentally implies a pattern of sexual attraction. It is as natural a phenomenon as other natural biological phenomena. What the science of

³³Navtej Singh Johar and Ors. v. Union of India (UOI) and Ors.,³³ 2018 10 SCC 1.

³⁴ Id at 139.

³⁵ Id at 253

*sexuality has led to is that an individual has the tendency to feel sexually attracted towards the same sex, for the decision is one that is controlled by neurological and biological factors. That is why it is his/her natural orientation which is innate and constitutes the core of his/her being and identity.*³⁶

iv. On dignity

The right to live with dignity has been recognized as a human right on the international front and by number of precedents of this Court and, therefore, the constitutional Courts must strive to protect the dignity of every individual, for without the right to dignity, every other right would be rendered meaningless.

Dignity is an inseparable facet of every individual that invites reciprocative respect from others to every aspect of an individual which he/she perceives as an essential attribute of his/her individuality, be it an orientation or an optional expression of choice.

*Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom....*³⁷

While referring to its previous judgments such as Shakti Vahini case and Lata Singh case, the Court observed that the freedom of choice is a crucial manifestation of an individual's right to life with dignity as is protected under Article 19 and 21 of the Constitution. This observation is also significant in the context of honour crimes indicating that the concept of 'honour and shame', which is intricate to the entire phenomenon, deserves to be given a wider interpretation. We will engage into a detailed discussion on this aspect in Section 3.3.

(C) Analysis

The above findings rather reveal a growing shift in the judicial mindset with regards to deciding the cases relating to honour crimes in India. In this section we will discuss that *shift* in details.

At the outset let us resume the discourse regarding the evolution of the notion of gender that we had mentioned in Section 2 (page 2-4). Gender, in common parlance, is widely associated with the biological sexes of an individual. The word 'he' is commonly used to identify a male whereas the word 'she' is used to identify a female. However, the inter-disciplinary academia

³⁶ Id [143].

³⁷ Id [3].

of social science regards gender as a ‘social construction’.³⁸ The history of this development can be traced back to the 1960s second wave of feminism in the United States.³⁹ Noteworthy, that prior to this period, gender was not largely be established as an independent notion devoid of its biological connotations (during the first wave of the feminist movement in USA, from 1848-1920).⁴⁰

Celebrated American sociologist, Talcott Parsons’ theory of gender is primary reflective of this biological connotation of gender. Before discussing Parsons’ works, it is imperative to understand three important concepts relating to gender i.e. *gender assignment, gender roles and gender identities*.

Gender assignments are gender attributions made by the society when a child is born. This process mainly depends upon external biological cues of the child such as genitals.⁴¹ Thus, gender assignments are a third-party attribution of an individual’s gender. This assignment also leads to the formulation of the perceived gender roles. A gender role is a set of prescriptions and proscriptions for behaviour – expectations about what behaviour is appropriate for an individual holding a particular position within a particular social context.⁴² Finally, gender identities are defined as an individual’s self-attribution of their gender. Thus, this identity is an individual’s own feeling about self-identification as man or a woman.⁴³

Now let us revisit Parsons’ theory on gender. Focussing mainly on the biological differences between men and women, for Parsons segregation of the sex-based gender roles was of paramount importance. He opined that that the occupational roles of being a bread winner should be shouldered by men whereas women should confine themselves to the private roles of being the homemaker.⁴⁴ According to Parsons,

“It goes without saying that the differentiation of the sex roles within the family constitutes not merely a major axis of its structure, but is deeply involved in both of these two central function complexes of the family and in their articulation with each other.”⁴⁵

³⁸ Alina Coman, ‘Gender Contents between Natural Data and Socio-Cultural Interpretations’ Vol 5, a Bull. Transylv. Univ. 5 (54) 2012

http://webbut.unitbv.ro/BU2012/Series%20VII/BULETIN%20VII/Vechi/22_Coman%202-2012.pdf

³⁹ Kathleen M Brown, ‘Brave New Worlds: Women’s and Gender History’ 50 William Mary Q. 311(1993)

⁴⁰ Akhil Reed Amar, ‘How Women Won the Vote’ 29 Wilson Q 30 (2005)

⁴¹ Satish Venkatesh and others, ‘Male Gender Assignment of a Child with Aphallia and Associated Complex Urological Anomaly’ 22 J Indian Assoc Pediatr Surg. 38 (2017)

⁴² Suzanne J Kessler, ‘Introduction’ in W McKenna, Gender: an Ethnomethodological Approach (Wiley 1978).

⁴³ Judith Butler, Gender Trouble: Feminism and the Subversion of Identity , (1st ed. 2006).

⁴⁴Talcott Parsons, *supra* note 13

⁴⁵ Id at 22

Therefore, Parsons believed that the driving force behind institution of family are the segregated gender roles based upon the biological sexes of individuals. He opined that this segregation, if disrupted, would potentially cause the institution of family to dismantle. Thus, we see that in this theory, Parsons emphasised upon the biological notion of gender in the context of the institution of family. In the subsequent paragraphs we will observe to what extent the Hon'ble Supreme Court's decisions on the questions of gender in the honour crime cases, during the early part of the millennium, is reflective of the Parsonian concept of gender on the lines of biological sexes. But before doing so, let us now look into the ethnomethodological view on gender.

Whereas, the relatively conservative Parsonian theory gained significant acceptance within the contemporary scholars in the field of gender studies,⁴⁶ however, gradually with the course of the future waves of the feminist movement, the notion of gender also evolved towards fluidity.

Unfortunately, we will not be documenting the entire gender journey in this research owing to word restrictions. Therefore, we will take a leap into the third wave of feminism which arguably commenced in the 1990s.⁴⁷ One of the striking features of this phase was its emphasis on the fluidity of the notion of gender beyond the biological sexes. Gender, during this period was widely regarded as an inalienable intimate notion of an individual, primarily associated as a matter of individual choice.⁴⁸ The concept of gender identity gained increasing popularity which catalysed the development of the ethnomethodological notion of 'doing gender'.⁴⁹

Primarily focussing on the functional aspects of gender, ethnomethodology views that gender is a product of an individual's own actions. Therefore, the biological cues, an individual is born with do not determine what gender the individual belongs to, rather gender is a matter of self-determination which individuals associate themselves with through their course of actions. This is commonly known as, 'doing gender' whereby it is believed that individuals have rights to assert their gender identities through their actions and such identities are not dependent upon any third-party assignment or approval.⁵⁰ Zimmerman writes,

“Doing gender means creating differences between girls and boys and women

⁴⁶ Theodore Wright, 'Mr Herbert Spencer on the Rights of Women.' Examiner; London 260.(1874)

⁴⁷ Kate Mahoney, 'Historicising the "Third Wave": Narratives of Contemporary Feminism' 25 Women's Hist. Rev. 1006 (2016)

⁴⁸ R Claire Snyder-Hall, 'Third-Wave Feminism and the Defense of "Choice"' (2010) 8 Perspect. Politics 255 (2010)

⁴⁹ Venkatesh and others, *supra* note 39.

⁵⁰ West and Zimmerman, *supra* note 21.

and men, differences that are not natural, essential, or biological. Once the differences have been constructed, they are used to reinforce the “essentialness” of gender.”⁵¹

Past studies have reflected cases, where individuals have affirmed their gender identities in their late 40s.⁵² These relatively modern developments provided the much-needed impetus to the recent discourses on issues such as, queer politics and homosexuality in the country.⁵³

Now, let us revisit the aforementioned Supreme Court decisions on honour crimes to analyse the evolution of the Court’s mindset in this regard.

In our opinion, on the question of gender, there is a *progressive* evolution in the Court’s decisions. The *Shakti Vahini case*,⁵⁴ acts as a point of this paradigm shift in the Court’s mindset. A critical analysis of the first three judgments discussed in this research, namely *Lata Singh*,⁵⁵ *Amurugam Servai*⁵⁶ and *Bhagwan Dass*,⁵⁷ reflects a rather *conservative* interpretation of gender, given by the Court. This is much in tune with the Parsonian concept of gender, primarily attributed to the biological sexes of individuals. Whereas, the Court has not explicitly discussed about the gendered aspects of the crimes in *Lata Singh case*, it has mostly used the connotations indicating gender binaries such as ‘his/her’ and ‘girls/boys’ to refer to the victims of honour crimes in *Amurugam Servai case*. The same conservative linguistic undertones largely indicating gender binaries can also be observed in the *Bhagwan Dass case*. This set of decisions can be best characterised within the first wave feminist notion of gender such as the ones given by Talcott Parsons and Emile Durkheim,⁵⁸ who primarily confined their analysis to the sex-based gender binaries and gender roles emanating from those binaries. Such a traditionalist trend of the Court’s mindset is also reflected in its interpretations of the pattern of the crimes. Though, we admit that most of the cases of honour crimes in India originate from *socially-controversial* romantic relationships between couples, yet in our view, the ambit of honour crimes potentially enshrines a wider range of criminal acts which the Court has somewhat been oblivious to, in the *pre-Shakti Vahini* cases. Further, we object the usage of the term ‘honour killings’ instead of the term ‘honour crimes’,

⁵¹ id at 137.

⁵² Sue Rankin and Genny Beemyn, ‘Beyond a Binary: The Lives of Gender-nonconforming Youth’ 17 About Campus 2(2012).

⁵³ Naisargi N Dave, ‘Activism as Ethical Practice: Queer Politics in Contemporary India’ 23 Cult. Dyn. 3(2011).

⁵⁴ *Shakti Vahini vs. Union of India and Ors*, *supra* note 6 .

⁵⁵ *Lata Singh v. State of U.P* ,*supra* note. 16.

⁵⁶ *Arumugam Servai v. State of Tamil Nadu*, *supra* note 19.

⁵⁷ *Bhagwan Dass v. State (N.C.T.) of Delhi*,*supra* note 22 .

⁵⁸ Riaz Hassana, ‘One Hundred Years of Emile Durkheim’s Suicide: A Study in Sociology’ (1998) 32 Aust N Z J Psychiatry 168(1998).

to address these cases, as the former significantly restricts the actual ambit of these crimes.

Now let us move on to the *post-Shakti Vahini cases* decided by the Court in the last two decades. Even though, owing to the limited scope of this research, we have only analysed two landmark cases *vis.a.vis. Shakti Vahini* and *Navtej Singh Johar*, yet it can be safely deduced that these decisions have certainly shown some promise of evolution in the judicial mindset towards the ethnomethodological notion of the functional connotations of gender.

In *Shakti Vahini case*, by explicitly acknowledging that the phenomenon of honour crimes also victimises men (even though the proportion might be heavily leaning towards the female victims) and that the nature of the threats posed might be different, the Court undoubtedly provided a huge impetus to the cause of all those male victims who are often left at the periphery of any honour crime narrative. Further, by mentioning honour killings as a species within the broader genus of honour crimes, the Court certainly opened the door for a more comprehensive redressal of the issue by including other types of crimes such as forced marriages and acts of violence against homosexuals within the ambit of honour crimes. It is important to note that the judicial decisions in the western countries includes the latter kinds of crimes within the fold of the term, 'honour crimes'. For instance, the brutal killing of Aqsa Parvez in Canada (a case of forced marriage),⁵⁹ or that of Ahmet Yildiz in Turkey (a case of perceived homosexuality),⁶⁰ were treated as incidents of honour crimes. Therefore, it is encouraging to see that the Indian judiciary is also treading the same path.

This aforementioned shift can also be noted in *Navtej Johar* judgment.⁶¹ While deciding on the question of legality of homosexuality, the Court's pronouncement is largely reflective of the third wave feminist notions of gender-identity,⁶² largely characterised by the ethnomethodological concept of 'doing gender',⁶³ as discussed earlier in the section. In this case, by categorically mentioning that individuals' assertion of gender identity and sexuality is a manifestation of their dignity and honour as guaranteed under Article 21 of the Constitution, the Court has certainly opened the possibilities of robust multi-dimensional redressals and analysis of the issue of honour crimes in future.

⁵⁹ Luis Granados, 'Saving Aqsa Parvez' 70 *The Humanist* 18(2010).

⁶⁰ Nicholas Birch, Was Ahmet Yildiz the victim of Turkey's first gay honour killing? | *The Independent*, (May 16, 2020, 6:47 PM) <https://www.independent.co.uk/news/world/europe/was-ahmet-yildiz-the-victim-of-turkeys-first-gay-honour-killing-871822.html>.

⁶¹ *Navtej Singh Johar and Ors. v. Union of India (UOI) and Ors*, *supra* note 31.

⁶² A Fisher and others, 'Gender Identity, Gender Assignment and Reassignment in Individuals with Disorders of Sex Development: A Major of Dilemma' (2016) 39 *J. Endocrinol. Investig* 1207(2016).

⁶³ West and Zimmerman, *supra* note 12.

IV. CONCLUSION AND THE WAY FORWARD

The phenomenon of honour crimes not only threatens the multicultural fabric of the country, but also presents constant challenges to the legislatures, executive and the judiciary alike. Within its limited scope, the findings of this research reflect that the notion of honour is itself unique and multi-faceted in nature. Primarily as much as it can emancipate an individual's fundamental right to a dignified life, at the same time, any misinformed notion of the same can also prove to be the breeding ground for many horrific crimes. One of the aspects that we have focussed upon in this research is on using the word 'crime' instead of using the word 'killing' because with the alarming increase in the number of cases, there is a dire need to include the allied criminal acts that are committed in the name of family/community honour.

Even though, the scope of our analysis here is relatively restricted, still we have been able to identify a positive developmental trend in the Hon'ble Supreme Court's judgments towards addressing the complexities of these crimes. It is certainly encouraging to see that the apex judiciary is starting to address the similar human rights abuses such as violence against homosexuality, within the genus of honour crimes. Therefore, the present analysis reflects that the judges are somewhat moving away from a Parsonian concept of gender to that of ethnomethodology.

However, in our opinion, there is a long way to go for Indian judiciary when it comes to addressal of the issue of gender. Particularly, in the context of the male victims of honour crimes, we believe that mainly the judicial narrative of representation of male victims needs to shift from the periphery to the mainstream. Whereas, the judiciary has indeed acknowledged cases of violence against male victims, yet such addressal has been largely sporadic.

Another aspect in our opinion, that needs immediate redressal is the enactment of an exclusive legislation, which not only comprehensively defines the honour crimes (addressing the unique facets of the crime in a broader sense) but also provides effective means of eradicating these evils such as stringent punitive measures including capital punishments, as opined by the court.

Finally, we believe that, there is a pressing need to explore the notion of 'gender' beyond biological binaries, both in academia as well as in practice. Therefore, we encourage further similar kinds of research on these issues. As Nivedita Menon rightly points out that the 'F'

word of feminism in this post-structural world is no longer exclusively a women-only club.⁶⁴

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⁶⁴ Nivedita Menon, 'Is Feminism about "Women"?: A Critical View on Intersectionality from India' 50 Econ. Political Wkly.(2015).

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