



# When Honour Overrides Justice: The Evidence Act's Role In Honour Killings In India

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## ARTICLE INFO

## ABSTRACT

Society is changeable. Honor killings remain a pervasive social issue in India, claiming lives despite constitutional safeguards and legislative efforts. This study investigates the intersection of societal notions of honor and the judicial system, with a particular emphasis on the Indian Evidence Act of 1872. It critically analyzes how specific provisions within the Evidence Act can either facilitate or obstruct justice in cases of honor killings. The research highlights key challenges faced by prosecutors, including the absence of direct witnesses, reliance on circumstantial evidence, and the manipulation of testimonies by families and communities complicit in these crimes. This article identifies significant loopholes within the Evidence Act, such as the lenient treatment of "confessions" made to family or community members and the subjective interpretation of "dying declarations," which may inadvertently shield offenders. Additionally, it explores societal and judicial biases that contribute to leniency in these cases, often justified under the pretext of cultural or familial honor. Through an analysis of landmark judgments and real-world examples, the research underscores the urgent need for reforms in evidentiary standards and judicial perspectives. It advocates for victim-focused approaches, enhanced witness protection mechanisms, and legal reforms tailored to address the unique challenges associated with honor killings. The paper concludes with a call for a comprehensive strategy that includes legislative amendments, judicial training, and public awareness initiatives to ensure justice prevails over entrenched societal norms.

**Key Words :** Honor killings, Social norms, Family honor, Caste system, Indian Penal Code (IPC), Constitutional rights, Culpable homicide, Judicial interpretations, Indian Evidence Act.

## Introduction:

Honour killings are heinous crimes where individuals, often young couples, are killed for allegedly dishonoring their families. These incidents are particularly prevalent in rural and semi-urban areas of India, where patriarchal structures dominate societal norms. The driving factors include inter-caste or inter-religious marriages, elopement, or relationships deemed inappropriate by the community. While Indian law criminalizes such acts, the existing legal framework, including the Indian Evidence Act, presents challenges in securing convictions.

Honour killings involve the murder of individuals, predominantly women, by their family members who believe that the victim has brought dishonor upon the family or community. Such acts are often linked to inter-caste or inter-religious relationships, refusal of arranged marriages, or other behaviors perceived as transgressions against traditional norms. Despite India's constitutional guarantees of individual rights and freedoms, honour killings persist, particularly in regions with strong patriarchal and caste-based structures. Honor killing, a deeply rooted and complex social phenomenon, continues to plague India, despite efforts to curb this abhorrent practice. This form of gender-based violence, where individuals are murdered by family members for perceived transgressions of societal and cultural norms, remains a significant challenge in the country. Understanding the underlying causes and the legal implications of honor killings is crucial in addressing this persistent issue and ensuring the protection of vulnerable individuals.<sup>1</sup>

Researchers have emphasized the intricate interplay of societal and cultural factors driving the persistence of honor killings in India. Key contributors include entrenched patriarchal power dynamics, strict gender role expectations, and an unwavering focus on preserving family honor. Furthermore, the nexus between honor-based violence and the inadequacy of effective legal measures to combat it has reinforced a cycle of impunity, allowing such crimes to continue unchecked.<sup>2</sup>

The notion of family honor in Indian society is closely intertwined with caste, religion, and gender norms. Anthropological research highlights how patriarchal structures exert strict control over women's autonomy, particularly in matters of marriage and sexuality. Honor is frequently equated with female chastity, leading to violent repercussions for any perceived violations of these societal expectations.<sup>3</sup>

Honor killings are brutal crimes carried out under the guise of preserving familial or societal "honor." Often directed at women and individuals from marginalized communities, these acts expose profound shortcomings in both legal and social systems. While India possesses a comprehensive legal framework, including the Indian Penal Code (IPC) and the Indian Evidence Act, the continued prevalence of such crimes raises concerns about the effectiveness of these measures in curbing them. This research paper seeks to explore the changing dynamics of honor killings in India, analyzing their root causes, the existing legal framework, and the challenges involved in addressing this widespread issue.

### Meaning and definition of Honour killing

Honor killings involve the murder of individuals—often young couples—by their families or communities, who view the victims' actions, such as inter-caste or inter-religious marriages, elopement, or defiance of traditional norms, as a source of shame. These heinous acts are deeply entrenched in patriarchal traditions, caste hierarchies, and communal honor codes.<sup>4</sup>

'Honour Crimes' can be elucidated as violence in the name of imposing certain moral values, the transgressions of which are perceived as intolerable.<sup>5</sup>

"Honour Killing" refers to the homicide or coerced suicide of an individual by a family or clan member, or a contracted assassin, based on the suspicion or implication that the individual has compromised their virtue, thereby tarnishing the family's honour, or, in other terms, has engaged in immoral conduct, thus bringing disgrace to their family.<sup>6</sup>

Human Rights Watch characterises 'honour killing' as acts of retribution, typically resulting in death, perpetrated by male relatives against female relatives deemed to have brought dishonour to the family, often

<sup>1</sup>Dorjee, T., Baig, N., & Ting-Toomey, S. (2012). A Social Ecological Perspective on Understanding "Honor Killing": An Intercultural Moral Dilemma. In *Journal of Intercultural Communication Research* (Vol. 42, Issue 1, p. 1). Taylor & Francis. <https://doi.org/10.1080/17475759.2012.723024>

<sup>2</sup>Rafique, H., Tariq, M., & Khan, S. A. (2021). Negotiating the Societal and Cultural Impact on a Perpetrator's Psyche in Elif Shafak's *Honour*. In *Sir Syed Journal of Education & Social Research (SJESR)* (Vol. 4, Issue 2, p. 109). [https://doi.org/10.36902/sjesr-vol4-iss2-2021\(109-118\)](https://doi.org/10.36902/sjesr-vol4-iss2-2021(109-118))

<sup>3</sup>Chowdhury, P. (2007). "Contentious Marriages, Eloping Couples: Gender, Caste, and Patriarchy in Northern India." *Modern Asian Studies*, 41(6), 1069-1101.

<sup>4</sup>National Crime Records Bureau (NCRB). (2021). *Crime in India Statistics*. Available at NCRB Website

<sup>5</sup>Vitoshka, D., 2010. *The Modern Face of Honor Killing: Factors, Legal Issues, and Policy Recommendations*. *Berkeley Undergraduate Journal*, 22(2).

<sup>6</sup> Id.

due to reasons such as refusal to participate in an arranged marriage, being a victim of sexual assault, or committing adultery."<sup>7</sup>

Honour killings involve murdering individuals for perceived dishonor brought upon the family or community. Regions like Haryana, Uttar Pradesh, and Rajasthan report high incidences, often influenced by caste panchayats (khap panchayats).

### **Factors and reasons for honour killings in India**

#### **1. Patriarchal Social Structure**

Honour killings in India are intricately woven into the patriarchal structure of society. Such acts often occur when individuals challenge traditional gender roles or familial authority, particularly concerning marriage and relationships. In patriarchal frameworks, women are regarded as custodians of family honor, subjecting their actions to relentless scrutiny. Research shows that families view inter-caste or inter-religious unions as threats to their social prestige, often leading to these extreme measures.<sup>8</sup>

#### **2. Caste System and Social Hierarchies**

Despite being legally prohibited, the caste system continues to exert significant influence in Indian society. Inter-caste marriages or relationships frequently provoke honor killings due to the perceived breach of caste purity. The entrenched rigidity of caste hierarchies often leads to violent retaliation against individuals attempting to cross these boundaries. Studies reveal that caste-based violence is particularly rampant in rural areas, where adherence to traditional norms is more pronounced.<sup>9</sup>

#### **3. Resistance to Inter-religious Marriages**

Honour killings are closely linked to inter-religious interactions, which are frequently regarded as dangers to communal cohesion. Families may resort to violence to protect cultural and religious identities, rationalizing such actions as safeguarding community honor. Legal experts suggest this reflects broader societal resistance to secular values and individual autonomy in personal decisions.<sup>10</sup>

Source: Hasan, Z. (2011). "Religion and Marriage in India: Exploring Honor-Based Violence." *Indian Journal of Human Rights*, 12(2), 78-92.

#### **4. Role of Community and Clan (Khap) Influence**

In regions like Haryana, Rajasthan, and Uttar Pradesh, informal community councils known as khap panchayats impose strict social codes. These councils often endorse or mandate honor killings to uphold traditional practices, particularly in cases involving same-gotra (clan) marriages. Scholars note that the unchecked authority of these councils perpetuates violence and undermines formal legal systems.

Source:

#### **5. Weak Legal Framework and Enforcement**

Despite the criminalisation of honour killings under Indian law, the lack of specific laws and protracted legal procedures allow the practice to continue. Community support for such acts often discourages reporting and prosecution. Experts emphasize the need for stronger legal enforcement and public awareness campaigns to address this deeply rooted issue.<sup>11</sup>

#### **6. Gender Inequality and Lack of Empowerment**

The occurrence of honor killings is worsened by the subordinate status of women in various regions of India. Factors such as limited access to education, economic reliance, and lack of decision-making authority make women especially susceptible to control by their families and society. Advocates argue that lasting solutions can be found in empowerment programs that focus on promoting gender equality.<sup>12</sup>

#### **7. Cultural and Traditional Norms**

Families frequently defend honor killings as a way to preserve cultural and traditional values, placing the family's reputation above individual rights. This cultural conservatism creates an environment where violence is seen as a legitimate method for maintaining social order. Anthropological research emphasizes how deeply rooted traditions continue to sustain these harmful practices, all in the name of safeguarding honor.<sup>13</sup>

### **Honour Killing and Legislative Measures in India**

<sup>7</sup> Human Rights Watch, n.d. *Violence against Women and 'Honour Crimes'*

<sup>8</sup> Patel, R. (2010). "Honor Killings in the Patriarchal Framework." *International Journal of Social Studies*, 47(3), 105-120.

<sup>9</sup> Jodhka, S. S. (2014). "Caste and Honor Killings in India: A Socio-Legal Perspective." *Economic and Political Weekly*, 49(31), 39-46.

<sup>10</sup> Gupta, D. (2009). "The Role of Khap Panchayats in Honor Killings." *Journal of Rural Studies*, 25(1), 62-71.

<sup>11</sup> Baxi, P. (2012). "Legal Responses to Honor Killings in India." *Indian Law Review*, 3(4), 255-276.

<sup>12</sup> Sharma, A. (2013). "Gender and Violence: Exploring Honor Killings in India." *Journal of Gender Studies*, 22(2), 115-130.

<sup>13</sup> Banerjee, T. (2015). "Culture, Tradition, and Honor-Based Violence." *Anthropological Quarterly*, 88(1), 71-90.

In India Government through the earlier legal provision i.e. Indian Penal Code 1860 tried to control the heinous crime Honour Killings. The cases of the said crime were tried under following sections :

- Section 302 -Punishment for murder.
- Section 307-Attempt to murder.
- Section 120B-Punishment of criminal conspiracy.
- Section 34-Acts done by several persons in furtherance of common intention.
- Section 364A- Kidnapping for ransom, etc.
- Section 354-Assault or criminal force to woman with intent to outrage her modesty.

Due to the recent amendment in the Indian Penal Code of 1860, both the title and section numbers have been revised. The updated title of the Act is the Bhartiya Nyay Sanhita 2023. The newly revised sections concerning murder and other related provisions under the Bhartiya Nyay Sanhita 2023 are outlined as follows:

- Section 101 Punishment for murder.
- Section 108 - Attempt to murder.
- Section 61(2)- Punishment of criminal conspiracy.
- Section 36- Acts done by several persons in furtherance of common intention.
- Section 140- Kidnapping or abducting in order to murder or for ransom, etc.
- Section 74- Assault or use of criminal force to woman with intent to outrage her modesty.

In addition to the Indian Penal Code 1860 (now the Bhartiya Nyay Sanhita 2023), other provisions have also been included, such as the Special Marriage Act of 1954.

This Act safeguards inter-caste and inter-religious marriages, but it lacks effective enforcement mechanisms.

### **Role of Indian Evidence Act**

In addition to the aforementioned criminal provisions, the Indian Evidence Act of 1872 plays a crucial role in delivering justice to victims of crime in India. While the Indian Evidence Act offers mechanisms for prosecuting honor killings, challenges remain due to societal norms, witness hesitancy to testify, and the secretive nature of these crimes. Legal experts and human rights activists have urged for reforms to address these issues more effectively. For example, the Law Commission of India's 242nd report recommended the creation of specific legislation to address honor crimes, highlighting the necessity of a comprehensive legal framework.<sup>14</sup>

The Indian Evidence Act, originally enacted in 1872, governs the admissibility of evidence in Indian courts. As part of the modernization of Indian laws, it has been proposed to be renamed under the Bharatiya Sakshya Bill, 2023, with the new title being "Bharatiya Sakshya Adhiniyam, 2023."

The Bharatiya Sakshya Adhiniyam, 2023 plays a crucial role in the prosecution of honor killings by setting the guidelines for the admissibility and assessment of evidence in Indian courts. Important provisions related to such cases include:

### **Section 8: Motive, Preparation, and Previous or Subsequent Conduct ( New Section No.6 as per Bharatiya Sakshya Adhiniyam, 2023)**

This section allows the court to consider the accused's motive and conduct before and after the crime. In honour killing cases, evidence of familial or societal pressure, prior threats, or actions indicating disapproval of the victim's behavior can be crucial in establishing intent.

**Section 10: Things Said or Done by Conspirator in Reference to Common Design (New Section No. 8 as per Bharatiya Sakshya Adhiniyam, 2023)** When multiple individuals are involved, as is often the case in honour killings, this section permits the inclusion of statements or actions by any conspirator in furtherance of the common intention, aiding in demonstrating collective culpability.<sup>15</sup>

### **Section 32(1): Cases in Which Statement of Relevant Fact by Person Who Is Dead or Cannot Be Found, Etc., Is Relevant (New Section No. 27(1) as per Bharatiya Sakshya Adhiniyam, 2023)**

This provision makes "dying declarations" admissible. If a victim makes a statement about the cause of their death before succumbing to injuries, it can serve as critical evidence in court.

### **Section 114: Court May Presume Existence of Certain Facts (New Section No. 50 as per Bharatiya Sakshya Adhiniyam, 2023)**

<sup>14</sup> Law Commission of India Report No. 242 (2012): Prevention of Interference with Freedom of Matrimonial Alliances

<sup>15</sup>UN Women. (2019). Understanding Honour Killings. Available at UN Women Official Website

This section empowers the court to presume the existence of certain facts based on the evidence presented. For instance, if a victim was last seen with the accused, the court may presume the accused's involvement unless proven otherwise.

### **Section 106: Burden of Proving Fact Especially Within Knowledge (New Section No. 42 as per Bharatiya Sakshya Adhiniyam, 2023)**

In situations where the accused has special knowledge of the facts pertaining to the crime, this section places the burden of proof on them to provide an explanation, which is particularly pertinent in honour killing cases involving family members.

### **Failure of Indian Evidence Act 1872 (Bharatiya Sakshya Adhiniyam, 2023)**

The Indian Evidence Act, enacted in 1872, forms the backbone of evidentiary rules in Indian courts. However, it falls short in dealing with honour killings due to several reasons:<sup>16</sup>

#### **1. Weakness in Admissibility of Evidence**

**Hostile Witnesses:** Family members or community members who initially testify against the accused often turn hostile under pressure, leading to acquittals.

**Circumstantial Evidence:** Honour killings often occur in private settings with limited direct evidence. The Act's reliance on direct evidence hampers conviction rates.<sup>17</sup>

#### **2. Presumption of Innocence**

The Act places the burden of proof on the prosecution. In cases where the accused claims a lack of direct involvement or blames external factors, proving guilt becomes challenging.<sup>18</sup>

#### **3. Community Collusion**

Evidence is often destroyed or fabricated, and witnesses are intimidated. The Act lacks provisions to account for such systemic interference in honour killing cases.<sup>19</sup>

#### **4. Inadequate Forensic Evidence**

Forensic capabilities in rural areas, where many honour killings occur, are limited. This results in a lack of corroborative evidence for prosecution under the Evidence Act.<sup>20</sup>

#### **5. Judicial Interpretation**

Courts have emphasized the use of Section 106 of the Evidence Act 1872, which places the burden of proof on the accused to explain circumstances surrounding the crime.<sup>21</sup>

### **Role of Judiciary**

The Indian judiciary has played a pivotal role in combating honour killings by interpreting existing laws, delivering landmark judgments, and issuing guidelines to curb this menace.

In the absence of a specific statute addressing honor killing as a criminal offense, judicial precedents play a pivotal role. Courts in numerous cases have reiterated that crimes committed in the name of protecting honor constitute a blatant violation of the Indian Constitution and are subject to stringent punishment under the law. In *Bhagwan Dass v. State*,<sup>22</sup> the court examined the brutal practice of honor killings, considering the perpetrators' motives, and concluded that such acts fall under the "rarest of rare cases," warranting the death penalty.

Similarly, in *Sujit Kumar v. State of Uttar Pradesh*,<sup>23</sup> the Supreme Court emphasized that as a free, secular, and democratic nation, India cannot tolerate honor killings or harassment of couples.

In *Lata Singh v. State of Uttar Pradesh and Others*,<sup>24</sup> the court condemned honor killings as "barbaric, cold-blooded murders" devoid of any honor. Furthermore, it advocated for the encouragement of inter-caste and inter-faith marriages, recognizing their role in strengthening the country's social and secular framework.

Likewise in *Armugan Servai v. State of Tamil Nadu*,<sup>25</sup> the court strongly criticized the unconstitutional practices of Khap Panchayats, which often interfere in the personal lives of individuals, impose arbitrary decisions, and promote honor killings. Such actions, including physical assaults and unlawful killings, fall under the "rarest of rare cases," justifying capital punishment.

<sup>16</sup>Ratanlal & Dhirajlal. (2020). *The Indian Evidence Act*. LexisNexis Publications

<sup>17</sup> Srivastava, S. (2021). *Hostile Witnesses and Challenges in Prosecution*. *Indian Law Journal*, Vol. 47(2).

<sup>18</sup> Datar, A. (2019). *Evidentiary Challenges in Honour Killings*. *Harvard South Asia Review*, Issue 24.

<sup>19</sup> *Indian Journal of Criminology*. (2020). *Impact of Community Collusion in Honour Killings*. *Indian Criminology Review*, Vol. 32(1).

<sup>20</sup> Rao, K. (2022). *Forensic Evidence in Rural India: Challenges and Opportunities*. *Journal of Forensic Science*.

<sup>21</sup> Nariman, F. (2020). *The Burden of Proof in Indian Law*. *Indian Legal Review*, Vol. 19

<sup>22</sup> *Bhagwan Dass v. State (NCT of Delhi)* (2011) 6 SCC 396

<sup>23</sup> *Sujit Kumar v. State of Uttar Pradesh*, AIR 2002 (NOC) 265

<sup>24</sup> *Lata Singh v. State of U.P.* (2006) 5 SCC 475

<sup>25</sup> *Armugan Servai v. State of Tamil Nadu*, (2011) 6 SCC 405.

In the landmark ruling of *Shakti Vahini v. Union of India*,<sup>26</sup> the Supreme Court declared any attempt by Khap Panchayats to prevent consenting adults from marrying as illegal, stating that these bodies are not authorized to enforce the law. The court also directed the central and state governments to ensure that honor killing cases are tried before designated courts on a daily basis and resolved within six months.

Through these judgments, it is evident that every individual has the fundamental right to choose their spouse, irrespective of caste, religion, clan, or gender. Acts committed under the guise of protecting familial or community honor reflect a blatant disregard for the rule of law and receive no legal protection.

### Challenges and Legal Gaps

**Social Pressure and Community Endorsement:** In many cases of honour killing, whole communities support the crime, which makes it challenging for law enforcement to find witnesses who are ready to testify or to gather evidence.

**Involvement of Family Members:** In order to keep the case from going to trial, honour killings frequently involve close family members who may obfuscate evidence, make up alibis, or put pressure on the victims' friends and family.

**Khap Panchayats' Influence:** In rural India, community-based councils like khap panchayats have a significant impact on upholding customs and frequently encourage the social acceptance of honour killings.

**Evidentiary Challenges:** Family members involved in the crime may not leave evidence trails or may conceal the murder as a suicide or accident, making it difficult to gather direct evidence.

### Recommendations for Reform

- **Legislative Changes:** The Indian Evidence Act should be amended to include safeguards for protecting witnesses. For circumstantial evidence, strengthen the rules of evidence. Even after the Indian Evidence Act was amended in 2023, honour killing is still not accepted as a distinct crime from murder.
- **Codification of Honour Killing Laws:** Pass legislation that specifically addresses honour killings and imposes severe punishments.
- **Awareness of the Community:** focused efforts to combat caste prejudice and patriarchal standards.
- **Protective Mechanisms:** Enforcing strong protective measures for families and couples in danger can save lives and guarantee marital and relationship freedom.
- **Law Enforcement Training:** To treat honour killing cases fairly and diligently, law enforcement organizations need to be made more aware of the issue. Investigative officers should also be trained to collect evidence efficiently, ensuring perpetrators do not evade justice due to lack of evidence.

### Conclusion

Honour killings remain a grave challenge in India's pursuit of social equity and justice. While legislative measures exist, the judicial process, including the application of the Indian Evidence Act, requires significant strengthening to effectively combat such crimes. Bridging the gap between legal frameworks and societal change is imperative. Through combined efforts of legislative reform, judicial innovation, and societal transformation, India can move closer to eradicating this practice.

The issue of honor killings in India highlights a deep conflict between entrenched traditional societal norms and the principles of justice upheld by the nation's legal system. Despite its foundational role in Indian jurisprudence, the Evidence Act often falls short in addressing the complexities of such cases, where the pursuit of familial honor drives horrific crimes. The misuse of evidentiary provisions, coupled with prevailing cultural prejudices, frequently results in undue leniency or acquittals for offenders, thereby perpetuating a cycle of impunity.

This study underscores the pressing need for a more nuanced and context-aware approach to handling evidence in honor-based violence cases. It advocates for strengthening the Evidence Act to enhance protections for vulnerable witnesses and minimize the impact of societal pressures on judicial decisions. In parallel, fostering a cultural shift that emphasizes individual rights and justice over outdated notions of honor is critical.

Reassessing legal frameworks and improving their implementation offers India a chance to reaffirm that justice must not be compromised, even in the face of deeply rooted cultural practices. Closing the gap between legal reform and social change is both a legal and moral necessity, essential to protecting the dignity, autonomy, and lives of individuals affected by honor-based violence. Achieving this balance will pave the way for a society that prioritizes equity and human rights over archaic traditions.

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<sup>26</sup>*Shakti Vahini v. Union of India* (2018) 7 SCC 192