

THE LAW COMMISSION ON CRIMES AND KILLING IN THE NAME OF “HONOUR”— A MYOPIC & PATRIARCHAL VISION

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The concept of honour killing finds deep-set support not only in contemporary society but also the prevalent political system. This paper thus seeks to analyse the recent Law Commission Report regarding the foregoing subject. While lauding the report for attempting to revolutionize the legal system, the author scrutinizes the flagrant shortcomings posited in the report. The basis of crimes committed in furtherance of honour killing lie on two pronged reasoning of- (i) arbitrary dictates of Khap Panchayat, and (ii) familial backlash due to archaic patriarchal notions. The former has been addressed and denounced in the said Law Commission Report however; surprisingly the latter has been conspicuously missing from their discussions. The necessity to condemn backlash directed by family members arises from their beliefs that they govern ownership over their daughters and their bodies, which inevitably leads them to partake in a plethora of crimes under the façade of protecting ‘family honour’. Therefore, the paper advocates for a legal system that acknowledges and outlaws the participation of family members in support of these crimes while analyzing separate and independent reports of varied Women Rights Commissions on the same subject.

I. INTRODUCTION

The Government of India has recently circulated a draft law against crimes in the name of honour to all the states for their opinion.¹ It has been reported that as many as 22 states have reacted to this proposal.² This draft law has been proposed by the 19th Law Commission (hereinafter referred to as ‘the L.C.’) and aims to stop “interference with the freedom of matrimonial

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¹ 22 States, UT’s Support Bill to Prevent ‘Honour Killings’, ECONOMIC TIMES, (Dec. 11, 2014) <http://economictimes.indiatimes.com/news/politics-and-nation/22-states-uts-support-bill-to-prevent-honour-killings/articleshow/45475342.cms>.

² *Id.*

alliances in the name of honour". The Bill punishes 'Khap Panchayats'³ and other assemblies from deliberating on or condemning any marriage or intended marriage and labels them as an "unlawful assembly". It further punishes any coercive action or pressure or intimidation exerted by this unlawful assembly.⁴ The L.C. draft thus seeks to deal with khap panchayats, who by issuing illegal and barbaric diktats have sought to punish young couples who dare to marry or have a relationship across caste and religious lines. These diktats have included,

*"social and economic boycott, coercive dissolution of marriage, levying of fines against the boy and his family and others sympathetic to the couple, extradition from the village and public humiliation, apart from ordering the killing of the girl and the boy."*⁵

Women organizations like the All India Democratic Women's Organisation (hereinafter referred to as 'AIDWA') and others have been demanding a standalone comprehensive law to deal with crimes and killings in the name of 'honour' since 2009. Their demands have arisen because, while dealing with such cases in the rural and urban areas in states like Haryana, UP, Punjab and Tamil Nadu, there was a total absence of legal provisions to deal with horrendous abuse and torture faced by young girls and boys, who dared to exercise their choice and entered into a relationship. There was also a complete absence of law to deal with the illegal and barbaric diktats of the caste Panchayats. Apart from this, they felt the need to have a law in place, which would facilitate and make it easier for young people to enter into a relationship or marriage of their choice and make the police and the state accountable. Thus, the L.C. seems to have taken a step in the right direction and acted in favour of this demand. However, a deeper analysis of the L.C.'s

³ Vibhuti Patel, *The Indian Women's Movement and Crimes Concerning 'Honour': A Review Paper* 488 in 'HONOUR' AND WOMEN'S RIGHTS, SOUTH ASIAN PERSPECTIVES, (Manisha Gupte, Ramesh Awasthi and Shraddha Chickerur eds., 2012); ("The khap has been a system of social administration and organization in the north-western states of India since ancient times. These khaps are spread all the way from North-west India down to Madhya Pradesh, Malwa, Rajasthan, Sindh, Multan, Punjab, Haryana and Uttar Pradesh. Although their rulings have no legal validity, they are very powerful and are successful in keeping with their so-called traditions. Recurrently, the khap panchayats and their leaders are being seen as protectors of the poor but in fact they are aggressors towards these underprivileged couples/ families. Instead of helping them, they try to impose their judgements on the community. Their tyranny is mostly felt in traditional rural habitations, since hardly any cases have been reported from urban areas. Their autocracy is specifically evident in the SarvKhap of Haryana; whose influence extends to the Malwa province in Central India, Rajasthan and Sindh. The effects of these khaps can be political, social or economical in nature.")

⁴ 242nd Law Commission of India Report, *The Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework Bill*, (2012), <http://lawcommissionofindia.nic.in/reports/report242.pdf> (last visited on Oct. 22, 2016).

⁵ *Table Honour Killings Bill This Session: Karat*, THE INDIAN EXPRESS, (July 10, 2010) <http://indianexpress.com/article/india/politics/table-honour-killings-bill-this-session-karat/>.

recommendations show that the proposals are flawed and biased. Moreover, they do not address the issue of violence against a daughter at her home. Violent opposition to marriages and relationships by choice begin at home, typically from fathers, brothers and other male relatives to control their daughters/sisters and their sexuality. This violent opposition is justified in the name of upholding the traditional customary norms which lay down strict rules regarding marriage within the caste and community. If a daughter breaks these norms by entering into relationship or marrying outside her caste or community, she is perceived to have brought dishonor to her family (in many cases her community) and accordingly must be stopped and/or punished. "Any breach of the customary law and practices leads to direct violence perpetrated by the male family members on the couple generally and on the woman particularly."⁶ In the past few decades, community organizations like the caste/ Khap Panchayats have also played a dominant role in enforcing these regressive traditions, either along with members of the girl's family or sometimes even on their own. Thus, by only targeting the Khap Panchayats and other associations of a similar kind, and deliberately not bringing the family of the girl within the scope of the law against crimes in the name of 'honour', the L.C.'s own conservative familial ideology comes to the fore. Further, it is undermining and devaluing the nature of sustained and acute forms of abuse, torture, and harassment that many young women are subjected to often by their male relatives if they want to enter into a marriage or relationship of their choice.

In not bringing in the family within the purview of the law, the L.C. is also reinforcing the classic and traditional divide between the 'public' and 'private' and ensuring that legal regulation doesn't enter the realm of the home. Talking primarily about sexual violence, Charlesworth points out that:

*"In western domestic legal systems the distinction drawn between public and private supports the sexual violence on which patriarchy is based: it creates a 'space into which the law's ordinary protection against violence will not be allowed to penetrate.' The most pervasive harm against women tends to occur right within the inner sanctum of the private realm, within the family."*⁷

This is also true for other forms of violence which subjugate and oppress women including daughters within the house. In India, this divide between the public and private spheres exists and some judgements have justified the lack of constitutional and legal regulation of the family.⁸

⁶ Prem Chowdhry, *Redeeming 'Honour' through Violence: Unravelling the Concept and its Application in THE FEAR THAT STALKS IN GENDER-BASED VIOLENCE IN PUBLIC PLACES*, (Sara Pilot and Lora Prabhu eds., 2012).

⁷ See Hilary Charlesworth, *What are Womens' International Human Rights?* in HUMAN RIGHTS OF WOMEN (Rebecca J. Cook eds., 1994).

⁸ Harvinder Kaur v. Harmander Singh Choudhry, 1983 SCC OnLine Del 322 : AIR 1984 Del 66; Saroj Rani v. Sudarshan Kumar Chadha, (1984) 4 SCC 90 : AIR 1984 SC 1562. ("One

In this article, I examine the L.C.'s report to deal with crimes in the name of honour and compare it with the proposed law made by the AIDWA and other women's organizations and subsequently endorsed, with slight changes, by the National Commission for Women⁹.

II. THE CONSTITUTION OF THE LAW COMMISSION

In her pioneering work on the L.C.,¹⁰ Lotika Sarkar pointed out that perhaps the lack of renowned jurists was responsible for the Law Commissions not being independent;

*"Unfortunately, none of the subsequent Commissions, and there have been ten more, were as fortunate as the first in the galaxy of members that comprised it. This perhaps contributed to the status of the Commission never becoming an independent body 'suggesting ways and means of improving the system of judicial administration' and attempting to make 'Justice simple, speedy, effective and substantial'. For achieving this it would be necessary, as pointed out by the First Law Commission, to have a real overhaul of the administration of justice. But that has not happened."*¹¹

Barring a few exceptions, this lack of substance has been somewhat reflected in subsequent Law Commissions' Reports also. The L.C. is a fixed term, executive body formed by an order of the Government of India. Its major function is to work for legal reform. Its membership primarily comprises legal experts, who are entrusted with a mandate by the government. The L.C. is established for a fixed tenure and works as an advisory body to the Ministry of Law and Justice.

The members of the L.C. are appointed by the government. A broad criterion for appointment of its members is specified. For instance, the order constituting the 18th L.C.¹² specified that the full time chairman/members

general observation must be made. Introduction of constitutional law in the home is most inappropriate. It is like introducing a bull in a china shop. It will prove to be a ruthless destroyer of the marriage institution and all that it stands for. In the privacy of the home and the married life neither Article 21 nor Article 14- have any place. In a sensitive sphere which is at once most intimate and delicate the introduction of the cold principles of constitutional law will have the effect of weakening the marriage bond. That the restitution remedy was abolished in England in 1970 by Section 20 of the Matrimonial Proceedings and Properties Act 1970 on the recommendation of the Law Commission headed by Justice Scarman is no ground to hold that it is unconstitutional in the Indian set-up.")

⁹ The Prevention of Crimes in the Name of 'Honour' & Tradition Bill, 2010, <http://ncw.nic.in/fmlnewlaws.aspx>, (last seen on March 15, 2015).

¹⁰ LOTIKA SARKAR, NATIONAL SPECIALISED AGENCIES AND WOMEN'S EQUALITY – LAW COMMISSION OF INDIA, Centre for Women's Development Studies, 10 (1988).

¹¹ *Id.*

¹² Government of India, Ministry of Law and Justice, Department of Legal Affairs, Order No.A-45012/1/2006-Admn.III (LA).

of the Law Commission could be serving or retired judges of the Supreme Court of India or the High Court or a Jurist/Legal expert or a professor of law. This criterion does not specify that the members appointed to the L.C. should have worked with law reform which its major function. This criterion also does not ensure the presence of experts in different areas of the law or the presence of experts working in areas such as human rights and gender justice. Thus, the criteria and the reason for appointing a person as a member to the L.C. remains cloaked in secrecy. L.C. members have been, in many instances, appointed by the government in an extremely ad-hoc and arbitrary manner according to the whims and fancy of the government. This is why we often find legal experts who have no interest in law reform as its members. Furthermore, though the government usually constitutes a L.C. for legal reform in certain areas it often does not appoint all the members at the same time and the dates on which different members are appointed seems to depend upon the will of the government in power. Lotika Sarkar mentions this and comments,

*“As is evident from the above, the Ministry of Law and Justice has often behaved in a cavalier manner with the Commission, just appointing the Chairman and then taking its time to appoint the other members but still expecting the Commission to function as a full Commission! ... It would appear that there are no guidelines which need to be followed. Baxi commenting on the selection of members writes ‘in order to avoid the impression of arbitrariness and even crude political patronage, the government needs to make public the general criteria that it considers desirable to pursue in the matter of appointments to the LCI. The considerable discretion it enjoys in inclusion and exclusion of categories of people from the membership of the LCI must at least be subject to some minimal informed evaluation. The Law Commission is definitely handicapped and it would appear (from the signed Reports which show the variation in the number) from Baxi’s comment that the Chairman’s initiative in the selection of his team is for all purposes non-existent.”*¹³

The composition of the L.C. also lacks proper representation of women and those who have been working for and are sensitive to gender justice. For instance, in the 19th L.C., there was only one women member and no members who had worked with any depth on women’s issues. Still, one of the mandates of that L.C. was to “examine the existing laws with a view of promoting gender equalities and suggesting amendments thereto”.¹⁴ This is a mandate for the 20th L.C. also which seems to have no women members at all.

¹³ Lotika Sarkar, *supra* note 10.

¹⁴ Ministry of Law & Justice, *Chairman of the 20th Law Commission Appointed*, January 7, 2013, Release Id 91394, <http://pib.nic.in/newsite/ereelcontent.aspx?relid=91394>

Yet, the 19th L.C. wrote reports on two important subjects which involved critical issues concerning women. One was a report which ostensibly dealt with crimes and killings in the name of honour while the other was a report under Section 498A Indian Penal Code (hereinafter referred to as 'IPC') which dealt with the offence of cruelty against women but was actually an exercise to examine to what extent this offence could be made less stringent and diluted. This section had been inserted in the IPC in 1983, after a long campaign by the women's movement for several years. The section gave recognition to and provided punishment for gross forms of domestic violence to a wife (both physical and mental) and harassment for dowry. Currently, it is one of the sections in the IPC which has one of the largest number of complaints filed under it. National Crime Records Bureau statistics shows a steady increase in the number of cases every year. For the year 2011, the statistics show that about 95,000 complaints were registered under this section. As stated above, constituents of the women's movement have also been dealing with the issue of crimes and killings in the name of 'honour' and have been fighting cases on the ground. However, if we examine these two reports of the 19th L.C. concerning women, we can see how the lack of a feminist consciousness and a patriarchal approach has affected these reports.

A. The background and Need for a Law on Honour Killing

During the last few years, violence in the name of honour has been reported throughout India; though it seems to be most prevalent in the Western Uttar Pradesh, Punjab and Haryana and to a somewhat lesser degree in Rajasthan, Maharashtra and Tamil Nadu. These crimes and killings are normally associated with marriages or relationships voluntarily entered into by a couple which are not accepted mainly by the girl's family.

While under the Indian law, marriages across caste and religion have been made legal ages ago,¹⁵ as stated before, there are very strict customary rules about marriage. These rules are based on caste endogamy and in certain parts of North India and on clan, village or territorial exogamy on the other.¹⁶ Thus, only marriages between members of the same caste are allowed, but in parts of Haryana, marriages within the same *gotra*, the same village and even between adjoining villages are not allowed. Marriages between two persons belonging to different religions are also taboo. These customs and rules are enunciated by the not only by dominant castes but by other castes in the village too. If a marriage or relationship takes place in violation of these customary norms it is supposed to bring dishonor to the family. The ideology of 'honour' is however a gendered notion. "The woman is the repository and the man is the regulator of this honour. Therefore, the greatest danger to the

¹⁵ § 29(1), Hindu Marriage Act, 1956. (The Special Marriage Act is the Civil Law of Marriage and is applicable to all persons residing in India.)

¹⁶ Chowdhry, *supra* note 6, at 199.

ideology of honour comes from the woman. One oft-repeated phrase is: *Ladki ke saath uske kutumb ki izzat judi huee hai* (the honour of every family is connected to its girl). Honour so posited in a woman is importantly located in her body. A woman dishonours her family by what is considered her shameful physical behaviour ...¹⁷ Thus, these marriages by choice and other consensual sexual relationships are typically objected to by the family of the girls¹⁸ and/or the caste, religious panchayat other associations with a feudal and patriarchal outlook. The families of the girl and her relatives and/or the caste, Khap Panchayats try to stop the marriage or relationship and carry out reprisals against the girl and the boy and often his family on the plea that their or their community's 'honour' is at stake. The girl and boy are subjected to a series of barbaric, violent and abusive acts including emotional, physical, sexual abuse and other coercive acts. It has also been noted that these codes of marriage enforce blatant caste hierarchy. The reprisals are particularly severe and violent if a lower caste boy dares to enter into a relationship with an upper caste girl.¹⁹

AIDWA has been dealing with cases in which the girl and the boy have had to suffer various forms of violence perpetrated by members of the girl's family including her relatives. These forms of violence, apart from killing of the girl and/or boy, also include persistent harassment of the girl and the boy and perhaps the boy's family, sexual violence against female members of the boy's family, public beating, public humiliation, stripping, shaving of the head, forcing the couple and the boy's family to drink urine, forced incarceration of the individuals, social and economic boycott, appropriation of the boy's family's property and levying of huge fines on them. Many of these forms of violence are perpetrated by the caste or community or religious panchayats who act as kangaroo courts and deal out extra-judicial and often medieval, barbaric forms of punishments which are illegal and unknown to the law of the land.

In many of these cases, the police are unsympathetic. They have been known to register false charges of kidnapping, rape against the boy and imprison him. Thus, the role of the police in these cases is usually in support of the perpetrators of the crime because of a shared view of what constitutes the 'honour' of the community. In a case from Agra, Uttar Pradesh, the discovery of the bodies of a couple, provoked both set of parents to come up with disparate theories about the couple's deaths. The boy's kin said that it is a case of honour killing; the girl's family accused the boy of gunning down their daughter before ending his own life. According to witnesses, the couple was

¹⁷ *Id.*, at 215.

¹⁸ AIDWA and other organizations have also experienced that in the cases that they have taken up. It is invariably the girl's family which resorts to violence to stop the relationship or punish the couple.

¹⁹ Brinda Karat & Jagmati Sangwan, *Concepts/Frameworks of Domestic Violence, Community Code and Honour Killings: The Haryana Experience*, (22 March, 2005) (unpublished paper presented in seminar on 'Domestic Violence in India: Issues and Concerns' (on file with The Council for Social Development)).

killed by the girl's family while they were in the midst of getting married at a temple. The girl was found wearing a '*dupatta*' and had vermilion on her head when police found her body. However, the Police lodged an FIR against the deceased boy for murder, which incensed the boy's family, who accused the police of being partisan in their investigation.²⁰

In many cases, the judgements also tend to portray a similar ideology and have sent a girl back to her home or to a state run protective home where they can be kept away from the person they want to be with. In the case of minor girls aged 15 or 16 years, the girls are normally always sent back to their parents' home where they are confined and ill-treated and often coerced into saying that they were not willing partners.²¹

While dealing with cases of crimes and killings in the name of 'honour' AIDWA came across several instances in which the Khap Panchayat, the family of the girl and the police have together been complicit in the crime. Two or three of the cases, which AIDWA has taken up are being highlighted below:

a. Manoj and Babli Case-Haryana

Manoj, a young boy, and Babli, a young girl, of Karora village in Kaithal district, were in their early twenties when they were brutally murdered by members of the girl's family and their associates. Babli and Manoj both belonged to the Banwala *gotra*²². The Jat caste panchayat of Karora village in Kaithal district not only issued diktats in the case to impose economic and social sanctions on Manoj's family to isolate them but also supported and praised the accused (relatives of Babli and a member of the Khap Panchayat) for their heinous killing of the couple.²³ The Haryana AIDWA Branch led by its head, Jagmati Sangwan, provided extensive support to Manoj's mother and sister. An AIDWA team went to the village Karora and mustered support for Manoj's family to end the economic and social isolation. AIDWA organised several protests and demonstrations to force the police to arrest the culprits. They lobbied with different levels of administration through delegations and memorandums to act in the case. They also took the family to the National Human Rights Commission and the National Commission for Women to get justice for them. Moreover, they highlighted the case in the media and in different forums. Volunteers of AIDWA accompanied Manoj's sister to the trial court in which the murder case of Babli and Manoj was being heard as Manoj's sister was under constant threat by the accused and members of the Khap Panchayat. The volunteers supported Manoj's family to fight the case

²⁰ THE TIMES OF INDIA February 10, 2015.

²¹ See Uma Chakravarti, *From Fathers to Husbands: Of Love Death and Marriage in North India in HONOUR*, (Lynn Welchman And Sara Hossa eds., 2005).

²² In Hindu society, the term *gotra* means clan. It broadly refers to people who are descendants in an unbroken male line from a common male ancestor.

²³ THE HINDU, Chennai, (April 2, 2010).

in the Punjab and Haryana High Court which finally gave financial relief to Manoj's family. Presently, AIDWA lawyers are helping Manoj's mother, Chandrapati, to fight an appeal in the Supreme Court against an acquittal of one of the main accused by the High Court.

b. Sonia Rampal Case: Haryana

In 2004, Sonia and Rampal, of Asanda village in Rohtak district, a married couple for one and half year, were declared brother and sister by the Rath Khap Panchayat. They were ordered to terminate their marriage although Sonia at that time was more than five months pregnant. In the Khap's opinion, Sonia and Rampal had violated the community code regarding intra-gotra marriages. Sonia and Rampal were thrown out of the village. Sonia was traumatised and became unwell. When AIDWA volunteers reached the village they found that Sonia urgently needed medical attention and they took her to the Medical College in Rohtak. The next day AIDWA contacted certain well-known human rights advocates and social scientists and visited the Khap Panchayat leaders along with them to persuade them to remove their diktat against Sonia and Rampal. When they did not succeed they approached the District Administration to take action against the Khap Panchayat and to protect the couple. Sonia and her husband's family were then immediately provided with security guards. It is important to mention that in this particular case, it was solely the Khap Panchayat which passed the diktat against the couple and pronounced them brother and sister. Although AIDWA managed to get the case registered against the Khap Panchayat leaders by appealing to the highest administrative and police authorities, the leaders still were not arrested. Ultimately, AIDWA and the concerned family had to get directions from the Punjab and Haryana High Court for the arrest of the persons who had pronounced the diktat. There was also a direction to the Police Commissioner to ensure that the human rights of the young couple were not violated and they lived together peacefully as a married couple in their village. Thereafter, AIDWA had to again partially persuade and partially force the administration to re-habilitate the couple in their village Asanda.

c. Vedpal-Sonia Case: Haryana

Vedpal Maun, a 27 year old medical practitioner of Mataur village in Kaithal district of Haryana, was brutally murdered in full public view with the active participation of nearly 300 villagers in his wife Sonia's village, Singhwal in Jind district on April 22, 2009. In this case, though the boy and the girl belonged to different *gotras*, they lived in adjoining villages and the Khap Panchayat held that they had violated the principle of brotherhood between neighbouring villages. The Banwala Khap had convened a public meeting and declared a reward for the murder of the couple. AIDWA met the family of Vedpal who were in extreme grief and trauma due to the murder and

the merciless manner in which it had been carried out. Vedpal was also the only earning member of his family. AIDWA helped the family to register the case with the police. However, as the police did not act as influential Khap members had been involved in the killing, AIDWA had to organise protests and demonstrations to force the police to arrest the culprits. They have been supporting the family with their legal affairs. They also organised a citizen's convention against the killing in Rohtak and called a number of legal activists and academics working on the issue. AIDWA has been helping Vedpal's father with his cancer treatment and have taken him a number of times to the Rohtak Medical College as the family is extremely poor and illiterate. AIDWA members have also been constantly visiting Vedpal's village to give moral support to the family.

d. Ravinder-Shilpa Case-Haryana

Ravinder Gehlaut had married Sonia, a girl of Kadyan *gotra* from Panipat district. The Kadyan Khap was incensed with the said act as allegedly "there is an agreement that a Kadyan won't marry a Gehlaut". Because of this, the family of Ravinder Gehlaut was ordered to be ousted from the village by the Khap. The family of Ravinder was also forced to pay a fine to the Panchayat. Ravinder, because of the tremendous pressure from the khap, had even tried to commit suicide. However, luckily he survived. AIDWA met Ravinder's family and persuaded them not to leave the village in pursuance of the *fatwa* as they would support and help them. AIDWA again met the District Administration to ask them to provide full security to the family. Due to AIDWA's effort, Ravinder's family was allowed to remain in their village. However, Ravinder and Shilpa could not continue to live in Ravinder's village and have taken refuge in another city. They have requested AIDWA to get a law passed which will protect their freedom to choose a partner of their choice and their freedom of movement. AIDWA is in constant touch with Ravinder's family and have also visited Shilpa's family consisting of her widowed mother and a younger brother as they also need moral support because their daughter and sister has not been allowed to visit them. This was another case in which the Khap Panchayat acted on its own while issuing the diktat.

AIDWA feels that the various crimes that are committed in the name of honour are specific in nature and that the IPC does not reflect or deal with these crimes. The right of young persons to enter into marriage or relationship of their choice also needs to be spelt out specifically in a legislation, as also, their right to bodily integrity and freedom of movement and association. A legislation would also make these rights justiciable against non-state actors whereas under the Indian Constitution, it is only the state which is obligated to enforce fundamental right.²⁴

²⁴ Mr. Raju Ramachandran, Submissions to the Amicus Curiae, Shakti Vahini v. Union of India, Writ Petition (Civil) No. 231 of 2010 (Pending) (SC).

Though the right to choose a partner of her own choice is a basic human and democratic right and is often stated as a right which flows from the Fundamental Rights chapter in the Constitution of India, this right is being denied to young girls in the country primarily because of caste and religious considerations and to control the sexuality of girls. The last few years have seen an increase in the violence that is committed against young persons who dare to transgress the boundaries set by members of their caste or class or religion while choosing their partners. No data or statistics are available for these acts of violence. Honour killing is not treated as a separate category of murder and the other acts of persistent harassment and coercion and assault are not even registered as crimes in the police stations. However, it is estimated that there are 5,000 honour killings internationally every year of which at least a 1,000 honour killings happen in India, 1,000 in Pakistan and 12 in UK.²⁵

These actions in the name of honour are due to a variety of self seeking reasons including economic reasons but are commonly justified on the basis of custom and tradition.²⁶ When the court, in the case of Babli and Manoj detailed above, finally gave a verdict convicting most of the accused, the Khap Panchayats were incensed and several of them got together and started demanding that the section in the Hindu Marriage Act which allowed intra *gotra* and inter caste marriage be deleted so that no such marriages could take place.²⁷

These actions, apart from violating several international conventions and treaties including the Universal Declaration of Human Rights and Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as 'CEDAW'), are also, as stated before, violative of certain fundamental rights in the Constitution of India, including the right to life and liberty which includes the right to bodily integrity, and the right to choose whom to associate with. The actions of the parents of the girls to stop her from exercising her choice also result in curtailment of her freedom to movement and expression.

Though the police have often sided with the girl's family in these cases and the state has been a silent spectator, the couple who are on the run, hounded by the family and the community seem to have no option but to approach the law. Thus, approaching the courts for protection is still seen as the only possible way out of being hounded and there are some positive judgments in these cases. A judge of the Punjab and Haryana High Court, Justice K.S. Ahluwalia, has noted in a 2008 judgment²⁸ that of the 26 matters listed in his court in a day, 10 pertained to marriage between young persons aged 18

²⁵ Honour Based Violence Awareness Network, *Statistics and Data*, International Resource Centre, <http://hbv-awareness.com/statistics-data/>.

²⁶ Chowdhry, *supra* note 6.

²⁷ THE ASIAN AGE, (May 12, 2010); see also Jagmati S. Angwan, THE HINDU, (May 7, 2010).

²⁸ Ashok Kumar v. State, (2008) 25 Civil CC (P&H).

– 21. He also remarked that in the last 4 – 5 years the High Court had been flooded with thousands of petitions in which married couples sought protection. He further observed, “Couples hiding themselves in the corridors of the court, chases by relations, accompanied by musclemen armed with weapons, is not the answer they seek by performing marriage. Society has to insulate these couples.”²⁹ In many of these cases the police are not only unsympathetic but they actually register false charges of kidnapping and rape against the boy and imprison him. As stated above, the role of the police in these cases is usually in support of the perpetrators of the crime because of a shared view of what constitutes the honour of the community.

Activists working in the field have therefore been campaigning for comprehensive measures to deal with these crimes and killings. Unlike certain countries in which legal provisions justify honour killings through various defenses no such legal provision exists under Indian law. However, there is a complete absence of law on how crimes in the name of honour should be dealt with under the law. Lotika Sarkar had also noted the complete absence of laws in certain critical areas of women’s rights and stated:

“The area in which there have been repeated demands for legal intervention for reform, is matrimonial property and the right of the wife to it or not still remains untouched. Over a decade ago the Committee on the Status of Women in India emphasized the importance of women’s rights to matrimonial property and urged the implementation of its recommendation in this regard.”

She had also mentioned the absence of a law to address the problems of home based workers and urged the L.C.to enact the recommended legislation. These areas of critical legal intervention still remain untouched and the lack of law has meant that women lack certain basic economic rights.

The lack of a law in the area of violence against women has meant that women continue to suffer this violence without any legal redress. This violence is the result of young women and men asserting their right to have a relationship of their choice. Stories of the kind of resistance these young persons have put up and the in spite of the torture they have faced in case after case show their tenacity of will to live and love. Thus, the violence has often been perpetrated because of the resistance of young women and men to the dominant sexual normative order and conservative familial ideology. However, the law allows the coercion and abuse that the young woman and man and others who are sympathetic to them face to remain unaddressed.

²⁹ T.K. Rajalakshmi, *In the Name of Honour*, THE FRONTLINE VOL. 26(17), (15 August, 2009) <http://www.frontline.in/static/html/fl2617/stories/20090828261700400.htm>.

B. The Law Proposals by Women's Organizations and Groups and the Law Commission

AIDWA had therefore drafted a standalone proposed law and this was later endorsed by some other women organizations and groups. The National Commission of Women also accepted this proposal with minimal changes. This law is directed against both - the caste and other illegal panchayats and the family members who are implicated in the crimes. One of the main issues that was addressed in this proposed law was the lack of definition of the offences.

Crimes in the name of honour, though they are specific in nature, lack any recognition and definition in the archaic and gendered IPC. Thus, crimes like extradition of a couple or the boy's family from a village on the plea that they had violated the traditional code of conduct and brought "dishonor" to the community and the village, leveling of fines by the Khap Panchayat, economic and social boycott, extreme harassment and assault/torture of a girl within her home, forced marriage and forcible separation were not and are not offences in the IPC. The IPC was framed in 1860 by the British who were not concerned about addressing these crimes. Also, though the various Indian personal laws require the consent of both the boy and the girl when a marriage takes place, in reality, many Indian girls have been and are still being forced and coerced into non-consensual marriages. Arranged marriages remain the preferred mode of marriage across the country in fairly large sections of the society along with other customary norms like dowry. However, it is also true that young persons in both rural and urban India, because of increased interaction and a variety of reasons, are entering into more and more relationships of their choice.³⁰ The right of young people to enter into a marriage or a relationship of their choice therefore needs to be specifically recognized as a part of their fundamental right to life and liberty and the proposal did this. Further, the proposed law lists all the forms of abuse that the couple and those who were sympathetic to them are typically subjected to, in these cases.

The proposed law also provides for police accountability in cases in which the police colluded with the girl's parents or the Khap Panchayats and filed false cases of kidnapping and rape against the boy and his family. Apart from this, the proposals also contain certain preventive and protective measures including providing for shelter homes where the girl and the boy could take shelter and get protection from the police.³¹ The proposed law sought to

³⁰ See Prem Chowdhry, *supra* note 6; Brinda Karat, *supra* note 19.

³¹ Letter dated Sept. 5, 2013 by several women's groups and organizations to Mr. Salman Khurshid, Minister of Law and Justice, Government of India and letter dated 03.08.2010 by AIDWA to Mr. Veerappa Moily, Minister of Law and Justice, Government of India. [Documents available in the AIDWA office]; *Final National Report for 9th AIDWA Conference 2010*, THE AIDWA ONLINE, <http://aidwaonline.org/post/final-national-report-for-9th-aidwa-conference2010>.

make the family, the Khaps and other community members who had resorted to violence subject to this law.

In what could be seen as a step in the right direction, the 19th L.C. also saw the need for a stand-alone legislation on crimes in the name of 'honour'. It also saw the hegemonic and deviant role played by these panchayats in curbing the life and liberty of young couples.³² The L.C. had also seen and examined the law suggested by the AIDWA and adopted by the NCW and referred to the law proposed by the National Commission for Women (hereinafter referred to as 'NCW') in the introduction to their proposals.

However, the proposed law by the L.C. is only directed against the illegal diktats of the community or Khap Panchayats. The 19th L.C., after cursorily mentioning that honour killings and honour crimes are directed specially against women and that men also become targets by members of the girls' family,³³ chose to overlook the fact that many of these crimes are not only committed by the Khap and community panchayats with or without the connivance of the girl's family but on many occasions only by the girl's immediate and extended family who seek to punish the girl and the boy for daring to cross the traditional boundary and repudiating the family's control on the girl's sexuality. Sometimes the family of the boy is also punished to teach them a lesson and to set an example for others. The L.C. gives the following reasons for their proposal,

"The intervention of caste/community assemblies in the name of 'Khap Panchayats', 'Katta Panchayats' etc. in the occurrence of these offences and other related incidents involving serious life and liberty consequences, are frequently noticed. Such assemblies gathered on caste/community lines assume to themselves the power and authority to declare on and deal with 'objectionable' matrimonies and exhibit least regard for life and liberty and are not deterred by the processes of administration of justice. The penal law lacks direct application to the illegal acts of such caste assemblies. Innocent youth are harassed and victimized while such assemblies continue to wield unhindered authority and also seem to resist any suggestion of being subjected to any social control.

*The pernicious practice of Khap Panchayats and the like taking law into their own hands and pronouncing on the invalidity and impropriety of sagotra and inter caste marriages and handling over punishment to the couple and pressurizing the family members to execute their verdict by any means amounts to flagrant violation of rule of law and invasion of personal liberty of the persons affected."*³⁴

³² *Supra* note 4, at 8, 15.

³³ *Id.*, at 1.

³⁴ *Id.*, at 5, 6.

The L.C. seems to be under the impression that only the Khap Panchayats routinely pressurize families to execute their sanctions and the family itself is not involved. It sees the Khap Panchayat as the sole villain. The L.C. thus goes on to suggest that any gathering "with the intention of condemning any marriage, not prohibited by law, on the basis that such marriage has dishonored the caste or community tradition..."³⁵ should be treated as an "unlawful" assembly or congregation and makes every member of this assembly punishable with a minimum of six months and a maximum of one year's imprisonment. Thus, the L.C. makes each participant in the unlawful assembly culpable.

It further creates the offence of endangerment of liberty in a suggested section and states that the offence should be deemed to have been committed if members of such unlawful assembly either individually or collectively "counsel, extort or bring pressure openly or otherwise upon any person or persons to prevent or disapprove of the marriage... or generate an environment of hostility towards such couple or either of them or their relatives..."³⁶ It further adds that acts which lead to social boycott and enforcement of social sanctions will be included in this definition and also broadly includes any other act of harassment whether mental or physical in Clause 3³⁷. This offence has been made punishable with imprisonment of a minimum of 1 year and a maximum of 2 years. The clause is similar to the proposed law by women's groups and incorporates some of the specific crimes suggested by the women's groups. However, it makes these crimes punishable only when they are committed by unlawful assemblies or under their directions.

In another clause, the L.C makes any member of an unlawful assembly or those persons who have acted at the instance of any unlawful assembly punishable, if they try to implement a decision by criminal intimidation

³⁵ *Supra* note 4, at S. 2(1)

³⁶ *Id.*, at 30, Clause 3(1) "The members of such unlawful assembly who in furtherance thereof individually or collectively counsel, exhort or bring pressure openly or otherwise upon any person or persons to prevent or disapprove of the marriage which is objected to by the said members or to generate an environment of hostility towards such couple or either of them or their relatives or supporters shall be deemed to have acted in endangerment shall be punishable with imprisonment for a period of not less than one year and extending upto two years and fine extending to twenty thousand rupees."

³⁷ *Id.*, at 31, Clause 3(2) "Any other person acting at the instance of any member of unlawful assembly or otherwise indulging in the acts of endangerment of liberty shall also be punishable likewise. Explanation: 'Endangerment of liberty' shall include the acts calculated to lead to social sanctions and in particular the following acts: (i) Bringing to bear pressure on the couples or their family or relatives to leave the village or area of residence concerned; (ii) Indulging in any conduct which will impede or is likely to impede, access to markets, community facilities, places of worship or any other necessities of life. (iii) Divesting or disposing the couple or their family of any land or property belonging to them. (iv) Any other act of harassment whether physical or mental."

punishable.³⁸ Criminal intimidation is a crime in the IPC and the L.C. justifies making it a part of this bill by stating that they are suggesting a higher punishment than that specified in the IPC.³⁹

However, acts of the family members of the girl and their extended family and friends, have deliberately not been made punishable. These acts can include sustained harassment and torture, repeated assaults, forced marriage etc., which are not covered by the IPC. It appears that the L.C. is unwilling to make family members accountable for their violence in the name of 'honour'. While the caste or community panchayats have been made punishable for acts endangering the life and liberty of the couple, the L.C. has refused to extend the same treatment to family members of the girl. The L.C. therefore makes a distinction between the public and the private sphere in which the law should not intervene. Indeed, it does not seem to understand that crimes in the name of honour are gendered crimes and the family is the basic site of violence and discrimination against the girl. As defined in General Recommendation 9 of the CEDAW, gender-based violence against women is violence that is directed against a woman because she is a woman or the violence affects women disproportionately.⁴⁰ Radhika Coomaraswamy in her report on 'honour' killings has remarked,

*"Honour is generally seen as residing in the bodies of women. Frameworks of 'honour', and its corollary 'shame', operate to control, direct and regulate women's sexuality and freedom of movement by male members of the family... 'Regulation' of such behavior may in extreme cases involve horrific direct violence – including 'honour killing', perhaps the most overt example of the brutal control of female sexuality – as well as indirect subtle control exercised through threats of force or the withdrawal of family benefits and security. In these contexts, the right of women (and girls) to control their own lives, to liberty or freedom of expression, association, movement and bodily integrity mean very little."*⁴¹

³⁸ *Id.*, at 31, Clause 4 "Any member or members of an unlawful assembly or any other person acting at their instance or otherwise who, with a view to secure compliance with the illegal decision of that assembly in relation to the marriage that is being objected to, indulges in criminal intimidation of the couple or either of them or their relatives or supporters shall be punishable with imprisonment for a term of not less than one year but which may extend to three years and shall also be liable to fine up to thirty thousand rupees provided that if the threat be to cause harm or injury of the description referred to in second part of Section 506 IPC, the maximum punishment shall extend to seven years of imprisonment instead of three years and fine extending to thirty thousand rupees. Explanation: The expression 'criminal intimidation' shall have the same meaning as is given in section 503 of the IPC."

³⁹ *Supra* note 4, at 75

⁴⁰ Convention on the Elimination of all forms of Discrimination Against Women, General Recommendation 19, UN Document, A/47/38 (Eleventh Session, 1993).

⁴¹ Radhika Coomaraswamy, 'Violence against women and 'crimes of honour' Lynn Welchman and Sara Hossain, Honor Crimes, Paradigms and Violence against Women, (Zeds., 2005).

In another statement, after noting that central to the violence committed in honour killings is the subordinate position of women, an AIDWA resolution observes,

"Women are viewed as the property of the family, the caste, and the community. Women's chastity is the "honour" of the community. She has no sovereign right over her body or her sexuality that can be expressed only within the norms laid down by patriarchal cultures and traditions. But it is particularly when she crosses caste and class barriers in her choice of a lower caste man as her partner that the reprisal is swift, cruel, and merciless. By giving herself to a lower caste man, she has defiled the entire caste, the entire community and therefore she has to be punished and he, who has dared to touch a woman of the twice born has to be punished in such a way that no one will dare to repeat such a crime."

*"In a majority of the reported cases where the girl belongs to a higher caste than the boy, both the young people are targets of the violence committed usually by the girl's family....."*⁴²

An analysis of newspaper reports during the last one year shows that in all the cases the girls' families acting on their own or with the extended members of the family have been responsible for the crimes.⁴³ Out of the 21 cases relating to or suspected to be related to crimes of 'honour', the perpetrators have been either the girl's brother or father or both the parents, sometimes along with a relative like the *mama* or *chacha* (brothers of the girl's parents) or a family friend. The cases concern young couples who were in a relationship or marriage of their choice. These cases have also been reported from all parts of the country and mostly concern inter-caste marriages or relationships though in some cases both the boy and the girl belonged to the same caste.

In one such case from Vadodara, Gujarat, a minor girl's parents allegedly murdered her after spotting her in a compromising position with a boy. The police said that her parents took the body to a jungle on the hill with the help of a person and 'hanged it' on a tree to make it look like a suicide. They also cooked up a rape story to take revenge on the minor boy.⁴⁴ In another case a teenage girl was murdered by her parents supposedly to protect their family honour, as she had fallen in love with a youth from another community at a village in Chittoor district, Andhra Pradesh. The Police said that the 17-year-old girl, a first year Intermediate student, had fallen in love with

⁴² Subhashini Ali, *Honour Killings in India* 16, in IN THE NAME OF HONOUR: LET US LOVE AND LIVE, All India Democratic Womens' Association 2010.

⁴³ This data has been taken from all the killings in the name of 'honour' reported in the Times of India, The Indian Express, The Hindu and the DNA newspaper from January 2014 till February 2015.

⁴⁴ Times of India, January 14, 2015.

Suresh (22), a neighbour. While the girl belonged to the Scheduled Tribe, the boy was from a Scheduled Caste community.⁴⁵

In yet another reported case a 26-year-old post graduate woman was murdered in Gurgaon and the police suspected that the crime may be related to honour killing. Her family members told police that she committed suicide by hanging herself. The autopsy report of the deceased however revealed that she did not die due to hanging. It suggested that she was strangled to death and was hanged later—a police official reported.⁴⁶ In another suspected case of honour killing, the police arrested the mother and the elder brother of a 20-year-old girl, who was allegedly set on fire by the two at their house in Mathura district, U.P.⁴⁷ This case shows that women can also be complicit in this crime and can share the same ideology as their male family members.

In a suspected case of honour killing, an 18-year-old girl was killed by her brother for having a relationship with her neighbour at the Kankerkheda police station area in Meerut, U.P. The girl's brother was arrested for killing his sister Bharti, a class 11th student, by slitting her throat as he was unhappy over her relationship with their neighbour.⁴⁸ In all these cases, the immediate family members of the girls were involved in the killing. Though these cases deal with murder which is in a way the ultimate act of violence and is punishable under the law these cases also show that violence in the name of honour is and can be carried out by the girls' parents and the law needs to address this.

The fact that crimes in the name of honour are normally carried out in inter religious and inter caste marriages are also borne out by some of these cases. In one case of alleged honour killing, a minor girl was hanged to death allegedly by her parents for falling in love with a man outside their community. The girl was from a backward class community while the boy belonged to a minority community.⁴⁹ In a suspected case of honour killing, an eight months pregnant teenager was strangled to death allegedly by her two brothers and her body thrown into the canal.⁵⁰ In one case, the Madras High Court ordered a CBI probe into the alleged honour killing of a teenage girl from a backward class community who had eloped with a Dalit youth. The girl's parents attempted to give her in marriage to another person, but the

⁴⁵ Arvit Srivastava, *Baby Raped in West Delhi Police Complex*, THE TIMES OF INDIA, (Jan. 17, 2015) <http://timesofindia.indiatimes.com/city/delhi/Baby-raped-in-west-Delhi-police-complex/articleshow/53999004.cms>.

⁴⁶ IANS, February 2015.

⁴⁷ *Honour Killing: Girl set ablaze by mother, brother in Mathura*, The Express News Service, February 13, 2015.

⁴⁸ THE DNA, February, 7, 2015.

⁴⁹ THE INDIAN EXPRESS, January 30, 2015.

⁵⁰ *Honour Killing: Eight months pregnant girl killed by brothers*, THE DNA, November 28, 2014, <http://www.dnaindia.com/india/report-honour-killing-eight-months-pregnant-girl-killed-by-brothers-2039180>.

couple eloped and got married at a temple. Fearing trouble from the girl's parents, they went to the police. The girl's family members went to police station and took custody of the couple after giving an assurance that they will bring them back once the enquiry is completed on their complaint. However, the girl died under mysterious circumstances and the body was hurriedly cremated by pouring kerosene on it.⁵¹ In an honour killing in Mumbai a 15 year old boy, Abhishek Yadav, who had eloped with his girlfriend (19) from a higher caste from UP to Mumbai, was murdered by her girl's father, and uncle.⁵² In another astonishing case of inter-caste marriage, a young woman was murdered by her brother many years after her marriage in the presence of her children in Tamil Nadu. The couple tried to make up with the girl's family and the woman was in fact living with her grandparents when she was killed.⁵³

Recently in Rohtak, Haryana, a young girl Nidhi Barak, (19) and Dharmender Barak, (21) of Jat-dominated Garnauthi village were killed by the girl's family when they were on the run in order to solemnize their marriage. The girl's father accompanied by several others overpowered the runaway couple and killed them using sharp-edged weapons.⁵⁴ In another case from Haryana a teenaged couple both aged 16 were found dead days after they went missing. They were studying in Class XI in a school at Nahar and belonged to different castes; the girl to the Ahir community and the boy to the Rajput community and the boy's family members alleged that the girl's father had threatened the former's family.⁵⁵

However, it seems that the violence can be triggered even if both the boy and the girl belong to the same caste. This shows that choice marriage alone is enough to incense the parents and the girl's sexuality must be controlled at all cost and in case after case the police inevitably side with the parents and relatives of the girls. A 23-year-old girl allegedly committed suicide by consuming poison at Uchipuli, Chennai Tamil Nadu triggering speculation that it might be a case of 'honour killing'. The woman had married a 22-year-old man from her same backward class community.⁵⁶ In Punjab a couple, who had married against their parents' will, was mercilessly killed. The deceased couple, Sandeep Kumar, 24, and Khushboo, 22, who belonged to a Dalit community (Mazhabi Sikhs) and were immediate neighbours had eloped and got married. Fearing honour killing the couple remained away from their village in the Hoshiarpur district of Punjab for three months. However, they returned to the village thinking their parents, who were against the marriage, must have reconciled

⁵¹ THE EXPRESS NEWS SERVICE, November 12, 2014.

⁵² THE TIMES OF INDIA, June 21, 2014.

⁵³ THE HINDU, June 26, 2014.

⁵⁴ Sat Singh, *Honour Killing: Year on, dead couple not 'forgiven'*, THE HINDUSTAN TIMES, September 21, 2014, <http://www.hindustantimes.com/chandigarh/honour-killing-year-on-dead-couple-not-forgiven/story-6iGb9wIxpbiwRQR5VidIj.html>.

⁵⁵ THE STATESMAN, January 26, 2014.

⁵⁶ THE HINDU, January 25, 2015.

to the marriage. Fearing brutality, the couple had also approached Punjab and Haryana High Court which had asked the Punjab police to provide protection to them. The police, however, did not act on the court orders.”⁵⁷ This case shows that in some cases even when the court orders police protection they refuse to give showing how deeply complicit they are in the crime

Recently in Rohtak, Haryana a young girl Nidhi Barak, 19, and Dharmender Barak, 21, of Jat-dominated Garnauthi village were killed by the girl’s family when they were on the run in order to solemnize their marriage. The girl’s father accompanied by several others overpowered the runaway couple and killed them using sharp-edged weapons.⁵⁸ In another case from Haryana a teenaged couple both aged 16 were found dead days after they went missing. They were studying in Class XI in a school at Nahar and belonged to different castes; the girl belonged to the Ahir community and the boy to the Rajput community, and the boy’s family members alleged that the girl’s father had threatened the former’s family.⁵⁹

Another recent case in Delhi of Bhawna Yadav and Abhishek Seth uncovered the horror stories of urban suburbs when there was an alleged honour-killing of a 21-year-old College girl by her parents because she chose to marry outside her caste. According to the police the parents of the girl, Bhawna, disapproved of her decision to marry 24-year-old Abhishek Seth. Once the two got married at an Arya Samaj temple on November 12, Bhawna’s parents threatened the couple but her father Jagmohan later persuaded her to return home so that the family could solemnise the union formally. However, on November 15, 2014, according to the confession by the girl’s father and mother, after their arrest, they assaulted her and then strangled her to death.⁶⁰

The heart rending stories of the brutality and extreme form of violence that young couples have been subjected to by the girl’s family are just the tip of the ice-berg. In some of the stories the girl and the boy have had to face various forms of abuse before the violence escalated and they were killed. Activists working in the field have reported the innumerable forms of violence and indignities that young people and particularly young women have to undergo on a daily basis if they try to enter into a relationship of their choice. Thus, newspaper reports in the past one year and even prior to this show that the family has almost always played a critical role in perpetrating these

⁵⁷ Sandeep Kumar, *Honour Killing in Hoshiarpur: Couple backed to death by girl’s father, family*, INDIA TODAY (Jan. 5, 2015) <http://indiatoday.intoday.in/story/honour-killing-hoshiarpur-punjab-dalit-couple-hacked-to-death-by-girls-father-family/1/411556.html>

⁵⁸ *Supra* note 54.

⁵⁹ THE STATESMAN, January 26, 2014.

⁶⁰ Chandan Nandy, *Honour Killing of 21 Year old Delhi College Girl Reflects Fractured Modernity*, THE ECONOMIC TIMES (Nov. 20, 2014) <https://blogs.econometrictimes.indiatimes.com/nandygram/honour-killing-of-21-year-old-delhi-college-girl-reflects-fractured-modernity/>

Crimes. However, in sharp contrast to the law proposed by women's organizations (hereafter the Women's Law), the L.C. has not addressed this. The L.C. seems unconcerned about preserving the oppressive family structure and violence against women.

Further, in a number of cases, it will be seen that the girl and boy who were punished were in relationship with each other but L.C.'s proposed Bill refuses to deal with this. The proposed Bill only deals with marriages or intended marriages⁶¹. Even a suggestion to the L.C. that relationships akin to marriage should be included was rejected as the commission felt that "bringing such relationship within the scope of this law may unduly dilute its efficacy and is likely to meet with resistance/and disapproval from various quarters and dimensions. As of now, the marriage laws of our country do not cognize live-in relationships as a form of marriage."⁶² (sic.) Thus, the L.C. is only committed to ensuring the life and liberty of those couples who are married or intend to marry while others can be left to be dealt with as the 'khaps' within and outside the homes deem fit.

The L.C. rejects including the family within the proposed law by dismissively stating:

"...it is felt that by enlarging the scope of the proposed law to include offensive conduct of individual family members/relatives, the integrity of the proposed law will be lost in so far as it aims to replace or substitute the entire corpus of existing criminal law on the subject..."

On the subject of including forced marriage which is not covered by any section of the IPC, the L.C. evasively states,

"The problem of forced marriages has a different dimension as the members of khap panchayats and the like do not come into picture there. They can be effectively taken care of within the ambit of general penal law and Child Marriages (Prohibition) Act..."

This shows that the L.C. is determined to keep the family out of the scope of the law even though it is the family which is often directly involved in forced marriages. The L.C. seems to overlook the fact that forced marriages do not only take place with children but with adult women as well in India and therefore the Child Marriage Prohibition Act cannot provide for this as far as adult women are concerned. Further, in implying that the law as it exists adequately covers coercive actions and acts by the woman's family the L.C. glosses over the fact that it has itself proposed a special law to deal with the "pressure" exerted by the khap panchayats collectively or individually and had

⁶¹ *Supra* note 4, at 30.

⁶² *Id.*, at 20.

made 'harassment' of the couple punishable. The pressure and harassment that is, at times, exerted by the family and relatives is as violent and severe as that exerted by the khaps. The L.C. itself acknowledges that the offence of criminal intimidation in the IPC does not prescribe a proportionate punishment for crimes in the name of 'honour' and has itself proposed a section which gives a higher punishment for offences dealing with criminal intimidation.

It is pertinent to mention that the L.C. had the draft proposal agreed to by women's organizations and endorsed without significant changes by the National Commission for Women and admits that the "bill" is closer in thinking to the law proposed by the L.C. but again suggests that "offences under the general law are also included". In doing so the L.C. ignores the specific nature of the violence committed in these cases and the fact that the sustained physical and mental violence which girls and boys are subjected to in cases of 'honour' crimes are not reflected in the IPC. The kinds of physical and mental abuse and torture that the girl and the boy and often his family suffer cannot be adequately addressed by the offences of 'criminal intimidation', 'assault', 'hurt' or 'grievous hurt' in the IPC which define one time actions. Criminal intimidation for instance covers "threats" made by a person to another "with any injury to any person, reputation or property"⁶³ and is punishable with imprisonment upto two years or with fine or both. It is clearly inadequate to define and cover a sustained form of harassment and intimidation that the girl and the boy may suffer over a period of time.

It may be argued that other sections on Assault and hurt in the IPC could be invoked in cases of physical abuse. For instance, the section on 'hurt' in the IPC seeks to punish a person who "causes bodily pain, disease or infirmity" to any person intentionally and this has been made punishable with upto 1 year of imprisonment.⁶⁴ This section also however, does not and cannot do justice to victims of violence in the name of 'honour' who are subjected to various forms of assaults and hurts over a period of time in their homes.

Grievous hurt, which is a more serious offence has been defined in the IPC as certain kinds of hurt including 'emasculatation', 'permanent privation of

⁶³ Indian Penal Code, 1860, §506 ("Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.")

⁶⁴ Indian Penal Code, 1860, §319 ("Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Section 323 Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.")

the sight of either eye', 'permanent privation of the hearing of either ear' etc.⁶⁵ This section apart from being couched in archaic language seems to cover only specific kinds of grievous hurts. The definition is therefore restrictive.

This is why an earlier L.C. Report⁶⁶ had recommended separate sections in the law to address the injury and hurt caused by acid attacks and this was accepted by the Government. Another specific offence to punish domestic violence of certain kinds which was introduced in the IPC was the offence of cruelty in §498A. This offence was created to deal with dowry harassment and grave forms of domestic violence, both physical and mental by a woman's husband or his family members on her. The insertion of §498A IPC was a recognition that the IPC did not have a provision which dealt with domestic violence.

Further, though the proposed women's bill and the NCW specified the various kind of crimes that were committed by the 'Khap' panchayats and the family it contained a specific provision "that the bill shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force." This meant that the existing provisions of the IPC could also, in any case be invoked whenever necessary. The L.C. which had also listed some of these crimes mentioned in the proposed women's law and NCW to deal with for example social and economic boycott and other pressures exerted by the 'khap' panchayats, also incorporated this section in their proposed bill so that there was no overlapping of sections of the bill with those in the IPC.⁶⁷ In any case, apart from the violence being qualitatively and quantitatively different from the kinds of violence described in the IPC, naming and describing the crime in a separate law would make it easier for prosecutions to take place and for data to be collected. The police and others connected with the law and order machinery would also not be able to make an excuse that no crime was committed.

⁶⁵ Indian Penal Code, 1860, § 320 ("The following kinds of hurt only are designated as "grievous":-

First- Emasculation.

Secondly- Permanent privation of the sight of either eye.

Thirdly- Permanent privation of the hearing of either ear,

Fourthly- Privation of any member or joint.

Fifthly- Destruction or permanent impairing of the powers of any member or joint.

Sixthly- Permanent disfiguration of the head or face.

Seventhly- Fracture or dislocation of a bone or tooth.

Eighthly- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."; §325, Indian Penal Code, 1860, "Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.")

⁶⁶ 226th Report of the Law Commission of India, *The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime*, (2008), <http://law-commissionofindia.nic.in/reports/report226.pdf>.

⁶⁷ *Supra* note 4, at 11-12.

The women's law also seeks to affirmatively provide a safe environment to the couple and the affected family in the exercise of their constitutional rights as free and equal citizens. The women's law therefore also contained certain positive provisions which would facilitate young persons to enter into a relationship of their choice and which would make it easier for young couples to be together. Their law therefore provided that if young couples declared their age and intention to be together before any government official or police officer, he would give this information to the relevant police station and no action could be taken by the police against the couple. In a further move to encourage 'choice' marriages the bill also provided for an amendment in the Special Marriage Act which allows for civil marriages between two consenting adults to take place.

The Special Marriage Act currently requires the couple to post a notice one month before their marriage, of their intention to marry.⁶⁸ The marriage is undertaken thereafter only if no objections are raised to their marriage. Vigilante community councils and others including members of the girl's family and their 'sympathisers' often keep an eye on these notices, and oppose any marriage outside their caste or religion. It has also been reported that sometimes notice of the intended marriage is also sent to the homes of the parties with inevitable consequences. Apart from this documentary proof of birth, of residence in the place of marriage and other technicalities have to be met before a marriage is registered.⁶⁹ The proposal by the women's organization and the NCW had suggested that this waiting period of one month should be done away with. The decision to marry or not to marry is a choice of the couple alone, and the law should not ask for objections from others- especially when this provision leads to further violence. However, the L.C. Bill does not suggest this amendment to make marriages between two consenting adults easier. This shows the extent to which the Commission wanted to encourage 'choice' marriages without interference from members of the family and others.

An extremely important amendment which has been suggested by the Women's Bill seeks to make the police accountable for any illegal or wrong action that they might take against the couple. As detailed above, women's organizations and others fighting these cases on the ground have had a bitter experience particularly with the police as they were prone to side with the parents and the relatives of the girl and register false cases of rape and abduction against the boy and others who supported the couple including the boy's relatives. The boy, in many cases was then placed under arrest while the girl was either sent back to her parental home to be further harassed and coerced into

⁶⁸ Special Marriage Act, 1954, §5, ("Notice of intended marriage.—When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.").

⁶⁹ *Supra* note 3, at 492.

giving up the relationship and/or be subjected to violence. The bill thus contained a provision that the couple could make a declaration that they were voluntarily together and, if thereafter, a police personnel took any action against the couple or one of them, he would be deemed to have committed an offence and could be sentenced with imprisonment upto 3 years.⁷⁰ The L.C. Bill did not contain any such provision.

Apart from this, the Women's law also tries to provide for the security and protection of the couple. In order to ensure that the young couples are safe when they are forced out or ran away from their homes, the Women's law had a provision which mandated State governments to provide for shelter homes and security for these couples.⁷¹ The proposal also envisaged financial support for the rehabilitation of the runaway couple.⁷² The L.C.'s proposed Bill, however, did not provide for any of these.

The L.C. has stated that there was no need to specially provide that honour killings would amount to murder. An earlier Government Bill had suggested a special category of murder in the murder clause of the Penal Code if the killing was done by any person or persons acting in concert with the member of the family or a member of the body or group, clan.⁷³ The Bill by AIDWA had also suggested that the clause should be inserted into the IPC that honour killings will always amount to murder for the reason that a plea should never be raised in court that a person who kills in the name of honour does so under pressure from his community or relatives or conceives this to be his moral responsibility as this could in certain instances gain the sympathy of the judge and lead to acquittal or lessening of sentences.⁷⁴

Thus, while the L.C. feels that the action taken by the 'Khap' panchayats and community and religious councils amounts to a "flagrant violation of (the) rule of law and invasion of personal liberty of the persons affected" it refuses to view the family as an arena in which the personal liberty

⁷⁰ The Prevention of Crimes in the Name of 'Honour' and Tradition Draft Bill, 2010, All India Democratic Women's Association, §9 ("(ii) Any action taken against the couple or either of them after a declaration made under sub-section (i) by a police personnel shall amount to an offence and shall be punishable with imprisonment upto three years and with fine.").

⁷¹ *Supra* note 3, at 7, "Clause 11. Duty to provide shelter homes: It shall be the duty of the Central and State Governments to provide homes for couples in need of shelter and a safe place to stay. There should be adequate security for the protection of these couples in these shelter homes."

⁷² *Supra* note 3, at "Clause 12 (i) All fines levied under this act shall be given to the couple and their family members whose rights have been violated.

(ii) The State Government shall also provide for financial support and rehabilitation of the victims of crimes under this Act in their State compensation and rehabilitation schemes."

⁷³ The Indian Penal Code and Certain Other Laws (Amendment) Act, 2010 (The Bill had also sought to define honour and included choice marriages and relationships by choice in the definition. It had further sought to shift the burden of proof in cases of honour killing).

⁷⁴ Dilip Premnarayan Tiwari v. State of Maharashtra, (2010) 1 SCC 775; State of U.P. v. Krishna Master, (2010) 12 SCC 324 : 2010 AIR SCW 4733.

of a girl is violated and in which extreme violence takes place against her. The unwillingness of the L.C. to challenge these crimes by the family and other individuals shows its conservative and patriarchal approach.

The right to choose a partner in marriage or have a relationship with anyone one chooses is a fundamental right which flows from the right to privacy, life and liberty and the right to bodily integrity.⁷⁵ However, the “tragic reality is that today thousands of young women and men are being harassed and murdered because they dared to exercise their constitutional right to marry (or be in a relationship).⁷⁶ Only a law along the lines of the draft law suggested by the women’s organizations and groups can even aspire to make a difference by recognizing and punishing abuse and torture within the family and outside. Women’s groups are not uncritical about the law and do not have complete faith in it. However, they know that they have to use the law while they fight cases on the ground. They also see the law as an instrument they can use to further their struggle against crimes in the name of honour and they try to mould and remake the law according to their experience and perspective.

⁷⁵ The Constitution of India, art. 21, “Protection of life and liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law”.

⁷⁶ Vina Mazumdar, *In a Convention on Honour Killing*, organized by AIDWA, New Delhi, 2010.