



**GOVERNMENT OF INDIA**

**LAW  
COMMISSION  
OF  
INDIA**

**Prevention of Interference with the Freedom of Matrimonial  
Alliances (in the name of Honour and Tradition): A Suggested  
Legal Framework.**

**Report No.242**

**AUGUST 2012**

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Dear Minister Sri Salman Khurshid ji,

The report of the Law Commission of India on "**Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework**" is attached hereto. Pursuant to the assurance given by the Union Home Minister in the Parliament that various aspects relating to "honour killings" will be got examined, a reference was made to the Law Commission of India by the Dept. of Legal Affairs.

2. The law proposed by the Commission under the title of "Prohibition of interference with the Freedom of Matrimonial Alliances Bill" is intended to curb the social evil of the caste councils / *panchayats* interfering with and endangering the life and liberty of young persons marrying partners belonging to the same *gotra* or a different caste / religion. These offending acts imperiling the liberty of young persons marrying or intending to marry according to their wishes are being perpetrated in certain parts of the country in the name of honour and tradition. It is felt that such honour crimes can be effectively checked by prohibiting the assembly or gathering of such members of *panchayats* for the purpose of condemning the marriage and taking further action of harming or harassing them. Three offences are created under the proposed legislation and they are punishable with mandatory minimum punishment. The proportionality of punishment has however been kept in view. The provisions of this proposed Bill are without prejudice to and not in derogation of the provisions of Indian Penal Code. In respect of the offences not specifically covered under the provisions of this act, the general provisions of Penal Code can be taken resort to. The preventive and protection measures to be taken by the District Magistrate / SDM have also been laid down. A Presumption as envisaged by Section 5 has been recommended. Steps to be taken for counselling and creating legal awareness are also suggested. Incidentally, critical comments have been offered on a recent judgment of Supreme Court in *Bhagwandas case* that the so-called 'honour killings' cases shall be treated as rarest of rare cases warranting death sentence.

The proposed Bill is at Annexure I of the Report.

With regards and good wishes,

(P.V. Reddi)

**Sri Salman Khurshid, M.P.**  
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**Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition):  
A Suggested Legal Framework.**

**1. Introduction**

1.1 Pursuant to the discussion in the Parliament on a Calling Attention Motion and the assurance given by the then Union Home Minister that various aspects relating to “honour killings” will be got examined, a reference was made to the Law Commission of India by the Ministry of Law and Justice in September 2009. That is how the subject has been taken up for consideration.

1.2 At the outset, it may be stated that the words ‘honour killings’ and ‘honour crimes’ are being used loosely as convenient expressions to describe the incidents of violence and harassment caused to the young couple intending to marry or having married against the wishes of the community or family members. They are used more as catch phrases and not as apt and accurate expressions.

1.3 The so-called ‘honour killings’ or ‘honour crimes’ are not peculiar to our country. It is an evil which haunts many other societies also. The belief that the victim has brought dishonour upon the family or the community is the root cause of such violent crimes. Such violent crimes are directed especially against women. Men also become targets of attack by members of family of a woman with whom they are perceived to have an ‘inappropriate relationship’. Changing cultural and economic status of women and the

women going against their male dominated culture has been one of the causes of honour crimes. In some western cultures, honour killings often arise from women seeking greater independence and choosing their own way of life. In some cultures, honour killings are considered less serious than other murders because they arise from long standing cultural traditions and are thus deemed appropriate or justifiable. An adulterous behaviour of woman or pre-marital relationship or assertion of right to marry according to their choice, are widely known causes for honour killings in most of the countries. The report of the Special Rapporteur to U.N.<sup>1</sup> of the year 2002 concerning cultural practices in the family that are violent towards women indicated that honour killings had been reported in Jordan, Lebanon, Morocco, Pakistan, United Arab Republic, Turkey, Yemen and other Persian Gulf countries and that they had also taken place in western countries such as France, Germany and U.K. mostly within migrant communities. The report "Working towards the elimination of crimes against women committed in the name of honour"<sup>2</sup> submitted to the United Nations High Commissioner for Human Rights is quite revealing. Apart from the other countries named above, according to the UN Commission on Human Rights, there are honour killings in the nations of Bangladesh, Brazil, Ecuador, India, Israel, Italy, Morocco, Sweden, Turkey and Uganda. According to Mr. Widney Brown, Advocacy Director for Human

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<sup>1</sup> [http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/42e7191fae543562c1256ba7004e963c/\\$FILE/G0210428.pdf](http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/42e7191fae543562c1256ba7004e963c/$FILE/G0210428.pdf)

<sup>2</sup> [http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/985168f508ee799fc1256c52002ae5a9/\\$FILE/N0246790.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/985168f508ee799fc1256c52002ae5a9/$FILE/N0246790.pdf)

Rights Watch, the practice of honour killing “goes across cultures and across religions”. There are reports that in some communities, many are prepared to condone the killing of someone who have dishonoured their family. The 2009 European Parliamentary Assembly noted the rising incidents of honour crimes with concern. In 2010, Britain saw a 47 % rise of honour-related crimes. Data from police agencies in the UK report 2283 cases in 2010 and most of the attacks were conducted in cities that had high immigrant populations. The national legal Courts in some countries viz., Haiti, Jordan, Syria, Morocco and two Latin American countries do not penalize men killing female relatives found committing adultery or the husbands killing their wives *in flagrante delicto*. A survey by Elen R. Sheelay<sup>3</sup> revealed that 20% of Jordanites interviewed simply believe that Islam condones or even supports killing in the name of family honour which is a myth.

1.4 As far as India is concerned, “honour killings” are mostly reported from the States of Haryana, Punjab, Rajasthan and U.P. Bhagalpur in Bihar is also one of the known places for “honour killings”. Even some incidents are reported from Delhi and Tamil Nadu. Marriages with members of other castes or the couple leaving the parental home to live together and marry provoke the harmful acts against the couple and immediate family members.

1.5 The Commission tried to ascertain the number of such incidents, the accused involved, the specific reasons, etc., so as to have an idea of the general crime scenario in such cases. The Government authorities of the

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<sup>3</sup> Quoted in Anver Emon’s Article on Honour Killings.

States where incidents often occur have been addressed to furnish the information. The Director (SR) in the Ministry of Home Affairs, by her letter dated 26 May 2010, also requested the State Governments concerned to furnish the necessary information to the Commission. However, there has been no response despite reminder. But, from the newspaper reports, and reports from various other sources, it is clear that the honour crimes occur in those States as a result of people marrying without their family's acceptance and for marrying outside their caste or religion. Marriages between the couple belonging to same *Gotra* (family name) have also often led to violent reaction from the family members or the community members. The Caste councils or *Panchayats* popularly known as '*Khap Panchayats*' try to adopt the chosen course of 'moral vigilantism' and enforce their diktats by assuming to themselves the role of social or community guardians.

## **2. The dimensions of problem and the need for a separate law**

2.1 The rising incidence of commission of murders of persons marrying outside their caste or religion and other serious offences perpetrated or hostility generated against them and also causing harm to their close relatives or a section of the community on considerations of caste and '*gotra*' are matters of grave concern. Those who may be directly involved in the actual commission of acts of violence or murder are either part of a community or section of the people and may also include members of the family concerned in the case of objected marriages. Very often such incidents and offences are not even taken cognizance at the threshold. The domineering position and

strength wielded by caste combinations and assemblies, silence or stifle the investigating and prosecuting agencies. In so far as the caste or community *panchayats* play a constructive role in addressing the common problems concerning the society or amicably settling the disputes between the local inhabitants and families, dissuading the people from a criminal path, the mission and the work of these village elders and *Panchayatdars* can be commended; but, if they exceed their limits, as it is often happening, impose their decisions in matters relating to matrimony and interfere with the legitimate choices of youngsters and indulge in acts of endangering their life and liberty, the law cannot remain a silent spectator in our progressive democratic polity wedded to cherished constitutional values.

2.2 As said earlier, incidents involving grave offences committed against persons marrying or proposing to marry *sagotras* or outside their castes/religions are periodically reported. It is learnt that number of cases go unreported for fear of reprisals or cascading effects. The intervention of caste/community assemblies in the name of 'Khap Panchayats', 'Katta Panchayats' etc. in the occurrence of these offences and other related incidents involving serious life and liberty consequences, are frequently noticed. Such assemblies gathered on caste/community lines assume to themselves the power and authority to declare on and deal with 'objectionable' matrimonies and exhibit least regard for life and liberty and are not deterred by the processes of administration of justice. The penal law lacks direct application to the illegal acts of such caste assemblies. Innocent youth are



harassed and victimized while such assemblies continue to wield unhindered authority and also seem to resist any suggestion of being subjected to any social control.

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

2.4 *Sagotra* marriages are not prohibited by law, whatever may be the view in olden times. The Hindu Marriage Disabilities Removal Act, 1946 was enacted with a view to dispel any doubts in this regard. The Act expressly declared the validity of marriages between the Hindus belonging to the same '*gotra*' or '*pravara*' or different sub-divisions of same caste. The Hindu Marriage Act does not prohibit *sagotra* or inter-caste marriages.

2.5 The views of village elders or family elders cannot be forced on the willing couple and no one has a right to use force or impose far-reaching sanctions in the name of vindicating community honour or family honour. There are reports that drastic action including wrongful confinement, persistent harassment, mental torture, infliction of or threats of severe bodily harm is resorted to either by close relations or some third parties against the so-called erring couple either on the exhortations of some or all the *Panchayatdars* or with their connivance. Several instances of murder of

one or the other couple have been in the news. Social boycotts and other illegal sanctions affecting the young couple, the families and even a section of local inhabitants are quite often resorted to. All this is done in the name of tradition and honour. The cumulative effect of all such acts have public order dimensions also.

2.6 In a recent case – *Arumugam Servai vs. State of Tamil Nadu* [reported in (2011) 6 SCC 405], the Supreme Court strongly deprecated the practice of *khap/katta panchayats* taking law into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice. In another case, *Lata Singh vs. State of U.P.* (2006, 5 SCC 475), the Supreme Court observed and directed as under:

*“This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. We sometimes hear of ‘honour’ killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism”.*

2.7 Some proposals are being mooted proposing amendments to Section 300 I.P.C. by way of including what is called 'Honour Killing' as murder and shifting the burden of proof to the accused. These proposals have been studied. The views from various quarters at an informal level have also been ascertained. After a preliminary examination of these and certain other models of law, the framework of proposed law has been prepared and annexed to the Consultation Paper. The Consultation paper together with the draft Bill prepared is at **Annexure II**. The views of the public were invited with reference thereto. We shall advert to the responses received and the Commission's views thereon. The draft legislation has been slightly recast by the Commission after further consideration. The draft Bill now proposed by the Law Commission is at **Annexure I**.

2.8 The idea underlying the provisions in the draft Bill is that there must be a threshold bar against congregation or assembly for the purpose of objecting to and condemning the conduct of young persons of marriageable age marrying according to their choice, the ground of objection being that they belong to the same *gotra* or to different castes or communities. The Panchayatdars or caste elders have no right to interfere with the life and liberty of such young couples whose marriages are permitted by law and they cannot create a situation whereby such couples are placed in a hostile environment in the village/locality concerned and exposed to the risk of safety. Such highhanded acts have a tendency to create social tensions and disharmony too. No frame of mind or belief based on social hierarchy can

claim immunity from social control and regulation, in so far as such beliefs manifest themselves as agents of enforcement of right and wrong. The very assembly for an unlawful purpose viz. disapproving the marriage which is otherwise within the bounds of law and taking consequential action should be treated as an offence as it has the potential to endanger the lives and liberties of individuals concerned. The object of such an assembly is grounded on disregard for the life and liberty of others and such conduct shall be adequately tackled by penal law. This is without prejudice to the prosecution to be launched under the general penal law for the commission of offences including abetment and conspiracy.

2.9 Given the social milieu and powerful background of caste combines which bring to bear intense pressure on parents and relatives to go to any extent to punish the 'sinning' couples so as to restore the community honour, it has become necessary to deal with this fundamental problem. Any attempt to effectively tackle this socio-cultural phenomenon, rooted in superstition and authoritarianism, must therefore address itself to various factors and dimensions, viz, the nature and magnitude of the problem, the adequacy of existing law, and the wisdom in using penal and other measures of sanction to curb the power and conduct of caste combines. The law as it stands does not act either as a deterrence or as a sobering influence on the caste combinations and assemblies who regard themselves as being outside the pale of law. The socio-cultural outlook of the members of caste councils or

*Panchayats* is such that they have minimal or scant regard for individual liberty and autonomy.

### **3. Salient features of the proposed Bill**

3.1 We may broadly indicate the general lay-out and the main features of the proposed legislation. Given the fact that the powerful influence of the caste or community *Panchayats* and the aggressive role played by them in controlling the freedom of choice of the marrying couple is the root cause of honour related crimes, there must be a check on such unwarranted interference by the members of *Panchayats*. The couple marrying against the wishes of members of the bodies like *khap panchayats* ought not to be driven to a state of insecurity and misery. Their life and liberty is 'endangered' because they are exposed to threats and socio-economic deprivations. The close family members of the couple are also brought into the picture to enforce the diktats of such informal body of *panchayats* / councils. This is directly affecting the community and the family life in the villages, thereby posing a threat to social order and peace. As there is a need to divest the *panchayatdars* or caste 'elders' of their self assumed hegemony and controlling influence in these matters, this Bill has been thought of, on balancing various considerations. It is proposed that there should be a threshold bar against the congregation or assembly for the purpose of disapproving an intended marriage or the conduct of the young couple and this objectionable conduct of the *panchayatdars* should be brought within the

purview of penal law. A preventive provision prohibiting such assemblies and penalizing the participation in such assemblies has also been introduced.

3.2 Having rendered the convening and conduct of such assemblies unlawful and punishable under law, consequential penal provisions dealing with offences committed in relation thereto have been proposed. Two sections are proposed to be introduced, i.e., Section 3, which makes punishable the acts endangering liberty, which are also particularized in the Section. The other Section, i.e., Section 4 would deal with criminal intimidation by the members of unlawful assembly or others to secure compliance with the illegal decision of the assembly. Such acts of criminal intimidation which are punishable under the general law, i.e., the Indian Penal Code have been specifically introduced for the purpose of meting out higher punishment to those members of unlawful assembly. The other penal provisions and the situations referred to above are not taken care of nor covered by the provisions of Penal Code. At any rate, there is a room for doubt as regards the invocation of the provisions of IPC. However, the criminal acts other than those falling under the three penal provisions of the Act can still be dealt with under the provisions of the Penal Code including the provisions relating to abetment and conspiracy. For instance, if a persons who is a party to the unlawful assembly has committed or abetted the commission of an offence of grievous hurt against the targeted couple or one of them or their relatives, the IPC provisions will be attracted. That is why Section 5 has been introduced to make it clear that the provisions of Sections 2, 3, and 4 of the proposed Bill

are without prejudice to the provisions of IPC. In order to have sufficient deterrent effect, mandatory minimum punishments have been prescribed while taking care to see that such punishment has an element of proportionality. Apart from these penal provisions, a specific section has been proposed to empower the District Magistrate or the SDM to take preventive measures and a further obligation is cast on them to take note of the information laid before them by the marrying couple or their family members and to extend necessary protection to them. The officials are made accountable for the failure or omission on their part to take necessary steps to prevent unlawful assembly (*caste panchayats*, etc.) or to give protection to the targeted couple. It has been provided that the offences shall be tried by a Court of Sessions in the District presided over by the Sessions Judge or Additional Sessions Judge as notified by the High Court. The need for constitution of special courts can be reviewed at a later stage. The offences are cognizable, non-bailable and non-compoundable.

3.3 The overlapping with the provisions of IPC has been, as far as possible, avoided. Though, at first look, it may appear that the offence of unlawful assembly is nothing other than what we find in Section 141 of IPC, it needs to be pointed out that the unlawful assembly of the kind contemplated by the proposed Bill does not strictly fall within the scope of the said section. The ingredients of 'unlawful assembly' under the Indian Penal Code and the unlawful assembly contemplated by Section 2 of the proposed Bill are not the same. Moreover, a punishment higher than that prescribed for unlawful

assembly under IPC has been prescribed under Section 2. As regards Section 4 dealing with criminal intimidation, as already clarified, this Section has been introduced with a view to provide for higher punishment in the case of acts of criminal intimidation by the members of unlawful assembly within the meaning of this Bill. Thus, the provisions of the proposed Bill coupled with those in IPC would, it is hoped, be effectively able to combat the menacing trend of dastardly actions and drastic social sanctions directed against the hapless young couple and their families.

#### **4. Autonomy of choices and liberty – a value to be protected.**

4.1 The autonomy of every person in matters concerning oneself – a free and willing creator of one's own choices and decisions, is now central to all thinking on community order and organization. Needless to emphasize that such autonomy with its manifold dimensions is a constitutionally protected value and is central to an open society and civilized order. Duly secured individual autonomy, exercised on informed understanding of the values integral to one's well being is deeply connected to a free social order. Coercion against individual autonomy will then become least necessary.

4.2 In moments and periods of social transition, the tensions between individual freedom and past social practices become focal points of the community's ability to contemplate and provide for least hurting or painful solutions. The wisdom or wrongness of certain community perspectives and practices, their intrinsic impact on liberty, autonomy and self-worth, as well



as the parents' concern over impulsive and unreflective choices – all these factors come to the fore-front of consideration.

4.3 The problem, however, is the menacing phenomena of repressive social practices in the name of honor triggering violent reaction from the influential members of community who are blind to individual autonomy. How best to tackle it is the question. In this context, the instrumentalist role of law to grapple with such situations assumes importance. The thought behind the proposals in this report is to bring to greater focus on the conduct which endangers life and liberty and to highlight the civilizing perceptions on liberty and autonomy.

4.4 Social protection has consistently been the paramount goal of modern criminal law. Criminal punishment typically achieves such protection through its capacity to motivate people to conform to socially acceptable rules of behaviour with threats of serious penalties for non-conformity. "Punishment serves as a weapon which society uses to prevent conduct which

harms or threatens to harm its interests"<sup>4</sup> The largest social interests or community values cannot be judged by a handful of influential persons whose beliefs are grounded in superstition and dogmas totally opposed to constitution and the laws.

4.5 The self-styled *Panchayats* or assembly of people constitute a close knit section of people bonded by certain common perspectives and values. Caste plays a pivotal role in this bondage. Having regard to the hegemony and the social or political power available to these Panchayats, their dictates on questions of caste relationships, matrimony etc. are formidable. Different caste groups have their own combinations. While these assembly of people may be playing some role in protecting certain basic cultural mores, their deviant role in subjecting to peril the life and liberty of persons who do not conform to their views and values cannot be condoned and it needs to be directly tackled and necessarily subjected to the disciplines of law. It would be unwise and socially incorrect to leave life and liberty of vulnerable people, at the mercies of dominant and authoritarian caste councils and such other groups whose commands and decisions cannot be easily ignored by the family and community members. The law should aim at counter-acting the misdirected power and domineering position of the caste / Community *Panchayats* in so far as they act as centers of coercion and

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<sup>4</sup> See the Article "A more Principled approach to Criminalizing negligence: A Prescription for Legislature" by Garfield, Leshie Yalof, Associate Professor, Pace University School of Law (1998).

intimidation. Regard and respect for life, liberty and autonomy of persons need to be the larger focus and the perceived strength of such assemblies or combinations will have to be appropriately dealt with by law.

## **5. Whether 'honour killing' to be included in Section 300 IPC:**

5.1 The Commission is of the view that there is no need for introducing a provision in Section 300 IPC in order to bring the so-called 'honour killings' within the ambit of this provision. The existing provisions in IPC are adequate enough to take care of the situations leading to overt acts of killing or causing bodily harm to the targeted person who allegedly undermined the honour of the caste or community. The motive behind killing a person does not furnish real justification to introduce a separate provision in section 300, as is contemplated to be done under the proposed Government's Bill (as published in the newspapers). Probably, the addition of such clause may create avoidable confusion and interpretational difficulties.

## **6. Burden of proof**

6.1 Further, shifting the burden of proof on the basis of mere accusations of involvement in the serious offence of murder etc or abetment thereof is not desirable. Such a move will be against the cardinal principles of jurisprudence accepted and absorbed into our criminal justice system. If burden of proof has to be shifted in such a case, logically, it will have to be done in a large number of other heinous crimes. We find neither logic nor rationale in treating the accused in the so-called honour killing cases as a separate class in the matter of application of doctrine of burden of proof. The

difficulties in proof before a court of law may not by itself be a legitimate ground to deviate from the well established canons of criminal jurisprudence. The evidence may not be forthcoming in many cases of ghastly murders and barbaric killings or the witnesses may be scared to speak against notorious criminals. A holistic approach is called for and any attempt to drastically expand the rigour of criminal procedure to cope up with *ad hoc* situations may be counter-productive. The introduction of such a drastic provision will be out of tune with the criminal justice system and the salutary principles we have accepted as part of it. As an alternative to this, the Commission is of the view that an appropriate presumption of intention to commit the prohibited acts in clauses 3 and 4 of the proposed Bill, can be legitimately drawn against a member of an unlawful assembly. Having regard to the natural course of human conduct and the authoritarian mindset of *Panchayatdars*, it is reasonable to think that they would not be content with merely taking a decision condemning the so-called objectionable marriage, but they would like to go further and give effect to the decision by acts of coercion and harassment if necessary. The offensive acts done in the aftermath of the decision cannot be dissociated from their role and hegemony. The presumption to some extent solves the problem arising from the difficulty in the identification of actual role that may be played by one or more members of the assembly and in securing evidence to implicate the guilty. In such a situation, the presumption as envisaged by clause 6 will assume a significant role.

6.2 Penal law handles proof of facts by direct and circumstantial evidence. Principles of inference and logic are involved in both modes of proof. Statutes relating to evidence have engaged themselves in grappling with problems of natural non-availability or paucity of evidence in certain offence situations. Presumptions have usually emerged as a tool of logic to fill these gaps. Presumptions state cause-effect relationships in such circumstances. Care must, however, be taken to ensure that the causal link is not too remote or too thin. Presumptions generally do not affect the position of burden of proof but only shift the burden of evidence or the burden of persuasion. The presumption which is eminently suitable in the context of the present problem is the one incorporated in Section 6 of the proposed Bill. It raises a presumption to the effect that the participants in unlawful assembly intended to commit and abet the offences punishable under Section 3 and 4 of the Bill in order to carry out the illegal decision taken by them. **Such presumption will supply an important link in the chain of evidence.** The presumption proposed to be introduced is as follows:

*Every person participating in an unlawful assembly, shall be presumed to have also intended to commit or abet the commission of offences under Section 3 and 4 of the Act.*

6.3 Thus, in respect of the overt acts under Sections 3 and 4, this presumption would be attracted. On a fair balance of various conflicting considerations, we feel that the presumption as above would be appropriate and effective.

6.4 In the matter of burden of proof, the Commission feels that the analogy sought to be drawn from the provisions of the Commission of Sati (Prevention) Act, 1987 is not appropriate for more than one reason. 'Sati' is a barbaric, deeply entrenched social evil which was prevalent in certain parts of the country. The magnitude and seriousness of that evil cannot be compared to the problem on hand. More important, the offence of 'Sati' always remained an open affair with all the rituals and ceremonies attached to it and the persons actively participating therein could be identified without difficulty. The accusations in such cases are based on solid evidence.

## **7. Honour Crimes Bill: Responses and suggestions**

7.1 As already stated, the Commission received responses from some State Governments, Law Universities and others. The list of persons / organizations from whom responses have been received are given in **Annexure III**. The Commission appreciates the effort of West Bengal National University of Juridical Sciences in presenting a critical analysis of the provisions of the proposed Bill and putting forward important suggestions. The Commission has also looked into the suggestions of Faculty of Amity Law School, Noida. None of the responses have opposed in principle, the Commission's proposed recommendations and the draft Bill. Some of those suggestions have been considered and changes to the extent considered appropriate have been made in the draft Bill.

7.2 One major suggestion is that relationships akin to marriage not prohibited by law should also be included in the meaning of the word

'marriage' occurring in clause 2 of the draft Bill. This means that live-in relationships should also be included and the protection of the law secured for persons in such relationships. While on first flush, this suggestion may deserve acceptance, it is felt that bringing such relationship within the scope of this law may unduly dilute its efficacy and is likely to meet with resistance/and disapproval from various quarters and dimensions. As of now, the marriage laws of our country do not cognize live-in relationships as a form of marriage. Unless a substantive law in the realm of marriage deals with that question comprehensively, it is not advisable at this point of time to bring in such relationships within the scope of the proposed law, whose object is to strike at the root of unwarranted interference of village assemblies even in relation to perfectly legal marriages and to generate important social perspectives on liberty rights and autonomy of individuals. Another suggestion is that forced marriages at the instance of family members should also be brought within the net of the proposed law. The problem of forced marriages has a different dimension as the members of *khap panchayats* and the like do not come into the picture there. They can be effectively taken care of within the ambit of general penal law and Child Marriages (Prohibition) Act. Further, it is felt that by enlarging the scope of the proposed law to include offensive conduct of individual family members / relatives, the integrity of the proposed law will be lost in so far as it aims to replace or substitute the entire corpus of existing criminal law on the subject.

7.3 Another comment that the criminalization of the acts of groups and focus on punishment by itself will not be able to abate the mischief and the prevention / protection aspects should also receive due consideration. However, it may be seen that the proposed Bill as recast deals with all these aspects Reining in the high-handed acts of caste assemblies within the pale of penal law with emphasis on deterrent element is a desideratum that needs to be given due priority to combat the existing evil.

7.4 The National Commission for Women has drafted a Bill titled "Prevention of Crimes in the name of Honour and Tradition". The Bill is closer in thinking to the law proposed by the Law Commission. It suggests certain prohibitive and penal measures. It provides for recording of declaration of an intended marriage by the couple concerned as a means of seeking protection apart from penalizing the acts of harassment etc. caused to the woman or her partner. However it misses the necessity and desirability of the focus on directly dealing with unlawful assemblies and their vicious influences. Further, the offences under general law are also included in the said Bill. But, certain aspects contained in that Bill have been usefully incorporated in the proposed law.

7.5 The Government of National Capital Territory of Delhi through its Department of Home, has forwarded the comments of an officer of the Law Department. The main point highlighted is that since the subject of unlawful assembly stands covered by Section 141 of the Indian Penal Code and Section 506 I.P.C provides for criminal intimidation, there is no need for the proposed



law. It further says that necessary amendments to the Code of Criminal Procedure should take care of the situation. These views have been examined. In fact, they have been considered and kept in mind while drafting the proposed law. Section 141 I.P.C. fifth clause alone has some resemblance to the subject on hand. However, the thrust of that clause is the conduct of subjecting - "any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do". It is doubtful whether the unlawful assembly of the nature contemplated by the proposed Bill is covered under Section 141. That apart, the proposed law intends to deal with the conduct of local bodies or caste assemblies and to strike at the blind fury of such associations acting in disregard of liberty of persons. A special class of unlawful assembly with a different punishment is, therefore, suggested as a measure of greater efficacy. In any event, Section 149 I.P.C. read with Section 141 (which envisages five or more persons of 'unlawful assembly' acting in furtherance of common object) is not to be affected. It would apply to situations other than those contemplated by the present law. Further, the above view failed to perceive the shift in perspectives and the need to intensify the focus, as already stated, to act in promotion of liberty and its contours. The Commission is unable to share the view that the amendments to Cr.P.C. would be able to serve the intended purpose of the proposed law.

7.6 The other response has come from the Government of Odisha (Law Department). According to this opinion, some overlap between Section 141 and 149 I.P.C. and the proposed law is seen. This misconception is again

rooted in the conceptual misgivings. It must be seen that the provisions of this Act coupled with those in IPC can be simultaneously worked in some areas and they can be complementary to each other. Care has also been taken to see that the offence dealt with under general criminal law are not, as far as possible, brought within the purview of the proposed law. It has been made clear that the provisions of this law are not in derogation of those in IPC, but will be in addition thereof. However, the Commission would like to clarify that bringing the offence of criminal intimidation into the gamut of this law is to prescribe more severe punishment. The Commission is of the view that instead of adding the same provision in IPC, it is better that this stand alone law dealing with honour crimes should contain such provision.

7.7 One more response has come from the Law Department of Government of Madhya Pradesh. Apart from suggesting the increase of length of imprisonment, it has been suggested that the 'pardon' shall be granted to an accused who is willing to depose as prosecution witness so that there would be better scope for conviction.

## **8. Counselling and awareness**

8.1 Apart from legislation to effectively curb honour related crimes, it is equally important that the steps should be taken to organise counselling programmes for the village communities, for instance to explain to them that *sagotra* marriages are not opposed to law, religion '*sadachar*' or medical science. In the initial stages, social workers and volunteers may not be in a position to accomplish this task as there may meet stiff resistance and they

may not be able to build up much needed trust. The spiritual or religious leaders or respected elderly persons like retired officials and political personalities, members of legal profession, teachers, etc., can be requested to address the village gatherings and explain to them the real position and the need to shed superstition and abominable practices. So also the services of medical practitioners of repute should be utilised by the official establishment to convince the people that the *sagotra* marriages do not have any adverse effects on the health and well-being of the couple or progeny. Side by side, discourses on electronic media by respected persons and scholars should be organised. Media too can play a very useful role in shaping the mindset of the people concerned. So also, the District and Taluqa Legal Services bodies can undertake this task through appropriate means.

## **9. Registration of marriage**

9.1 In order to avoid unnecessary hassles and harassment from external sources directed against the couple who are intending to marry and even their family members who would like to go according to their wishes, it is desirable that the procedure under the Special Marriage Act is simplified. The time gap between the date of giving notice of marriage and the registration should be removed and the entire process of registration of marriage should be expedited. The domicile restriction should also be removed. We are aware, that already an amendment is proposed to the Special Marriage Act by the Government of India by introducing a Bill in the Parliament. It is, therefore,

not necessary to make a detailed study and give specific recommendation on this aspect.

## **10. A recent Supreme Court Judgment, Re: Death sentence**

10.1 Before we conclude this Report, we would like to refer to one recent decision of the Supreme Court wherein a direction of far reaching consequences has been given by the Supreme Court while laying down the proposition that the so-called honour killing comes within the category of rarest of the rare cases deserving death punishment. It was observed "this is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate 'honour killing' should know that the gallows await them". This decision in *Bhagwan Das Vs. State (NCT of Delhi)* [(2011) 6 SCC 396] as well as the decision in *Arumugam Servai* (supra) were rendered by the same Bench. A copy of the judgment was directed to be sent to all the High Courts who shall circulate the same to all the Sessions Judges. Following this judgment, in the recent times, as seen from the newspaper reports, almost all the accused in the so-called honour killing murder cases were sentenced to death by the Sessions Courts in U.P. and Delhi. With great respect, we are constrained to say that such a blanket direction given by the Supreme Court making death sentence a rule in "honour killings" cases, makes a departure from the principles firmly entrenched in our criminal jurisprudence by virtue of a series of decisions rendered by larger Benches of

Supreme Court, for e.g. *Bachan Singh Vs. State of Punjab*<sup>5</sup> and *Machhi Singh Vs. State of Punjab*<sup>6</sup>. It is settled law that aggravating and mitigating circumstances should be weighed and it is only in very exceptional and rare cases, death sentence should be imposed. Death sentence, in other words, is a last resort. Further, where there is more than one accused, the degree of participation and culpability may vary. It is needless to emphasize that each case must be judged by the facts and circumstances emerging in that case. No hard and fast rule can be laid down in the light of the Supreme Court's consistent approach towards death sentence vs. life imprisonment issue. This judgment in the case of *Bhagwan Das* is bound to create uncertainty in the state of law and we are sure that in the near future, the correctness of such proposition will be tested by a larger Bench of Hon'ble Supreme Court.

## **11. Summary of Recommendations**

11.1 In order to keep a check on the high-handed and unwarranted interference by the caste assemblies or *panchayats* with *sagotra*, inter-caste or inter-religious marriages, which are otherwise lawful, this legislation has been proposed so as to prevent the acts endangering the liberty of the couple married or intending to marry and their family members. It is considered necessary that there should be a threshold bar against the congregation or assembly for the purpose of disapproving such marriage / intended marriage and the conduct of the young couple. The members gathering for such

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<sup>5</sup> (1980) 2 SCC 684

<sup>6</sup> AIR 1983 SC 957

purpose, i.e., for condemning the marriage with a view to take necessary consequential action, are to be treated as members of unlawful assembly for which a mandatory minimum punishment has been prescribed.

11.2 So also the acts of endangerment of liberty including social boycott, harassment, etc. of the couple or their family members are treated as offences punishable with mandatory minimum sentence. The acts of criminal intimidation by members of unlawful assembly or others acting at their instance or otherwise are also made punishable with mandatory minimum sentence.

11.3 A presumption that a person participating in an unlawful assembly shall be presumed to have also intended to commit or abet the commission of offences under the proposed Bill is provided for in Section 6.

11.4 Power to prohibit the unlawful assemblies and to take preventive measures are conferred on the Sub-Divisional / District Magistrate. Further, a SDM/DM is enjoined to receive a request or information from any person seeking protection from the assembly of persons or members of any family who are likely to or who have been objecting to the lawful marriage.

11.5 The provisions of this proposed Bill are without prejudice to the provisions of Indian Penal Code. Care has been taken, as far as possible, to see that there is no overlapping with the provisions of the general penal law. In other words, the criminal acts other than those specifically falling under the proposed Bill are punishable under the general penal law.

11.6 The offence will be tried by a Court of Session in the district and the offences are cognizable, non-bailable and non-compoundable.

11.7 Accordingly, the Prohibition of Interference with the Freedom of Matrimonial Alliances Bill 20\_\_ has been prepared in order to effectively check the existing social malady.

**[Justice (Retd.) P. V. Reddi]  
Chairman**

**[Justice (Retd.) Shiv Kumar Sharma]  
Member**

**[Amarjit Singh]  
Member**

	<p style="text-align: center;">THE PROHIBITION OF INTERFERENCE WITH THE FREEDOM OF MATRIMONIAL ALLIANCES BILL, 20__ A  Bill</p> <p>to provide for, in the interests of protecting individual liberty and preventing victimization, prohibition of unlawful assemblies and other conduct interfering with the freedom of matrimonial alliances in the name of honour and tradition and for the matters connected therewith or incidental thereto;</p> <p>Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows: -</p>	
	<p><b>1.</b> (1) This Act may be called the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Act, 20__.</p> <p>(2) It extends to the whole of India except the State of Jammu and Kashmir.</p> <p>(3) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.</p>	<p>Short title, extent and commencement.</p>



	<p><b>2.</b> (1) No person or any group of persons shall gather, assemble or congregate at any time with the view or intention of condemning any marriage, not prohibited by law, on the basis that such marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned.</p> <p><i>Explanation 1:</i> 'Marriage' shall include a proposed or intended marriage.</p> <p><i>Explanation 2:</i> The words 'gather', 'assemble' or 'congregate' would include acting in concert through the use of any technological means or mediums.</p> <p>(2) Such gathering or assembly or congregation shall be treated unlawful and every person convening or organizing such assembly and every member thereof participating therein directly or indirectly shall be punishable with imprisonment for a term of not less than six months but which may extend to one year and shall also be liable to fine up to ten thousand rupees.</p>	Unlawful Assembly.
	<p><b>3.(1)</b> The members of such unlawful assembly who in furtherance thereof individually or collectively counsel, exhort or bring pressure openly or otherwise upon any person or persons to prevent or disapprove of the marriage which is objected to by the said members or to generate an environment of hostility towards such couple or either of them or their relatives or supporters shall be deemed to have acted in endangerment of their liberty and such an act of endangerment shall be punishable with imprisonment for a period of not less than one year and extending upto two years and fine extending to twenty thousand rupees.</p> <p>(2) Any other person acting at the instance of any member of unlawful assembly or otherwise</p>	Endangerment of Liberty.

	<p>indulging in the acts of endangerment of liberty shall also be punishable likewise.</p> <p><i>Explanation:</i> 'Endangerment of liberty' shall include the acts calculated to lead to social boycott or enforcement of social sanctions and in particular the following acts:</p> <ul style="list-style-type: none"> <li>(i) Bringing to bear pressure on the couples or their family or relatives to leave the village or area of residence concerned;</li> <li>(ii) Indulging in any conduct which will impede or is likely to impede, access to markets, community facilities, places of worship or any other necessities of life.</li> <li>(iii) Divesting or dispossessing the couple or their family of any land or property belonging to them.</li> <li>(iv) Any other act of harassment whether physical or mental.</li> </ul>	
45 of 1860	<p><b>4.</b> Any member or members of an unlawful assembly or any other person acting at their instance or otherwise who, with a view to secure compliance with the illegal decision of that assembly in relation to the marriage that is being objected to, indulges in criminal intimidation of the couple or either of them or their relatives or supporters shall be punishable with imprisonment for a term of not less than one year but which may extend to three years and shall also be liable to fine up to thirty thousand rupees provided that if the threat be to cause harm or injury of the description referred to in second part of Section 506 IPC, the maximum punishment shall extend to seven years of imprisonment instead of three years and fine extending to thirty thousand rupees.</p> <p><i>Explanation:</i> The expression 'criminal intimidation' shall have the same meaning as is given in section 503 of the Indian Penal Code.</p>	Criminal Intimidation.

	<p>5. The provisions in Sections 2, 3 and 4 shall be in addition to and not in derogation of the provisions in the Indian Penal Code, and is further clarified that the specific offences under the above provisions shall be punishable under this Act, regardless of punishment for any corresponding offence under any other law.</p>	Provisions of IPC remain unaffected
	<p>6. Every person participating in an unlawful assembly, shall be presumed to have also intended to commit or abet the commission of offences under Section 3 and 4 of the Act.</p>	Presumption.
	<p>7. In the Representation of the People Act, 1951, in section 8, in sub-section (2), after clause (c), the following shall be inserted, namely :-</p> <p>“(d) any provision of the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Act, 20__.”</p>	Amendment of Act 43 of 1951.
	<p>8. Power to prohibit certain acts and the duty of authorities to take preventive measures.</p> <p>[a] The sub-divisional Magistrate or District Magistrate shall receive any request or information from any person or persons seeking protection from any assembly of persons or from members of any family who are likely to or who have been objecting to any lawful marriage.</p> <p>[b] Where the SDM or District Magistrate receives information from any source that there is a likelihood of convening of an assembly openly or in secrecy to condemn as objectionable any marriage proposed or solemnized, he shall, by order prohibit the convening of such assembly</p>	Power to prohibit certain acts and taking preventive measures.

	<p>and doing of any act towards the commission of any offence under this Act by any person in any area specified in the order.</p> <p>[c] The SDM or District Magistrate may take such steps as may be necessary to give effect to such order including giving appropriate directions to the police authorities concerned.</p> <p>[d] The SDM or District Magistrate shall also take such steps as may be necessary to ensure the safety of the persons targeted pursuant to the illegal decision taken by the unlawful assembly.</p> <p>[e] The SDM or the District Magistrate shall be in direct supervision of the protection and safety of the persons concerned.</p> <p>[f] Every official called upon to act in terms of the above provisions shall be accountable for their lapses, omissions or failures and the State Government shall provide for and take such action against them as may be deemed fit for their lapses, omissions or failure to act.</p>	
	<p>9. (1) Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be triable by the Court of Sessions presided over by the District and Session Judge or any other Sessions Court presided over by an officer of the rank of Sessions Judge or Additional Session Judge in the district concerned as may be specified by the High Court in a notification.</p> <p>(2) The Court of Sessions so notified may take cognizance of any offence without the accused being committed to it for trial upon receiving a complaint of facts which constitutes such offence, or upon a police report of such facts.</p>	<p>Trial of offences under this Act.</p>
	<p>10. (1) When trying any offence under this Act, the notified Court of Sessions may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.</p> <p>(2) If, in the course of any trial of any offence</p>	<p>Power of Special Court with respect to other offences.</p>

	under this Act, it is found that the accused person has committed any other offence under this Act or any other law, the notified Court may convict such person also of such other offence and pass appropriate sentence authorized by that law.	
	11. Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be cognizable, non- bailable and non-compoundable.	Offences to be cognizable, non-bailable and non-compoundable.

## **THE PROHIBITION OF UNLAWFUL ASSEMBLY (INTERFERENCE WITH THE FREEDOM OF MATRIMONIAL ALLIANCES) BILL, 2011**

**[An Act to deal with conduct endangering life and liberty of persons in matrimonial alliances]**

### **Statement of Objects and Reasons:**

There has been a spurt in illegal intimidation by self appointed bodies for bringing pressure against Sagotra marriages and inter-caste, inter-community and inter-religious marriages between two consenting adults in the name of vindicating the honour of family, caste or community. In a number of cases, such bodies have resorted to incitement of violence and such newly married or couples desirous of getting married have been subjected to intimidation and violence which has also resulted into their being hounded out of their homes and sometimes even murdered. Although such intimidation or acts of violence constitute offences under Indian Penal Code, yet, it is necessary to prevent assemblies which take place to condemn such alliances and to prescribe more severe punishment for such intimidatory or violent acts or acts imperiling the liberty of individual. This Act is, therefore, enacted to nip the evil in the bud and to prevent spreading of hatred or incitement of violence through such gatherings. The Act is designed to constitute special offences against such assemblies and is in addition to other offences under the Indian Penal Code.

Sub: Unlawful interference of Caste Panchayats etc.with marriages  
in the name of honour: A suggested legislative framework

Consultation paper

1. Incidents of murder and other grave offences committed against persons marrying or proposing to marry sagotras or outside their castes/religions are periodically reported. It is learnt that number of cases goes unreported for fear of reprisals or cascading effects. The intervention of caste/community assemblies in the name of ‘Khap Panchayats’, ‘Katta Panchayats’ etc. in the occurrence of these offences and other related incidents involving serious life and liberty consequences, are frequently noticed. Such assemblies gathered on caste lines assume to themselves the power and authority to declare on and deal with ‘objectionable’ matrimonies and exhibit least regard for life and liberty and are not deterred by the processes of administration of justice. The penal law lacks direct application to the illegal acts of such caste assemblies and needs to be amended. Meanwhile innocent youth are harassed and victimized while such assemblies continue to wield unhindered authority and also seem to resist any suggestion of being subjected to any social control.

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

3. Sagotra marriages are not prohibited by law, whatever may be the view in olden times. The Hindu Marriage Disabilities Removal Act, 1946 was enacted with a view to dispel any doubts in this regard. The Act expressly declared the validity of marriages between the Hindus belonging to the same 'gotra' or 'pravara' or different sub-divisions of same caste. The Hindu Marriage Act does not prohibit sagotra or inter-caste marriages.

4. The views of village elders or family elders cannot be forced on the willing couple and no one has a right to use force or impose far-reaching sanctions in the name of vindicating community honour or family honour. There are reports that drastic action including wrongful confinement, persistent harassment, mental torture, infliction of severe bodily harm is resorted to either by close relations or some third parties against the so-called erring couple either on the exhortations of some or all the Panchayatdars or with their connivance. Social boycotts and other illegal sanctions affecting the young couple, the families and even a section of local inhabitants are quite often resorted to. The cumulative effect of all such acts have also public order dimensions.

5. In a very recent case – *Arumugam Servai vs. State of Tamil Nadu* [reported in (2011) 6 SCC 405], the Supreme Court strongly deprecated the practice of khap/katta panchayats taking law into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice.

6. Some proposals are being mooted proposing amendments to Section 300 I.P.C. by way of including what is called 'Honour Killing' as murder and shifting the burden of proof to the accused. These proposals have been studied. The views from various quarters at an informal level have also



been ascertained. After a preliminary examination of these and certain other models of law, a broad framework of proposed law to deal with the situation has been prepared and annexed herewith. The views of the public are invited with reference thereto.

Draft Legislation (enclosed)

7. The idea underlying the aforesaid provisions is that there must be a threshold bar against congregation or assembly for the purpose of discussing on and objecting to the conduct of young persons of marriageable age marrying according to their choice, the ground of objection being that they belong to the same gotra or to different castes or communities. The Panchayatdars or caste elders have no right to interfere with the life and liberty of such young couples whose marriages are permitted by law and they cannot create a situation whereby such couples are placed in a hostile environment in the village/locality concerned and exposed to the risk of safety. Such highhanded acts have a tendency to create social tensions and disharmony too. No frame of mind or belief based on social hierarchy can claim immunity from social control and regulation, in so far as such beliefs manifest themselves as agents of enforcement of right and wrong. *The very assembly for an unlawful purpose viz. disapproving the marriage which is otherwise within the bounds of law and taking consequential action should be treated as an offence as it has the potential to endanger the lives and liberties of individuals concerned.* (Italic part has been added by Hon'ble Chairman)

8. The proposed law is not in derogation of the provisions of Indian Penal Code which can take care of various offences of serious nature

perpetrated by the members of caste panchayats in prosecution of their unlawful objective.

9. The Commission is *prima facie* of the view that there is no need for introducing a provision in Section 300 IPC in order to bring the so-called 'honour killings' within the ambit of this provision. The existing provisions in IPC are adequate enough to take care of the situations leading to overt acts of killing or causing bodily harm to the targeted person who allegedly undermined the honour of the caste or community. The motive behind killing a person does not furnish real justification to introduce a separate provision in section 300, as is contemplated to be done under the proposed Bill (as published in the newspapers). Probably, the addition of such clause may create confusion and interpretational difficulties.

10. Further, shifting the onus on to the accused facing accusations of involvement in the serious offence of murder etc or abetment thereof is not desirable. Such a move will be against the cardinal principles of jurisprudence accepted and absorbed into our criminal justice system. If burden of proof has to be shifted in such a case, logically, it will have to be done in a large number of other heinous crimes. A holistic approach is called for and any attempt to drastically expand the rigour of criminal procedure to cope up with *ad hoc* situations may be counter-productive. The introduction of such a drastic provision needs to be avoided. As an alternative to this, the Commission is of the *prima facie* view that a presumption could be raised in respect of commission of the prohibited acts in clauses 3 and 4 of the proposed Bill, if he or she is a member of an unlawful assembly convened for the purpose of discussing and condemning the perfectly legal conduct of a young couple – married or intending to

marry. This is necessary having regard to the fact that the task of identification of roles that may be played by one or more members of assembly, is difficult to accomplish as the eyewitnesses may not be willing to depose and the circumstantial evidence will not be strong enough to implicate the guilty. In such a situation, the presumption as envisaged by clause 6 will assume a significant role.

11. In this context, the Commission feels that the analogy sought to be drawn from the provisions of the Commission of Sati (Prevention) Act, 1987 is not appropriate for more than one reason. 'Sati' is a barbaric, deeply entrenched social evil which was prevalent in certain parts of the country. The magnitude and seriousness of that evil cannot be compared to the problem on hand. More important, the offence of 'Sati' always remained an open affair with all the rituals and ceremonies attached to it and the persons actively participating therein could be identified without difficulty. The accusations in such cases are based on solid evidence.

The Law Commission of India would like to receive responses to this Paper preferably within 4 weeks which can be sent post or email at [lci-dla@nic.in](mailto:lci-dla@nic.in).

The website of Commission <http://lawcommissionofindia.nic.in>  
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	<p align="center"><b>THE PROHIBITION OF UNLAWFUL ASSEMBLY (INTERFERENCE WITH THE FREEDOM OF MATRIMONIAL ALLIANCES) BILL , 2011</b></p> <p align="center"><b>A Bill</b></p> <p>to provide for, in the interests of protecting individual liberty and preventing victimization, prohibition of unlawful assemblies aimed at interference with the freedom of matrimonial alliances in the name of honour and tradition and for the matters connected therewith or incidental thereto;</p> <p>Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows: -</p>	
	<p><b>1.</b> (1) This Act may be called the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Act, 2011.</p> <p>(2) It extends to the whole of India except the State of Jammu and Kashmir.</p> <p>(3) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.</p>	<p>Short title, extent and commencement.</p>
	<p><b>2.</b> (1) No person or any group of persons shall gather, assemble or congregate at any time with the view or intention to deliberate on, or condemn any marriage, not prohibited by law, on the basis that such marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned.</p>	<p>Unlawful Assembly.</p>

	<p><i>Explanation:</i> ‘Marriage’ shall include a proposed or intended marriage.</p> <p>(2) Such gathering or assembly or congregation shall be treated as an unlawful assembly and every person convening or organizing such assembly and every member thereof participating therein shall be punishable with imprisonment for a term of not less than six months but which may be extend to one year and shall also be liable to fine up to ten thousand rupees.</p>	
	<p><b>3.</b> Any member of an unlawful assembly who alone or in association with other such members counsels, exhorts or brings pressure upon any person or persons so as to prevent, or disapprove of the marriage which is objected to by the said members of the unlawful assembly, or creates an environment of hostility towards such couple or either of them or their relatives or supporters, shall be deemed to have acted in endangerment of their liberty and such an act of endangerment shall be punishable with imprisonment for a term of not less than one year but which may extend to two years and shall also be liable to fine up to twenty thousand rupees.</p>	Endangerment of Liberty.
45 of 1860	<p><b>4.</b> (1) Any member of an unlawful assembly who, with a view to secure compliance with the illegal decision of that assembly in relation to the marriage that is being objected to, indulges in criminal intimidation of the couple or either of them or their relatives or supporters shall be punishable with imprisonment for a term of not less than one year but which may extend to three years and shall also be liable to fine up to thirty thousand rupees provided that if the threat be to cause harm or injury of the description referred to in second part of Section 506 IPC, the maximum punishment shall extend to seven years of imprisonment instead of three years and fine extending to thirty thousand rupees.</p> <p><i>Explanation:</i> The expression ‘criminal intimidation’ shall have the same meaning as is given in section 503 of the Indian Penal Code.</p>	Criminal Intimidation.
	<p><b>5.</b> The provisions in Sections 2, 3 and 4 shall be in addition to and not in derogation of the provisions in the Indian Penal Code.</p>	Provisions of IPC remain unaffected

	<p>6. In a prosecution under section 3 or section 4, if it is found that any accused person participated or continued to participate in an unlawful assembly, the Court shall presume that he intended and decided to take all necessary steps to put into effect the decision of unlawful assembly including the commission of acts referred to in Sections 3 and 4.</p>	<p>Presumption.</p>
	<p>7. In the Representation of the People Act, 1951, in section 8, in sub-section (2), after clause (c), the following shall be inserted, namely :-</p> <p>“(d) any provision of the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Act, 2011.”</p>	<p>Amendment of Act 43 of 1951.</p>
	<p>8. (1) Where the Collector or District Magistrate receives information that there is a likelihood of convening of an unlawful assembly, he shall, by order, prohibit the convening of any such assembly and doing of any act towards the commission of any offence under this Act by any person in any area specified in the order.</p> <p>(2) The Collector or District Magistrate may take such steps as may be necessary to give effect to such order, including giving of appropriate directives to the police authorities.</p> <p>(3) The Collector or District Magistrate shall also take such steps as may be necessary to ensure the safety of the persons targeted pursuant to the illegal decision taken by the unlawful assembly.</p>	<p>Power to prohibit certain acts.</p>
	<p>9. (1) Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be triable by a Special Court constituted under a notification issued in the official gazette and the special court shall be presided over by an officer of the rank of Sessions Judge or Addl. Sessions Judge.</p> <p>(2) The State Government shall in consultation with the High Court constitute one or more Special Courts for the trial of offences under this Act and every Special Court shall exercise jurisdiction in respect of the whole or such part of the State as may be specified in the notification.</p>	<p>Trial of offences under this Act.</p>
	<p>10. (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon</p>	<p>Procedure and power of Special</p>

	<p>receiving a complaint of facts which constitute such offence, or upon a police report of such facts.</p> <p>(2) Subject to the other provisions of this Act, a Special Court shall, for the purpose of the trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, so far as may be, in accordance with the procedure prescribed in the Code of Criminal Procedure for trial before a Court of Session.</p>	Court.
	<p>11. (1) When trying any offence under this Act, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.</p> <p>(2) If, in the course of any trial of any offence under this Act, it is found that the accused person has committed any other offence under this Act or any other law, the Special Court may convict such person also of such other offence and pass any sentence authorized by this Act or such other law for the punishment thereof.</p>	Power of Special Court with respect to other offences.
	<p>12. Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be cognizable, non- bailable and non-compoundable.</p>	Offences to be cognizable, non-bailable and non-compoundable.

**Prohibition of Interference with Matrimonial  
Alliances In The Name of Honour and Tradition Bill**

Statement of Objects and Reasons

There has been a spurt in illegal intimidation by self-appointed bodies for bringing pressure against Sagotra marriages and inter-caste, inter-community and inter-religious marriages between two consenting adults in the name of vindicating the honour of family, caste or community. In a number of cases, such bodies have resorted to incitement of violence and such newly married or couples desirous of getting married have been subjected to intimidation and violence which has also resulted into their being hounded out of their homes and sometimes even murdered. Although such intimidation or acts of violence constitute offences under the Indian Penal Code, yet, it is necessary to prevent assemblies which take place to condemn such alliances. This Bill is therefore, proposed to nip the evil in the bud and to prevent spreading of hatred or incitement to violence through such gatherings. The Bill is designed to constitute special offences against such assemblies, in addition to other offences under the Indian Penal Code.



### **Annexure – III**

*[Refer para 7.1 of the Report]*

List of respondents who responded on the Consultation Paper on Unlawful Interference of Caste Panchayats etc. with marriages in the name of honour: A suggested legislative framework.

1. Government of Mizoram, Home Department.
2. Renu Mishra, Programme Co-ordinator, AALI.
3. Pradeep Singh, New Delhi.
4. Dr. Tarunabh Khaitan, Fellow in Law, Christ Church, Oxford.
5. Dr. Surajit C. Mukhopadhyay, Registrar, The W.B. National University of Juridical Sciences, Kolkatta.
6. Government of Madhya Pradesh, Law & Legislative Dept., Bhopal
7. Government of National Capital Territory of Delhi, Home Dept., New Delhi
8. Government of Odisha, Law Dept.
9. Maj. Gen. Nilendra Kumar, Director, Amity University, Amity Law School, Noida, Uttar Pradesh.
10. Government of Maharashtra, Law & Judiciary Dept., Mumbai.
11. Government of Sikkim, Home Dept., Gangtok.
12. Government of Manipur, Law & Legislative Affairs Dept.