HONOUR KILLING

by

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ABSTRACT

This thesis is a timely response to the current developments of cultural forces which lead to honour killings in Canada. I believe that it is only through a detailed analysis of honour killings that Canada as a country can equip and prepare itself to deal with crimes of honour in the future. The aim of this thesis is to examine the crime of honour killing by elaborating the close linkage that it shares to the cultural regulations for the sexuality of women. The research also endeavors to resolve the existing dilemmas of balancing multiculturalism and diversity in Canada on one hand and counteracting the extreme violent cultural reactions, which are in clear violation of Canadian laws. I propose that, since the crime shares a crucial foreign element, being cultural pressure, a careful analysis of the honour killing situations in South Asian countries can offer vital inputs for policy analysis.
ACKNOWLEDGEMENTS

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I also would like to express my gratitude to my parents who always helped me during the academic year in managing my research, both in India and Canada. I felt inspired and motivated by their constructive suggestions.
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INTRODUCTION

Under the wide scope of crimes of honour that happen, honour killing is perhaps the most heinous of them all. Although its crime elements may overlap with the requirements of murder under the Canadian Criminal Code\(^1\), it has certain unique features which make honour killing even more heinous than murder. Under the crime of honour killing the victim is usually not a third person but rather the victim’s own family member or social group member. The perpetrator in many cases is a brother or father whose cultural role initially was supposed to be protecting the victim from any harm. The perpetrator in these crimes has no economic motivation and is purely fueled by the abstract desire to bring back the honour to the family by eliminating the family member who brought dishonor.

This perceived dishonour is normally a result of the loss of control felt by the male members of the family on the sexual behavior of a female member of the family. In many rural societies, where the value of education is lower than that of family status, the ideal of masculinity is underpinned by a notion of ‘honour’ - of an individual man, or a family or a community- and is fundamentally connected to policing female behavior and sexuality.\(^2\)

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\(^1\) Section 229- Culpable homicide is murder
(a) where the person who causes the death of a human being
(i) means to cause his death, or
(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;
(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or
(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.
\(^2\) Radhika Coomaraswamy “Violence against women and ‘crimes of honour’, UN special Rapporteur.
These policing could be around arranged marriages, preferred spousal choices, and extramarital relationships, out of caste marriages or even minor objections to ‘obscene’ clothing. Thus, varying from the amount of control exercised ranging from choice of clothing to choice of spouse. It is important to note here that all these choices which are regarded as rebellious actions have a common thread of ‘regulation over sexuality’ running through them.

In most cases, as can be seen from the examples discussed in the chapters below, the violence often has a curve. It starts from withholding trivial benefits and then slowly progresses to more aggressive forms of control. According to Radhika Coomaraswamy these ‘Regulation’ of such behaviour 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.

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3 Rosie Dimano and Andrew Chung. Inside the Shafia murder trial. A Toronto Star Publication.
4 Radhika Coomaraswamy “Violence against women and ‘crimes of honour’, UN special Rapporteur.
‘HONOUR’: A DETAILED ANALYSIS

One of the hardest concepts to introduce to the western society about honour killings is the concept and meaning of honour in the context of Honour Killings. Many at first instance oppose the use of the word honour due to its frequent interchangeable positive attributions. Nevertheless, it is important to keep in mind that even though the origin of the term ‘honour’ in context of the killings is positive, the mens rea element for the killing is fueled from the preservation of the same positive attribution, in an extreme culturally pressured dosage. It is only due to the recent media attention on honour killings that a debate has sprung in society calling the crime dishonour killing. Therefore, I believe the term is correct as it stands. One of the most apt definitions which encompass all the elements of the crime is offered by Human Rights Watch.

Human Rights Watch defines "honor killings" as follows:

_Honor killings are acts of vengeance, usually death, committed by male family members against female family members, who are held to have brought dishonor upon the family. A woman can be targeted by (individuals within) her family for a variety of reasons, including: refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce—even from an abusive husband—or (allegedly) committing adultery. The mere perception that a woman has behaved in a way that "dishonors" her family is sufficient to trigger an attack on her life._

Honour killing is originally the product of a particular social interaction amongst members of the society which believes in a strong patriarchal structure. These killings are qualitatively different from other kinds of murders.

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5 "Violence Against Women and ‘Honor’ Crimes“. _Human Rights Watch_.

3
They are uniquely governed by “the specific logic of an honor culture”⁶. This culture has a typical understanding of the meaning of shame and honour in a patriarchal society which may seem alien and incomprehensible at first from the viewpoint of foreign cultures.

According to Michael Kurkiala, under this type of logic and understanding:

….if a woman refused to comply with the rules set down by her cultural community, her ‘immoral behaviour’ contaminated the whole family. If other strategies to make the women comply failed, the only remedy was for her male relatives to kill her in order to protect the family honour. Thus, the murders were culturally sanctioned and designed to uphold a specific moral order.⁷

The term Honour or Honor is derived from the Latin word ‘honos’ which is an abstract concept of a perceived quality of worthiness, respectability and moreover the perceived standing of an individual in large social bodies such as schools, neighborhoods, cities or nations. But none of the meanings seem conducive to encourage or support the assumption that honour is associated with the right to kill in order for its preservation, neither do they inspire any violent conduct in situations where the honour of the individual is at stake.

In a strong patriarchal society the word ‘honour’ is not measured with the worthiness of a man, but rather the honour lies in the women under the control of a man.

⁷ Ibid
According to Kamla Bhasin and Ritu Menon, “most men and women we spoke to agreed that honour, for losing and preserving, is located in the body of women”.  

Margaret Visser observes that in an honour-based society “a person is what he or she is in the eyes of other people.” The concept here, is very different from the meaning of reputation or prestige, and should not be confused with such associations. This notion becomes problematic in scope when limited by stereotypical associations with the historical positive notions of ‘Honour’. This in turn then brings about a knee-jerk reaction from the western society that, the term ‘honour killing’ is oxymoronic in nature.

Such difficulties in the attribution of honour also arise due to the understandings embedded in the unfamiliar characteristics of a patriarchal society. It is only that once we examine the male dominating behavior in such societies, can we be able to get a better grasp of the concept of honour.

Moreover, the problem in understanding honour also lies in the abstract nature of assessing the perceived standing of an individual. This assessment of quality is customarily not based on any written principles but rather based on the moral unwritten codes of the society at large. This nonfigurative nature of this moral code shared amongst society at large is what gives honour its intangible nature. Therefore, although the code might be flexible in nature, it leaves ample scope for bias in its interpretation.

Unfortunately in rural areas of developing nations the interpretation of this moral code is left to those people who are locally in power. Which typically constitutes of the large

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8 K Bhasin and R. Menon, BORDERS AND BOUNDARIES, Kali, New Delhi p.58.
land owners and other uneducated orthodox adults in favour of extreme cultural preservation. This power allows the ruling minority in power to interpret the moral code in their favour and against those who are not in power, socially and politically.

Such a moral code defines honour in terms of women’s assigned sexual and familial roles as dictated by traditional family ideologies. Thus, adultery, premarital relationships (which may or may not include sexual relations), rape and falling in love with an ‘inappropriate person’ may constitute violations of family honour. Only in an attempt to re-examine the underlying assumptions of a patriarchal societies, the sensitive and complex nature of the problem is revealed.

The state is often put in a difficult situation in regards to reacting to these crimes of honour. The local governance is faced with an option of political suicide, by losing local support and hence does not react. The international community is bewildered at first, but is very cautious between striking a delicate balance. On one hand are the human rights of woman and respecting them, as being independent free thinking agents in choosing to endeavor such cultural restrictions and on the other hand are the extreme cases of violence which are highly objectionable to the modern developed world. These paradoxes make the problem of honour killing extremely problematic to circumference.

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HISTORIC IMPLICATIONS OF HONOUR

Historically in the European context the term ‘honor’ connoted the meaning ‘chivalry’ and ‘nobility’ to which killing formed an essential element of such a code of chivalry. Duels to protect the honor were considered proper amongst the elite in the western civilizations. Hence, implying a more positive association to the word rather than a negative one, ignoring the violent and death resulting consequences of the crime.

To the more modern European society the word ‘honor’ evolved to hold a definite framework of the appropriate behavior expected from a man. These included acts such as verbal promises transforming into binding contracts by holding on to a word of mouth as an ‘honorable’ man’s binding words.

The monarch in the UK is also posited to be the ‘fountain of honor’11 who bestows tokens and rewards for ‘distinguished service’ that evidences chivalry or honor. This is done through the giving of titles, which themselves are collectively referred to as honours, hence the ‘honor list’ of names thus endowed.

These positive meanings might shift from bravery and nobility into more chivalrous actions, but they always retained their positive implications. This view is no doubt correct if understood in its isolated existence. But, it fails to encompass the more negative consequences of the acts done in the preservation of honor, which is the main structural constituent in understanding crimes of honor.

11 The origin of the Sovereign as the 'fountain of honor' is an ancient one- http://www.royal.gov.uk/MonarchUK/Honours/Developmentofthehonourssystem.aspx
Purna Sen in her article illustrates another UK example of the Neo-Nazi group called ‘Blood and Honour Combat 18’, which claims a ‘code of honor’ such that ‘to live by honour means that one is prepared to die rather than be dishonoured’. To the east, the context holds primarily a negative implications stressing more on the harmful consequences in preserving the so called ‘honour’. Thus, not devoicing the term ‘honour killing’ to its relative meaning when taken in context.

There is however another distinction, apart from the negative and positive aspects of the term honour. The meaning of the word honour in honour killings “imposes duties rather than bestows privileges”. Unlike the positive meaning which would only bestow honour upon a person, honour killing on the other hand imposes the duty to protect that honour by any means necessary. Even if that necessity of preservation leads to killing of a loved one, thereby creating a decisive metamorphosis in its positive and negative inferences. Many languages use two different words, in order to emphasize and differentiate these two different concepts.

In such a scenario honour should be clearly distinguishable from dignity. As William Wordsworth would say “True dignity abides with him alone… Who, in the silent hour of

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13 Combat 18 is a racist, anti-immigration group based in the UK. It claims the history and title of National Socialism.
15 For instance, in Turkish, “onur”, “gurur”, “nam”, and “s.an” are gender-neutral words used to refer to prestige and respect, while the word “namus” Is a gender-specific term used to refer to certain different qualities and standards that an honorable woman or man should have. Similarly in Pakistan, the word “ghairat” is used to mean “honor” “jealousy”, “courage”, “modesty”, and “shame” and the word “izzard” is used to mean reputation and respect. For further discussion see Pnina Werbner, “Honor, Shame and the Politics of Sexual Embodiment among South Asian Muslims in Britain and Beyond: An Analysis of Debates in the Public Sphere”, International Social Science Review, Vol. 6, No. 1, 2005, pp. 25–47,p. 27, and also see Clementine van Eck, Purified by Blood, Honour Killings amongst Turks in the Netherlands, Amsterdam, the Netherlands: Amsterdam University Press, 2003, pp. 20, 21.
‘inward thought’, can still suspect, and still revere himself… In lowliness of heart.” Here the term honour can be interchangeable for the meaning dignity. While honour, on the other hand holds distinctiveness of an ‘outward thought’ of society laying judgmental values, both positive and negative upon an individual.

In 1994 al-Babel (“The Alternative”), established from the organisations within Palestinian community of Israel, called itself the Coalition to Combat the Crime of “Family Honour”, they believed this statement to be more appropriate in explaining that “it is not possible to give the term “family honour” a positive understanding, since it attributes all the maladies of society to a women’s body and individual behaviour, giving legitimacy to social conduct restricting women’s freedom and development, using all forms of violence, the most extreme being murder. Various other organizations have also suggested similar changes in the name of the crime.

I believe that even though the name can be changed to more suitable versions, adapted to different regions, the importance and the seriousness of the crime still remains the same and understanding this heinous act is the real issue at hand. After the Shafia trial in Canada some people have also suggested the use of the term ‘Femicide’ to better describe the murder of the four women, but this title is devoid of crucial element of mens rea behind such a crime. Therefore it is of paramount importance to understand the meaning and implications of the word ‘honour’, as oxymoronic as it may sound.
GENDER AND HONOUR KILLING

It is important to note that, the crimes of honour are not restricted by gender. Men can also be the victims of honour killing by the family members of the woman with whom they are perceived to have an inappropriate relationship.\textsuperscript{16} Honour crimes although are targeting more often towards women, they are in no way restricted to women alone. For example, a report by Human Rights Commission of Pakistan analyzed the deaths of 97 men as well as 158 women in Karo-Kari ‘Honour Killings’ in the province of Sindh, Pakistan.\textsuperscript{17}

In the role of execution for the crimes of honour it is not always the men who play the sole role, rather in many cases women play a crucial part in the killings. Women are also key role players in ensuring the initial limits of sexual regulations and can also be party to decisions to kill women, including their own daughters.

In the year 2000, it was reported that 10\% of the crimes of murders committed in Egypt in 1999 were ‘crimes of honour (sharaf)’.\textsuperscript{18} There were cases of girls with blocked hymens, their bellies swollen with menstrual blood, killed by family members who think they have fallen pregnant through illegitimate sexual relations; or girls whose stomachs swell with tumors, or girls whose periods stop due to anemia such conditions being revealed at the autopsy, along with the fact that the girl was a virgin.\textsuperscript{19}

\begin{flushright}
\textsuperscript{16} Afghan couple stoned to death – Central & South Asia. Al Jazeera English (2010-08-16).
\textsuperscript{17} Amnesty International, 1999a:6
\textsuperscript{19} Siham Abdul Salam – Crimes of honour in Egypt
\end{flushright}
Here the women of the family played a crucial role in reporting such incidents or encouraging a suitable punishment and administering it either themselves or through a male member.

The Jaswinder Sidhu honour killing case of Vancouver, Canada is also an appropriate example where the mother played a crucial role in getting her own daughter killed while she was in India. Such killings are made even more complex by adding the element of extra-territoriality to the already complex structure of ‘honour killings’.

The figures in Table 1 are taken in July 2004 by the Federal Minister of Interior presenting the following national statistics to the senate (Pakistan’s upper house). Between the period of 1998-2003, total reported killings were 4,101 in Pakistan. Out of which 1,327 were male and 2,774 were female. These figures are representative of the fact that, men also fall victim to honour crimes.

Although there is no reliable method in such developing countries to verify the incidence of ‘honour killings’, since most of the killings are never reported. These figures lay out the minimum numbers, if not more. The noticeable trend of increasing male victims falling for the offence of honour killings is also a recent development. This I believe is largely due to the increase in awareness of the youth who dare to change the orthodox traditions which cause honour killings.

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20 Source: The News, 10 July 2004. These figures were published in Pakistan’s four major national English language dailies, albeit with slightly varying figures. Table 1 -

<table>
<thead>
<tr>
<th>Reported total killed</th>
<th>Male Victims</th>
<th>Female Victims</th>
<th>Cases registered</th>
<th>Compromised</th>
<th>Pending in Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>4,101</td>
<td>1,327</td>
<td>2,774</td>
<td>3,451</td>
<td>2,028</td>
<td>1,262</td>
</tr>
</tbody>
</table>
ORIGIN AND DEVELOPMENT OF HONOUR KILLING

Historically there are no definitive explanations regarding the origins of ‘honour killings’. In the south Asian continent some scholars claim the practice originated with various Baloch tribes of Balochistan and spread to other countries as they migrated to different parts of the country. Colonial records on the then Balochistan clearly mention the ‘custom’ of ‘honour killing’.21 These included details on who were allowed to raise allegations against women and the evidence that would be required in such a case including possible punishments.

It is possible that such customs were later adopted in regions of Pakistan and India later on. Even recently in 2008, Israr Ullah Zehri, a Pakistani politician in Balochistan, defended the honour killings of five women belonging to the Umrani tribe by a relative of a local Umrani politician. Zehri defended the killings in Parliament and asked his fellow legislators not to make a fuss about the incident. He said, “These are centuries-old traditions, and I will continue to defend them. Only those who indulge in immoral acts should be afraid.”22

Although the origin might be disputed, one can clearly see the plausibility of the occurrence of honour killing since the status of women was already very low in such patriarchal societies.

21 Sohail Akbar Warraich. ‘Honour Killings’ and the law in Pakistan’; during the British Colonial period, District Magistrate/ Collectors would compile gazettes to provide basic information about the area, its geography, history, climate, population, customary practices of the tribe, families I the district, etc. These gazettes served as guidebooks for the administration.
In modern India, there have been thousands of crimes of honour across the country. Ranging from hundreds of incidents of killings, rape and mass murder to protect honour. The brutal murders of Harpreet Kaur, daughter of famous Punjab (India) politician Bibi Jagir Kaur, Nirupuma Pathak who was a young JNU (Jawaharlal Nehru University), Delhi student and the countless victims of the khap across the northern Indian heartland are few glaring example.

These examples are symbolic of the lack of a specific socio-cultural identity among those who kill in the name of honour. The problem cannot be categorized to one specific caste or region; rather it is a cultural problem that persists across borders and beyond religion. Analysis of the social aspects of ‘honour crimes’ indicates that they cut across class lines and are perpetuated by feudal structures that intend on retaining their social and political hold over local communities.\textsuperscript{23}

The 2002 and 2003 reports of the United Nations Special Rapporteur on violence against women, and other available data also show that honour killing is not restricted to the Muslim communities.\textsuperscript{24} It is paramount to realize the cross-cultural dimension of honour killing. It is not restricted by class, caste, region or religion. Thus, stereotyping these crimes to certain ethnic group or religion seems counterproductive to the goals of preventing such crimes.

For instance, in Upper Egypt, it was found that Coptic families (Egyptian Christians) were statistically as likely as Muslim families to commit such crimes.\(^{25}\) Similarly, it is reported that honour killing takes place in the Palestinian Christian community in Palestine.\(^{26}\) It can be observed, however, that while honour killing is not a solely Muslim phenomenon, the concept has increasingly become associated with Muslim societies in general.\(^{27}\)

According to Syeda Hameed, planning commission member of India, the problem is one that is pervasive across class, caste, religion and region and is rooted in the millennia-old rigidity in gender, caste and community relations.\(^{28}\)

She adds that, this deep-running bias influences almost all our decisions, surfacing most stridently in the public and the professional domains. This omnipresent, “morally acceptable” and socially “just” character baffles those who seek to end it.

Therefore, revealing the two extremes of people, those who affirm such behavior as a familiar custom being carried on from generation to generation and those who are baffled and cannot begin to comprehend the nature of the crime.

From the prospective of legal developments in Pakistan and India, the 1860 British Penal Code introduced the notion of ‘modesty’, and related concepts of ‘chastity’, ‘enticement’ and ‘abduction’, as part of the larger framework of collective ‘honour’.

\(^{25}\) CEWLA (Centre for Egyptian Women’s Legal Assistance), “‘Crimes of Honour’ as Violence against Women in Egypt”, in “Honour” crimes, eds Lynn Welchman and Sara Hossain, op. cit., pp. 308-331, 311.

\(^{26}\) BBC News, 7 May 2005, “Killed for the Family’s Honour”.

\(^{27}\) Recep Doğan. Is Honor Killing a “Muslim Phenomenon”? Textual Interpretations and Cultural Representations Journal of Muslim Minority Affairs (September 2011), 31 (3), pg. 423-440.

\(^{28}\) Dr. Syeda Hameed.”shame, not honour”. member of the Planning Commission India.
This meant that rather than protecting the individual rights of the oppressed women, the colonial laws gave rights to third parties like the community, state and the immediate family. Removal of a woman from the custody of a male made the women even more dependent on male members of her family.\footnote{Possession and control of the woman by the man to whom she belongs has nurtured in law notions of adultery, seduction, and enticement. Fathers seeking to retrieve their daughters from the men the daughters choose to live with resort to charging the other man with kidnapping, abducting and inducing the daughters to compel them into marriage. The popularity of this provision has had the court remark that it is ‘unfortunately a section which comes before the court possibly more often than any other particular section in the [penal] code, except those of riot and hurt.’ : Ramanathan, U. (1999)’Images(1920-1950): Reasonable Man, Reasonable Woman and Reasonable Expectations’, in A.Dhanda and A.Prasher (eds), Essays in Honour of Lotika Sarkar, Eastern Book Co., Lucknow.}

Women’s chastity and modesty were to be protected against violation by any male outside the relationship of a legal valid and socially accepted marriage, on the premises that women’s vulnerability and the need for its protection by men. While this same vulnerability was actually the result of generations of foul treatment, denial of education, voting rights and any say in the household decisions by the male members of the family itself.

These laws clearly display a heavier emphasis on the collective rights as opposed to the individual rights of the women. However, post-independence the courts in these countries are now witnessing a shift back to individual rights.

In the Supreme Court of Pakistan in 2001, the court for the first time acknowledged the value of fundamental rights (similar to Charter rights in Canada) of the victim in honour killing cases. The court held in the case\footnote{Pakistan Supreme Court case : Muhammad Akram Khan v. The State PLD 2001 SC 96; para.3 p. 100.} that no person would be deprived of life and liberty except in accordance with law or any custom or usage. Such deprivation would be in violation of Article 8(1) of the Pakistan constitution.
**Sati and Honour Killing**

Sati (also known as sutty or suttee) was the ancient practice amongst Indian communities. The practice consisted of a recently widowed woman to have immolated herself on the burning funeral pyre of her husband. The term Sati was initially a feminine participle derived from the verb “to be”. The term was frequently used in a number of ways to reflect the devotion of a woman to her husband. In a subsidiary sense, Sati denoted a woman who “is burned on the pyre along with the body of her (dead) husband”. Similar to the debate shared around the term ‘honour killing’, Sati too got later corrupted by the orthodox practice and started to be more popularly used in its negative sense.

Courtright\(^3\) raises the interesting question of whether women who commit the act of Sati and walk into funeral pyres do so out of a sense of pure devotion and compelling confidence in the reality of reincarnation, or whether this includes the feelings of effectiveness of self-sacrifice simply because this is one way of asserting their freedom and sense of self-worth in making a decision that is made independently.\(^3\)

It is possible that some elements of sudden grief and bereavement may lead to depersonalization during which social and cultural pressures may lead to acts being carried out. It is not likely that these women are suffering from either severe depression or psychosis, which lead to the acts of self-immolation.\(^4\)

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\(^4\) D. Bhugra.Sati: A Type of Nonpsychiatric Suicide.Crisis: The Journal of Crisis Intervention and Suicide Prevention (July 2005), 26 (2), pg. 73- 77 .

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Ibid.
Therefore, while it could be plausible that an iota of percentage of women might as well be sacrificing themselves out of pure devotion, it is highly unlikely that a majority of the women would share the same feeling. Rather, the state of shock from the death of her husband coupled along with the overwhelming social pressure created by surrounding kinship and other villagers is what causes the widow to take such an extreme measure. I believe this social pressure is one of the most important causal links of Sati. It is of vital importance to lay emphasis on the third party role in order for effective prevention strategies to such crimes.

Westermarck (cited by Thakur, 1962) observes, “From Greece we have the instances of Evadne throwing herself in the funeral of husband and of the suicide of three Messeten widows mentioned by Pausanians . . . sacrifice of widows occurred as it seems a regular custom among the Scandinavians, Herliniki, and Slavians.”35 The problem in India seemed unique due to its continued existence occurrences even after 1900’s. It was only after the Indian government passed legislation that an effective control on the problem could be noticed.

The practice of Sati was initially banned in the 1829’s by the British in India. Various measures are in place today in India to curb the practice of Sati. In 1987 the Indian government passed the Commission of Sati (prevention) Act, 1987. What is most interesting to the current topic of honour killing is the manner in which the legislation worked to eliminate the practice of Sati.

The government was aware that a modern woman, who is educated and independent, would not sacrifice herself after the death of her husband. There had to be pressure put on her to give up her life. After all if no glory was given to the commission, no one would have been interested in the commission. Hence, the drafters of the legislation carefully analyzed the situation and drafted the act in a manner that, the law now made it effectively illegal to be a bystander at an event of Sati.

The law made no distinction between any passive observer or the active promoters of the event, all were held to be equally guilty. Further, measures were laid down to stop the promotion of ‘glorification’ of the dead women. This was usually done in the manner of setting up temples at the place of death by creating shrines to the dead.

Such policies were extremely effective in creating a powerful deterrence effect. The zero-tolerance policy implied now included punishing anyone who forced someone to commit Sati by death sentence or life imprisonment, while the act of glorifying is now punishable with 1-7 years in prison.

In a case in India, Roop Kanwar, an 18-year-old, recently married woman immolated herself on the funeral pyre of her husband in a small town of Rajasthan, India. The Police despite the powers given by the legislation did not act. This incident created widespread debate throughout the country on issues such as the male vs. female split, the modern women vs. the traditional split and the free agent exercising her will vs. human rights. Much like the Shafia case in Canada, the Roop Kanwar provoked a lot of thought into Indians to choose where they stand as a nation.
According to Nandy\textsuperscript{36}, these are the nature of coercion in Sati, its glorification, the roots of sati in the traditional role of the woman, and in the use of the state to stop the practice of sati. He calls sati the dark side of the particular culture, thus again, indicating the role of social and cultural pressures rather than individual mental illness. Emphasizing again on the cultural dimension of crime as well as the coercive aspect of Sati.

While both the crimes of Sati and honour killing are based on different ideologies, much can be learnt from the efforts invested in prevention of sati. There is a crucial element that overlaps in both crimes which must be emphasized on, the element of coercive external social pressure. Without such pressure it would be impossible in many cases for the perpetrator to commit such a crime. Therefore, when Canada is thinking of policy implementation to develop strategies in combatting the honour crimes, it must keep in mind the abettors and the promoters who are equally guilty of the commission of the crime.

KHAP PANCHAYATS ROLE

At the time of newly gained independence of India, it was felt that the land was difficult to administer due to its wide spread geographic area. The leaders of new independent India believed that people are best left to govern themselves and this was the ideology behind the freedom struggle. Implementing these principles they believed that due to the lack of infrastructure and administrative set up, it would be best to set up local governance structure which would deal with local village level affairs directly. This led to the growth of Panchayati Raj. "Panchayat" literally means assembly (ayat) of five (panch) wise and respected elders chosen and accepted by the local community.

What the leaders could not have envisaged was the mental freeze of culture and the problems it would create with coping up to the fast growing and modernizing India. These values of local governance seemed to have been frozen in times of orthodox practices like Sati (practice of burning the widow on the pyre of her husband) and Untouchability (forbidding any interaction with lower castes in society). The traditional Panchayats represent the vox populi, and to go against them would be electorally suicidal. It is a fact that Panchayati raj (rule) is increasingly becoming a training ground for leadership at higher levels, and it is widely felt that the state leadership in Haryana (India) may emerge from these institutions. Therefore, it receives plenty leverage from the higher state authorities when it comes to ultra vires decisions made by the Panchayats.

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However, Khap (caste) Panchayats in some parts of India define their own laws by running their own parallel judicial institution to the courts. Not only do these Khap (caste) Panchayats declare marriages null and void, but go beyond by awarding death as a punishment in many cases. These killings are used to restore faith in the orthodox approaches of the rural people. They believe that these socially unapproved marriages must be punished by extreme measures, including death.

Legally speaking, under the Hindu Marriage Act (1955) which is the governing law of the land on marriage in India, except for the observation of certain prohibited degrees of relationship, legal restrictions on the choice of marriage partner are almost non-existent. This implies that under the law, both agora (kin in the patrilineal line of descent whose members claim descent from the same gotra ancestor) and inter-caste marriages are permitted. Making the functioning of the Khap Panchayats not only obsolete but ultra vires the law. Yet, they still seem to flourish in north India due to the political support that they hold.

Culturally translated, the principle of village exogamy means that all men and women of the same clan, the same localized clan and the same village are bound by the morality of brother-sister and, therefore, that both sex and marriage are prohibited between members of any of these units.  

Difference and hierarchy are the two most widely acknowledged and characteristic features of the caste system. To maintain these characteristics, the principle of strict caste endogamy has to be maintained. Inter-caste marriages lead to a blurring of the differences

between different caste groups and disturb the recognized caste hierarchies. Therefore, anyone venturing to transgress this law is out-casted, expelled or worse killed as a result.

For the execution of punishment, the khap Panchayats do not afford the luxury of having a standby executing police force, instead they count on irrational of mob thinking. This mob then makes believe to each member that their actions are a justified reaction. They consider such cleansing as mere settling of the disturbed balance.

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NARRATIVES OF VIOLENCE: AN INDIAN ANALYSIS

I. IN LINE WITH LAW, OUT OF LINE WITH THE MOB: IN-GOTRA MARRIAGE

Ved Pal, 23 year old youth lynched for marrying a girl, Sonia against the village’s wishes in 2008 Haryana, India. His crime was that he married a girl who was from a ‘Banwala gotra’ and he was a ‘Mor Jat’ and according to the local custom, the Panchayats (Village administration) did not allow marriage between the two gotras (castes).

One might think that in the 21st century such an act is impossible and that such an incident might have taken place at the spur of the moment or in a heated confrontation, but the truth is far from that. Ved Pal Mor went to get his wife back from her parent’s custody accompanied by court orders from the High Court of Punjab and Haryana state along with a warrant officer and few policemen. While playing all the cards right and in accordance with the rule of law, he underestimated the blind power of an unruly mob. When they arrived at the girl’s parents house the mob scared away the warrant officer who was able to escape with few injuries, leaving Ved Pal to the mercy of the mob. He was then lynched to death by the mob in the name of honour and his body was left at a crossing at the village for the entire village to witness the state of Ved Pal.

A news report on 25.07.09 in India read “No remorse, no regret, no repentance – that’s the mood of the village two days after an unruly mob lynched Matour resident Ved Pal Mor for wanting his wife back”.  

40 The Tribune, India dated 25.07.09. “He died for her, but she takes a U-turn”
II. CASTE MATCH, LOVE DENIED: MARRIAGE WITHOUT PARENTAL APPROVAL

Seema (Sister of victim) has filed a case against her sister-in-law’s family for brutally killing her brother in the name of Honour. The incident took place on May 9th, 2008 inBalah village. The wife, Sunita Devi was 22 and the husband, Jasbir Singh was 27. While they both were of legal age for marriage and both were Jats, the only problem was that they fell in love against the wishes of the parents. As a result both were killed by Sunita’s father and other relatives. Their bodies were displayed like hunting trophies outside Sunita’s house.41 Furthermore, as the village celebrated the killings, the ‘Sarpanch’ (village council head), announced with pride that the entire village supported the family in its ‘noble act’.

III. DYING A DAILY DEATH IN FEAR: SAME-VILLAGE MARRIAGE

The case of Sonia Devi and Rampal Dahiya of Asandha village in Jhajjar district of Haryana, India. The couple were married for over one year, and Sonia was three month pregnant. The Rathi caste panchayat of Asandha declared that the couple could only be brother and sister. The judgment was based on the rule that the husbands caste, inhibit the same village as Sonia’s parents. At the Panchayat hearing Rampal was warned that he would be physically attacked if he wasn’t tied a rakhi42 from his wife.

42 A Hindu tradition of tying a thread by the sister on her brothers arm, celebrating her brotherly protector relation with her.
But Sheela Malik, 40 intervened in time to stop the mockery, she later filed a timely petition with the high court of the state demanding protection for the couple. Today after 6 years of marriage and two children, the couple still live in fear of the Khap Panchayat.\textsuperscript{43}

The other popular reason for honour killing is difference in religion between the husband and wife. Even though the law of the land provides for special laws making such marriages legal, the society in India still continues to reject these marriages on various levels. The main reason behind passing the \textbf{Special Marriage Act, 1954} was to provide a special form of marriage for the people of India and all Indian nationals in foreign countries, irrespective of the religion or faith followed by either party. One of such incidents have been stated by Chakravarti, he reports that in India “a Hindu woman who had a relationship with a Muslim man, was dragged out of her house, stripped and killed, and then left on the street as an example to all other women of the punishment to be inflicted on women who transgressed the boundaries of communities.”\textsuperscript{44}

Although, in some cases the victim is able to rise above the societal pressure and fight back his/her oppressors. The case of Mukhtar Mai from Pakistan is unique in the manner that, unlike other women in small villages of Pakistan, instead of committing suicide after being gang-raped on the orders of the tribal council, she instead decided to fight back. She was punished on behalf of her family for allegations made on her brother, in regards to having illicit relations with a higher caste girl. This in turn led a “Mukhtar revolution” in 2004. Much like the “Jasmine revolution” which was the impetus of the Arab Spring, the “Mukhtar revolution” led to awakening of many oppressed women in Pakistan.

\textsuperscript{44} Uma Chakravarti, “From Fathers to Husbands: of Love, Death and Marriage in North India”, in “Honour” crimes, eds Lynn Welchman and Sara Hossain, op. cit. ,pp. 308-331,311.
There might be various causations to the crimes of honour, but three important elements seem to remain common in the composition of these honor killings –

I. The regulation of a women’s sexuality

II. The feeling of shame/loss of control of women’s sexuality

III. Communities role is enhancing or reducing the shame/loss

Control over the women’s sexuality exists in various degrees in society. This element of control can even be seen in modern societies when there is no legal recognition given to women to control their sexual lives. The failure to recognize rape in a marriage is based on the principle that once married a women is deemed to have consented to sexual relations with her husband in perpetuity and is thus unable to express desire in rejection of him.45

The above examples are only a few highlighting the crimes of honour that take place in North India. If a lower-caste man is involved with a higher caste woman, he is invariably killed. And the girl, whether belonging to the higher caste or the lower caste, is also certainly eliminated.46

Things are so bad that Indian youth even if modernized refrain from choosing a life partner of their choice, 60 % of the youth say that the final decision is taken by the parents.

45 Purna Sen. “Crimes of Honor- Value and Meaning” : Majority of the states fail to protect women from rape in marriage, those that do so include south Africa, The UK, Norway, the Philippines and France.
While 27% of the country’s youth reported that they did not have friends from other gender, religion or caste.\textsuperscript{47}

The violence can range from murder, murder made to appear like suicide, to public lynching, to social boycott of the family. Jagmati Sangwan\textsuperscript{48}, an activist questions that “At times, the Panchayat forces the couple into tying a rakhi (a customary band) to signify that they are brother and sister. What kind of twisted morality is this?”

Although the Khap Panchayats lost their social recognition after the 73\textsuperscript{rd} and 74\textsuperscript{th} constitutional amendments, their voices continue to be heard. The Legislation doesn’t dare to pass any laws for the enforcement of these amendments due to the strength the local MLA’s (member legislative assembly) and MP’s (member parliament) receive during election campaigns from the Khap Panchayats. To do otherwise would be electoral suicide. To the extent that even the Chief Minister of the Haryana, India Shri Bhupinder Singh Hooda said on record that “we cannot interfere in the social customs of our people”.\textsuperscript{49}

The Khap Panchayats are so powerful that they can even flout court orders and influence the police. They consider it their right to enforce tradition and check deviations. The reports in media, print and visual clearly give a message that the rural North Indian Society is in a state of confusion. On one hand a section of the society is adamant to preserve the old/traditional values, which do not recognize the basic human rights of

\textsuperscript{47} Report 2008. ―India Youth in a Transforming World: Attitudes and Perceptions‖. Center of the Studies of the Developing Societies (CSDS).

\textsuperscript{48} Haryana president of Akhil Bhartiye Janwadi Samiti (AIDWA in Hindi) an NGO.

\textsuperscript{49} News report: ―Chronicles of Death Fortold‖. Outlook. 26\textsuperscript{th} May, 2008.
liberty of an individual. And on the other hand are the ideological changes that are taking place in spheres of gender equality and the struggle against discrimination.

The Telegraph (newspaper) quotes “With more and more youngsters defying the family control over the institution of marriage, the Khaps have been hitting back, often mercilessly.”\(^{50}\) It is clear that such interferences in the personal lives of the residents of Haryana (India) by the Khap Panchayats (caste based Panchayats) is ultra vires the spirit of the constitution of India. No gathering of individuals can take the place of judicial courts and run their own parallel judicial institution declaring marriages null and void.

A woman’s right to choose, if, when and whom to marry, is a fundamental human right. Provisions of the Indian Constitution on non-discrimination on the basis of sex, equal protection of the law, equality before the law, and the protection of life and personal liberty safeguard this right. Not only are these rights available in the constitution, but they hold a universal characteristic. Right to marry with his/her own choice was recognized in Article 16\(^{51}\) of the Universal Declaration of Human Rights, 1948.

Article 23 of the United Nations ‘International Covenant on Civil and Political Rights’ 1976 also recognizes the right of men and women of marriageable age to marry and have a family.\(^{52}\)

\(^{50}\) The Telegraph, Calcutta, India “Court comes to sibling couples rescue”. October 16\(^{th}\) 2004.
\(^{51}\) Article 16 says- 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. 2. Marriage shall be entered into only with the free and full consent of the intending spouses. 3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
\(^{52}\) Article 23- 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending spouses. 4. States Parties to the present Covenant shall take appropriate steps to ensure equality
REACTION OF THE STATE ENFORCEMENT AGENCIES: INDIA

One might expect that the perpetrators thinking is limited to the village elders or the village mob, but unfortunately the support for honour killing is embedded so deep into every institution of society that it is difficult for the victim’s to seek shelter. This support spreads from police agencies to the judicial officers entrusted with upholding the rule of law. While investigating a harassment following an inter-caste marriage between a Jat girl and Dalit boy in Narela, the Station House Officer/Superintendent of Police, a Jat (higher caste) himself, made clear statements in an interview claiming that the police is also a part of the society and as such is not above it.

Therefore, the police too reflect the shared values of the society which unfortunately support the orthodox traditions leading to Honour Killings. How can the victimized youth expect justice when the local police share the same values and consider themselves toothless in front of the power of society?

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of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

53 The Superintendent of Police Nerela has an M.A. in Political Science, is a law graduate and is very conscious of human rights discourses; his statements to the PUDR (Peoples Union for Democratic Rights) team were made in April 2003 with great camaraderie. In Uma Chakravarti, “From Fathers to Husbands: of Love, Death and Marriage in North India”, in “Honour” crimes, eds Lynn Welchman and Sara Hossain.

54 Quoting from the interview: “Many of the cases of reports of missing girls are not kidnapping at all although the FIR’s are registered as such; they are cases of elopement, but we have to process with the investigation on the basis of kidnapping charges. When I get a case like this I often know that they are elopements -from the photographs of the girls it becomes clear that they are involved in love affairs and would have gone on their own. Later when we investigate the case we find clues in the notebooks such as drawings of hearts and arrows, the names of boys, or code words, and so on...... But we have to treat these cases as kidnapping because of social pressure. Also you must understand that the police are not above the society; they live in and reflect the values, and they reflect the vibrations....I cannot finish off Jat domination can I, I do not believe in the hierarchy of castes but I do consider that there should be separation between castes and that each should have their autonomy. Marriage is an important institution, it is an important part of Hindu society, and we must respect it in all its variations; taking pride in one’s community is natural. I am conservative in matters of marriage and believe that the arranged marriage is best for our society. Let me say that I have given my daughter al freedom of choice, she can marry whomever she likes, but he should be Jat.”
When the pleas of individuals are unheard, some women activist group in the country often try and use pressure and media tactics to enforce action by approaching the senior officials. Unfortunately even the higher ranked police officials support the perpetrators in such situations and ignore the so called ‘free will’ of the individual. Furthermore, an Assistant Commissioner of Police in Lucknow, India as a response expressed to women activists that:

“You are talking to me about rights! What shall I tell this poor father, who had complete control of his daughter for 17 years, 11 months and 29 days? What magic happened on the 30th day that he has to watch helplessly as she dishonoured him?”

Such attitudes in support of the father make it impossible for the girl to express her own free will in the choice of marriage. Regrettably, the lower judiciary of India does not share the same passion for modernization and development as the Higher Court judges. Their hands are tied by the same pressures of society which govern the police in crimes of honour.

In some cases, even the lower judiciary who are in direct contact with such offences are forced to recognize that in the fight between the “two sides” namely the girl’s father and the husband, the state [does] throw in its weight in on the side of the father”. Even the implicit undercurrents of judicial disapproval relate to a peculiar ambivalence about women and the expression of desire: judges often not only accept but even cast women as consenting parties in cases of rape, while dismissing the charges.

57 Dhagamwar, V. (1992), Law, Power and State, Sage, Delhi.
CULTURAL RELATIVISM AND HUMAN RIGHTS

Cultural relativism, long a key concept in anthropology, asserts that since each culture has its own values and practices, anthropologists should not make value judgments about cultural differences. As a result, Anthropological pedagogy has stressed that the study of customs and norms should be value-free, and that the appropriate role of the anthropologist is that of observer and recorder.

According to Carolyn Fluehr-Lobban, this interpretation is being challenged by critics inside and outside the discipline, especially those who want anthropologists to take a stand on key human rights issues. He agrees that the time has come for the anthropologists to become more actively engaged in safeguarding the rights of the people whose lives and culture they study.58

Carolyn further adds that “the issue of violence against women throws the perils of cultural relativism into the stark relief.”59 Similarly, an analogous stance should also be adopted by judiciary when dealing with such offence.

The state needs to maintain its policy of integration of the immigrants into Canada, but at the same side educate itself about the thin border between cultural freedom and unlawful activities. This balance is very similar to the balance of interest that every citizen must exercise between his rights and duties towards the state. No right can be ultimate and neither can cultural freedom.

59 Ibid
Canada’s cultural policy towards immigrants is based on what is known as the “Multiculturalism assumption”.\textsuperscript{60} This refers to the proposition, in the statement on multiculturalism policy made in 1971 by then Prime Minister Trudeau.\textsuperscript{61}

With respect to cultural heritage, the multiculturalism policy is aimed at helping ethnic groups to maintain features of their traditional cultures rather than encouraging the maintenance of full cultural systems.\textsuperscript{62} This is a very crucial distinction as it separates those values which can easily be transported to Canada and need to be preserved and those values which are conflicting with Canadian laws.

A good example would be the traditional feature of yielding a lower status to women. Such cultural value cannot be allowed to be transported to Canada; otherwise they would be in direct conflict with the existing norms of Canadian society. The immigrant must abandon such practices at the time of immigration to Canada.

On the other hand, the host population should consider two alternative approaches towards immigrants- integration and assimilation. Integration would lead to policies promoting the full participation of immigrants in the host society while being sensitive to the maintenance of their cultural identities. Assimilation is a policy which puts more pressure on the immigrants to give up their cultural identity and merge into the mainstream of the host society. This expectation is often perceived as the price to be paid by the immigrant for moving to the host country.

\textsuperscript{60} Berry, J.W., R.Kalin, and D.M. Taylor (1977), Multiculturalism and Ethnic Attitudes in Canada(Ottawa: Supply and Services Canada.)

\textsuperscript{61} National unity if it is to mean anything in the deeply personal sense, must be founded on confidence in one’s own individual identity; out of this can grow respect for that of others and a willingness to share ideas, attitudes and assumptions. A vigorous policy of multiculturalism will help create this initial confidence- [House of Commons Debates, 8 October 1971, P.8545]

Both the approaches could yield different results. While the ultimate goal of both the host country and the incoming immigrant is in fact to merge into the new society and be a socially and economically successful, it must be done at an appropriate rate. Any variation in this adjustment rate would either result in a cultural freeze and complete refusal to accept the new culture, or extreme reaction from the host country of prejudice and bias towards the new immigrants.

Multiculturalism as an integration approach is the explicit policy of the federal government through Multiculturalism and Citizenship Canada. The government of Quebec is also moving towards a more liberal integration approach than the old assimilationist policy. The evidence suggests that these strategies have already registered some modest success in reducing the amount of intolerance in Canadian society. The most important ingredient that needs to be monitored is perhaps the rate of change. This would ensure a smooth transmission between the immigrant integrating into the society.

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RATE OF CHANGE

The rate of change of the ethnic composition of the community is an important factor in managing diversity. This is influential both on the host country citizens and the incoming immigrants. It is only when there is a smooth transmission on both ends, that a peaceful and successful assimilation is possible. Any rapid change would lead to apprehension, especially on the part of the older and less educated citizens.64

This apprehension is often witnessed by the immigrants as well, who come from different countries and are not able to assimilate into the society at the required pace. This may be due to the age of the immigrant candidate or an individual’s own assimilation rate, but it generates a very negative impact on the individual known as cultural freeze. At such a stage the individual refuses to accommodate any elements of the foreign culture. This rigidity further enhances his belief and practice of his home culture to which he is more similar.

The concerns that have been raised by scholars65 point to the need to improve policy implementation through public education, better funding for front-line community organizations, and on-going research on monitoring of levels of tolerance and conflict. An approach that might well prove successful from the public-education perspective would be the formalization of the implicit moral contract between immigrants and the host community.66

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64 Ibid
RELATION BETWEEN HOMICIDE AND HONOUR KILLING

While honour killing shares many of the elements of the criminal offence of homicide, it is important to establish here that there are important distinctions between the two offences. Subsequently, the prosecutions of the two should not be treated the same. While homicide is a crime which is well understood by the western world and has had a well-established jurisprudence, honour killing on the other hand is a relatively newer concept of crime that the western society has trouble establishing.

The first main difference lies in the mens rea aspect of the crime. Offences under homicide are usually motivated by monetary gains or some other strategic benefit, while the offence of honour killing is purely motivated by the desire to eliminate the person and somehow restoring the ‘honour’ back to the family.

This delusional thinking is a part of the perpetrators custom and engraved into him from birth. Such engraved traditional thinking is so strong, that no matter how much the world around the person changes and modifies, he still believes in the old values that he was initially raised with.

This intangible character of the perpetrators thinking is what makes it possible for immigrants to move from their home countries into host countries and even after 15-20 years of assimilation still not be able to let go of these orthodox practices. Such killings often involve years of building intent and planning. Therefore, the mens rea of these crimes of honour should be much higher than other regular offences of violence against women.
The second distinct feature that exists in honour killings is the fact of shared relation between the perpetrator and the victim. The perpetrator unlike the crime of homicide is not a stranger or a third person. The perpetrator is usually one of the family members of the victim, who themselves have been entrusted with the guardianship and care of the victim. The sudden reversal in the role of the caretaker is a unique element of crimes of honour.

The third distinct feature that separates honour killings from homicide is that so long as the honour of the family or group or community is not affected by the shameful and dishonorable conduct the community or group does not necessarily expect retaliation or require killing or violence in return. Emphasizing a stronger need of external pressure from the community. For instance, wearing short or revealing clothes might be regarded as shameful, but the degree of shame brought by this action does not necessarily require severe intervention on the part of the society as a whole. The wrongdoer may be blamed, mocked or ridiculed.

However actions such as rape and adultery are treated differently because they usually bring shame not only on the performer but also their kin as well as on the victim and the victim’s kin. Therefore, they stain the collective honour of the group. Which in return is responsible for the extreme reaction of violence or killing in retaliation of the lost honour.

The final distinct feature which separates honour killing from homicide is that fact that the perpetrator does not act on his sole motivation. Rather, he is fueled by desires and

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directions of either him family relatives or by the desire of the local village in rural settings. Therefore, the guilt burden should not be solely on the trigger puller but rather on every person that was responsible for the abetment and incitement of the crime.

Similarly when tackling the problem of future prevention of honour killings, keeping the deterrence theory of crime in mind, the policies must be guided towards eliminating the peripheral enticing elements as well. which is very similar to the crime of homicide and the punishment of the abettor to the crime. It is only when all the elements of the planning and the enticement were met that the crime was possible. Hence, each person who played a role in the offence must share the burden of the punishment as well.
IMPORTANCE TO CANADA

There is amply material available on honour killings, ranging from the origin of customary practices to the abundance of recent cases from the South Asian countries. However, one might wonder about the need to study such practices in a modern and developed country like Canada.

The Western viewer’s eye often seeks intervention that shapes the problematic society, in ways that mirror practices of the west, in pursuit of a ‘shared culture which may or may not always begin with the establishment of alien rule and end with the departure of alien rulers’.69

This raises the critical debate about recognition of problems, such as honour crimes. While Canada acknowledges the existence of the isolated incidents of honour crimes, it refuses to codify specific provisions in the Canadian law. It is correct to say that majority of the Canadian society is not affected by such orthodox practices, but it is of paramount importance to codify specific laws in order to offer better protections for victims of honour crimes.

One might believe that such violence only exist in developing countries, but from the Shafia trial and other such incidents it becomes clear that such cultural extremism may continue to exist even in developed countries like Canada.

Although, incidents of honour crimes are rare in Canada and are only restricted to a few over the past decade, crimes of honour do exist. No matter if an immigrant family lays on

the extreme spectrum of being uneducated and orthodox or on the more liberal spectrum of being educated and holding heterodox opinions: the cultural elements of honour still persist in varying degrees even after immigrating to Canada.

Most Canadians perceived crimes of honour as something foreign. This was the notion before Canadians were stunned after witnessing the violence that was displayed by the Shafia trial in the name of honour. The Shafia trial and the issue of honour crimes may as well have changed the face of Canadian criminal law. The post-Shafia era is upon us and Canada can no longer turn a blind eye to honour crimes.

The finding of the bodies submerged underwater in a car of the three sisters Zainab Shafia, 19, Sahar Shafia, 17, and Geeti Shafia, 13, along with their fathers polygamous father’s wife, Rona Amir Mohammed, 50, shocked the Canadian society. Mohammad Shafia, his wife Tooba Mohammad Yahya and their son Hamed Mohammad Shafia, 20 were found guilty of 4 counts of first degree murder. Not only was the Canadian society in shock over such a heinous act, but in greater remorse over the fact that the state agencies failed to prevent such a crime even after repeated red signals.

A few months prior to the incident, Zainab had fled to women’s shelter and Sahar and Geeti had called the police, saying that they feared the violent outburst of their father and brother. Sahar had also confided to her school teacher that her father and brother beat her, and the teacher had witnessed scissor cuts on Sahar’s hands.

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This led to enquiries by Quebec child protection services; however the file was closed by public agencies and the police in early May, 2009. The four victims were found dead in the Kingston canal next month on June 30, 2009.\textsuperscript{71}

The alleged motive for the murder was to ‘restore’ the family’s honour which had been put to disrepute by two Shafia girls having boyfriends and the third being “rebellious”. This played a crucial role in the prosecution’s ability to establish the required mens rea for the offence. This adducing of honour crimes evidence by the crown is novel, as this had mostly been used by defendants raising the provocation defense.\textsuperscript{72}

The defense of provocation is often raised in honour killing crimes; similarly in the Sadiqi\textsuperscript{73} trial the defense claimed that it was the victim who provoked the accused to such an extreme that he had to commit the crime. Although the Canadian judges and jury have been wise enough to disregard ‘provocation’ as a defense to first degree murder, the legislature must act upon these examples to limit the scope of provocation as a defense and ensure that such crimes do not go unpunished.

Professor Mojab, who testified as an expert witness in the Shafia trial, said about honour killing that, “It doesn’t have any direct connection with religion at all,” Mojab testified.

\textsuperscript{71} Ibid.
\textsuperscript{73} R. v. Sadiqi, 2009 CarswellOnt 4140, 68 C.R. (6th) 346 (Ont. S.C.J.), Hasib Sadiqi was charged with first degree murder in the deaths of his sister, Khatera, and her fianc’e, Feroz Mangal. Khatera and Feroz’s families were of Afghan origin, although from different tribal ancestry. Before getting engaged, Khatera approached her mother rather than her father for approval. Feroz’s family made overtures to Khatera’s mother, who responded with a gift intended to symbolize approval. Khatera later moved into Feroz’s family’s home. Hasib Sadiqi was outraged by this turn of events and admitted to killing the two, although he raised the defense of provocation, arguing that the engagement and the manner in which it had been entered into cast dishonour on the Sadiqi family. A jury convicted Hasib Sadiqi of first degree murder, and Justice Rutherford of the Ontario Superior Court of Justice pronounced the mandatory sentence of life imprisonment with no chance of parole for 25 years.
“It is not unique to any particular religion. We see it among Hindus. We see it among Jews and Christians in the (Middle East) region. It is also not limited to the Middle East or the Arab world.”

Furthermore, Asma Jahangir, United Nations Special Rapporteur on extrajudicial, summary on arbitrary executions, included the following careful statement in her annual report: “The practice of ‘honour killing’ is more prevalent although not limited to countries where the majority of the population is Muslim. In this regard it should be noted that a number of renowned Islamic leaders and scholars have publicly condemned this practice and clarifies that it has no religious basis.”

It is important to note here that the sudden increase of attention on the Shafia trial can be seen as a double edged sword. On one hand, it can be immensely helpful in removing the veil of ‘cultural tolerance’ from crimes of honour and build positive alliances in developing effective preventive strategies, on the other hand it could be detrimental in building stereotype associations which would be counterproductive to building crime preventive strategies.

One such option available to the Canadian government is the introduction of specific criminal law provisions relating to honour crimes. As of now there is no separate provision in Canadian criminal law which deals specifically with honour crimes.

Therefore, the perpetrators of honour killings are usually charged with the offence of

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74 “Inside the Shafia trial”. Reporting by Rosie DiManno and Andrew Chung. A Toronto Star publication.
homicide or assault provisions. As discussed in the chapters above these offences do not encompass all the unique elements of honour crimes which requisite recognition.

It is only after the conviction, that a judge can invoke his sentencing powers to enforce some of the harshest penalties under Canadian criminal law. However, even at this stage there are no specific guidelines under the sentencing provisions which deal with honour crimes.

On March 2011 the National Judicial Institute’s Criminal Law Seminar in Vancouver, held a workshop on “Sentencing Challenges of So-Called Honour Crimes” given by Pascale Fournier and Prof. Korteweg. The workshop revolved around the legal treatment of honour crimes and the need of awareness amongst the judiciary and other legal actors to better grasp the concepts of honour crimes. The conference offered crucial suggestions for the better prevention of crimes of honour.

Pascale Fournier, stresses on the state intervention aspect of honour crimes in order to protect the vulnerable members of a minority. She further adds that the development and dissemination of practical knowhow with regards to legal intervention among cultural minorities. Pascale Fournier further discusses that participants at the conference found it striking that the Department of Justice has not issues any policy statements or guidelines on the phenomenon of honour crimes.

In fact, she adds that the only mentions of honour crimes by the government of Canada is a new immigration guidebook’s warning to immigrants and new Canadians that

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77 Section 235(1) of the criminal code imposes a mandatory term of life imprisonment for both first and second degree murder.
“Canada’s openness and generosity do not extend to barbaric cultural practices that tolerate spousal abuse, ‘honour killings’, female genital mutilation, forced marriage or other gender-based violence.”79

Nevertheless, Pascale Fournier proposes “Since the homicide provisions leave very little room for judicial discretion, the adoption of sentencing guidelines to specifically address honour crimes seems unnecessary.”80

Similarly, Marie-Pierre Robert says the Canadian judicial system has all the tools it needs to adequately punish those who commit honour crimes. In her study, Robert looked at 12 cases of “honour crimes” in Canada since 1954 involving 15 victims.81

This conclusion is over reliant on the discretionary sentencing power made available under the Canadian criminal code to a judge at the conviction stage. The discretion is based on the two supporting provisions in the Canadian criminal code’s sentencing guidelines which deal with aggravating factors.

The first deals with the fact that the perpetrators almost invariably “abuse a position of trust or authority in relation to the victim”.82 As discussed in above chapters generally the women who fall victim to these crimes are daughters, sisters or wives of the perpetrator himself. The second provision often invoked in sentencing is due to the added elements

82 Section 718.2(a)(iii) of the Criminal Code: : abuse of position of trust or authority as a codified aggravating circumstances.
of domestic violence\textsuperscript{83} which often occurs in events leading to the crime, sometimes it involves the abuse of children below the age of 18 as well.\textsuperscript{84} Analogizing the sentencing provisions with the Shafia trial would yield, Mohammed Shafia(father) abusing his position of trust as a father, elements of domestic violence would seem directed towards Rona Amir Mohammed(first wife) and the abuse of a child below 18 can be seen towards his daughters Sahar Shafia(17) and Geeti Shafia(13).

I believe that although through sentencing guidelines, the judiciary is able encompass the most important aggravating elements including domestic violence, child abuse and the abuse of position of trust, however, they lack a clear laid out legislative provision which bonds together indirect provisions. Therefore, a legislative process drafting a clear-cut provision is more desirable.

Such a specific provision will not only encourage predictability of law but also ensure consistency, after all clarity and efficiency are the primary goals of all laws. This new law in turn will allow the growth of multidisciplinary analyses of the topic, which is much needed to tackle the issue of crimes of honour in Canada.

The added burden of expert opinions regarding honour crimes can also be minimized since a specific law would address all such elements. This would bring forward sociologists, educational specialist, religious heads, social workers, lawyers and the police administration in Canada to develop policies which could have prevented killings such as the Shafia case from occurring.

\textsuperscript{83} Section 718.2(a)(ii) of the Criminal Code : domestic violence as a codified aggravating circumstance.

\textsuperscript{84} Section 718.2(a)(ii.1) of the Criminal Code : the codified aggravating circumstance of abuse of a person under the age of eighteen years.
The balanced approach for prevention of such crimes needs to be twofold. While the immigrants need to realize that although, they have been given freedom to exercise their culture free of any hindrances, they also have an equal duty to respect the laws of the country. Once they have moved to a new country they must make their best attempts to assimilate into the Canadian society. This clearly means that any orthodox cultural practice which might have been given a blind eye in their home country will result in a zero-tolerance treatment in Canada.

The government on the other side must also extend a hand in first, understanding the problem of crimes of honour and then, through a detailed understanding develop strong preventive policies. After all if the state mechanism lacks in either understanding or in efficacious methodology for tackling such crimes of honour, the preventive efforts will be of waste. We can see from the Shafia trial that the government agencies were not prepared to deal with such cases. Not only did they fail in prevention of such a crime, they worsened the scenario by reporting the victims back to the perpetrators: the parents.
CONCLUSION

This thesis has explored ‘honour crimes’, in particular ‘honour killings’. The chapters above have shown that, the meaning of honour is often confused and debated but in relation to the term honour killings it must be taken only in its original context displaying the rudimentary elements which may seem foreign to western cultures. Once the meaning and origin of the term has been elaborated it becomes clear that honour is deeply embedded in a patriarchal society. These patriarchal societies have their entire social framework around the protection and regulation of female sexuality. To change the entire framework of societies will take hundreds of years, specially were women rights have recently been recognized and are slowly gaining importance.

Since colonial times, India has witnessed the development of law, unfortunately most laws have been framed unfavorable towards the women. This law framework perpetuates the subordination of women and regulate their conduct only by a legitimate family male member. Under the protection of any other man, or on the free will of the women, the actions are perceived to be illegal and punished under offences like Kidnapping and abduction. Although the country is yearning for legal reforms, the process is painfully slow. The legislation drags their feet when it comes to going against customs since they know that any such maneuver could lead to political suicide. The village level police and local courts protect themselves under the umbrella of themselves being part of society and unable to single handedly oppose the will of the entire village.

The Khap Panchayat is a concept that needs to be further analyzed as well, while in India the Khaps might be the root cause of declarations of such killings, in Canada the idea
needs to be understood along the lines of family structures. It is only when the community or the larger family structure apply pressure on the immediate male relatives of the victim that they succumb to pressure of committing the offence. Therefore, as seen from the Sati examples from India, a more joint liability approach must be taken towards these offences.

The need of the hour is to balance assimilation and integration. While integration allows enough room for immigrants to preserve crucial elements of their culture it does not allow them to do so in violation of Canadian laws.

Canada must, in light of recent developments, enact new legislation which recognizes the problem of honour crimes. This will then shift the sole burden from the shoulders of judiciary and its sentencing procedures to a much broader dimension of state administration. After all, crime demands a multidisciplinary approach for prevention, one that will bring together scholars, jurists, police administration and social activists towards fostering stronger policy responses towards honour crimes.

Perhaps, the route for positive transformation is presently entrenched with deep obstacles. Nevertheless, this transformation is possible if efforts are made for changing the mindset of the immigrants towards better integration and the Canadian government is better trained to distinguish crimes of honour from other domestic crimes.
BIBLIOGRAPHY

JURISPRUDENCE

K. Belal alias S.K. Raja and Others vs. State of Orissa and Others II (1994) DMC 327
Muhammad Akram Khan v. The State PLD 2001 SC 96; para.3 p. 100
R. v. Nahar 2004 BCCA 77
R. v. Sadiqi, 2009 CanLII 37350 (ON SC)

LEGISLATION


Special Marriage Act, 1954 : India

THE COMMISSION OF SATI (PREVENTION) ACT, 1987 (No. 3 of 1988): India

Universal Declaration of Human Rights, available at :

SECONDARY MATERIAL


Beach, C.M. and A.G. Green, eds. (1988), The Role of Immigration in Canada’s future (Kingston, ON: John Deutch Institute, Queen’s University)

Berry, J.W., R.Kalin, and D.M. Taylor (1977), Multiculturalism and Ethnic Attitudes in Canada (Ottawa: Supply and Services Canada.)


CEWLA (Centre for Egyptian Women’s Legal Assistance), ““Crimes of Honour” as Violence against Women in Egypt”, in “Honour” crimes, eds Lynn Welchman and Sara Hossain, op. cit., pp. 308-331.


D. Bhugra. Sati: A Type of Nonpsychiatric Suicide. Crisis: The Journal of Crisis Intervention and Suicide Prevention (July 2005), 26 (2), pg. 73-77.


Fougere, Maxime, Simon Harvey, Jean Mercenier, and Marcel Merette (2005).


J.S. Hawley (Ed.), Sati: The blessing and the curse: The burning of wives in India (pp. 131–149). NY: O.U.P.

K Bhasin and R. Menon, BORDERS AND BOUNDARIES, Kali, New Delhi p.58.


Prem Chowdhry. Caste panchayats and the policing of marriage in Haryana: Enforcing kinship and territorial exogamy Contribution to Indian Sociology (January 2004), 38 (1-2), pg. 1-42

Purna Sen. “Crimes of Honor- Value and Meaning” : Majority of the states fail to protect women from rape in marriage, those that do so include south Africa, The UK, Norway, the Philippines and France.


Recep Doğan. Is Honor Killing a “Muslim Phenomenon”? Textual Interpretations and Cultural Representations Journal of Muslim Minority Affairs (September 2011), 31 (3), pg. 423-440


