

Chapter IV

Aspects of Honour Killing and Human Rights

4.1 Introduction

In the previous chapter researcher discussed the origin, and historical aspects of honour killing. The practice of honour killing has been prevalent in a number of societies and is not confined to particular communities. It is originate from ancient customs that have been incorporated in too many countries. The notion of honour has fundamental importance in collective societies since the dishonourable conduct of an individual reflects upon the rest of the family members or community. Indian society is a multicultural and pluralistic, where lot of beliefs and faiths, regulate human life. Honour is the most precious thing in Indian society. Every member of the society tries to protect and preserve the honour, reputation of individual and family. Honour killing is a social evil practice emerged by number of behavioural activities of women such as involvement in immoral activities. Researcher briefly discussed the concept and misconception about honour killing which is prevailing in the Indian societies. Honour killing is a murder committed against men or women for actual or perceived immoral behaviour that is deemed to have breached the honour code of a house hold or community. Researcher has evaluated current scenario about increasing number of incidents of honour killing under the name of customary practice. In the crime of honour killing often victims are the own family members or sometimes social group member. Researcher has briefly discussed, about salient features, various causes or reasons of honour killing. Researcher

has highlighted on the methods of punishments used by the family members and community in case of dishonour of the family, caste, community. Researcher highlighted on the religious and cultural perspectives of honour killing in Indian society.

It is observed that, women in India suffer in all stages of her life due to different reasons. Honour killing is nothing but as an extreme form of violence committed against the violators of the code and norms of the family and community. Under the heading of customary killing number of human rights violates, it becomes an issue of human rights. Honour killing practice is a curse to Indian society. Human rights are the matter of part and partial of International law because human rights cannot depend upon any individual nation. Hence protection of human rights cannot be limited to the jurisdiction of any state. In order to protect the life of person and to maintain peaceful atmosphere in the world, the international law provides number of protective instruments such as, *Universal Declaration of Human Rights 1948*, *The International Convention on Civil and Political Rights*, *the International Convention on Economic, Social and Cultural Rights*, *Declaration on the Elimination of Violence against Women, 1993* and *CEDAW* etc. Human rights means the rights and freedoms that every citizens are entitled to enjoy i.e. right to equality, right to life, right to social security and liberty of the persons etc., without distinction of any kind such as race, colour, sex, language, religion etc.

It seems that, Honour Killing is one of the extreme violence perpetrated on women by men. Now International Women's Human Rights group observed that, Honour killing crimes also occur in Bangladesh, Brazil, Ecuador, India, Israel, Italy, Morocco, Sweden, Turkey, Uganda and United Kingdom¹. It is mostly prevalent in Muslim countries. In India, it is mostly prevalent in states such as Punjab,

¹ . Law Z Vol.11, No.5, Issue 105 May 2010, P.25

Haryana, Rajasthan and Western area of Uttar- Pradesh and in some parts of Bihar.² Issues of honour crimes are rarer in south India, and also in the western province of Maharashtra and Gujarat states.

It is observed that, honour killing crimes are violation of number of human rights International instruments as well as domestic laws. Women all over the world have not only, been denied justice, social, economic and political but as a weaker section they have been used, abused, exploited till their death. Although they constitute half of the total population and have contributed and sacrificed not less than men. Unfortunate several times women's life deprived by men under the name of customary practices. In patriarchal society Indian people regarded women as a social evil and she is inferior to the men. The harmful traditional and cultural customary evil practice such as honour killing violates human rights rules and regulations. The most pathetic aspect of disrespect for human rights includes various brutal practices such as; honour killing includes rape, forced marriage, torture, imprisonment within the home and even murder. Honour killing violates the most cherished and basic human right to life of the victim persons. In order to protect family honour the family members' commit violent actions against the victims.

It is observed that, Indian woman challenges for violation of right to dignified life. Harmful cultural practices may directly violate the right to life of women, which are rooted in our society. She is still tied up by the rusted chains of religious customs and traditions. Violence against women is a very important issue concern in the world. A woman has always been an object of gross and severe violence at the hands of man. She is often a victim of physical and mental violence not only outside her house but also inside it. Hence women are deprived of basic freedom and

² . Legal Era Vol.1 Issue IV Aug 2010 P.7.

thereby are easily exposed to exploitation. She has not received any freedom, liberty dignity of life. They are always dominated by male patriarchal society. Violence includes, dowry death, Sati, Sexual abuses, Child-marriages, Infanticide, Feticide, Rape, Sexual- harassment, Murder, Honour Killing etc. Honour killing is one of the extreme violence perpetrated on women by men, it is an evil practice and a gross violation of the right to life with human dignity and the worst possible form of discrimination based on sex, caste, communities.

It is observed that, Honour killing crimes are clearly violation of human rights. It is mostly prevalent in states such as Punjab, Haryana, and Western area of Uttar- Pradesh and in some parts of Bihar.³ As per Indian Democratic Women's Association shows the number of honour killings as approximately nine hundred in Punjab, Haryana and Uttar Pradesh, whereas rest of the country adds to the number by another three hundred. Every year over five thousand brides are killed for dowry in India. In 2007, approximately six hundred fifty five cases were registered as honour killings. A Human Rights Commission of Pakistan (HRCP) that six hundred and forty six women were killed in the name of honour in 2009 up by thirteen per cent from 2008 when five hundred and seventy four such killing was reported. In the Northern State as high as ninety two per cent of the people disapprove of honour killing and related crimes, shows another study commissioned by National Commission of Women which interviewed people from both urban and rural areas⁴.

Honour related violence is not only a problem of our country; its worldwide problem. It is mostly related to youth. Youth are the future of every country. Whenever we punish youth for daring to choose their own life-partner and marry with him or her, obviously we destroy future of our

³.Legal Era. Vol.1 Issue IV Aug 2010 P7.

⁴. Criminal Law Journal ,September 2012, vol. 118, Part 1353, P. 24

country as well as reduce energy and power of our own notation. Most of the victims were mainly young to-twelve to twenty-four years old, it creates fear among the youth, who may intending to get married, due to this pressure is so much that couples tend to commit suicide, it is an severe violation of human rights. It is observed not only women are the victim of honour killing but, men also became victim of honour killing. It is true that numbers of incidents of honour killing are unreported. Honour killing crime is an affront to Human rights and human dignity. It is nothing but a murdering of humanity numbers of Honour Killing cases are not reported so far there is no any specific law to deal such crimes and whatever are laws prevails in our country are not sufficient enough to create the deter in the mind of supposed criminals.

It is observed that, as per the report of United Nations Population Fund (UNFPA), that there are five thousand victims⁵ of honour killings in the world annually. However, many cases are not reported, and many deaths are reported as suicides, so it is difficult to grasp actual numbers. Under the heading of the Honour Killing (Customary killing) no. of women and men's are murdering across the country and it is increases continuously. In India every year more than one thousand young people loses their lives for protection of honour and in the name of customary killing⁶. It is observed that, number of parents think that; their honour lies only in killing their son and daughters who marrying outside caste or inter-religious marriage.

4.2 Honour Killing Violation of Human Rights

The harmful traditional and cultural customary evil practice such as honour killing violates human rights rules and regulations. The most

⁵. Law Z, vol.11, N0. 02, Issue 114, Feb. 2011, P.15.

⁶.Magazine for Legal Professionals and students Lawyers updates Volume XVI, Part 08 ,August, 2010, P, 27

pathetic aspect of disrespect for human rights includes various brutal practices such as; honour killing includes rape, forced marriage, torture, imprisonment within the home and even murder. Indian societies possess a number of customary practices. Honour killing is one of the customary practices which violate number of human rights of the persons. Human rights provide number of rights in order to preserve and protect the human life, liberty, equality and freedom without any discrimination. Violence affects the lives of millions of women worldwide. It constitutes a violation of the rights and fundamental freedoms of women. Since womb to tomb, a woman is under the constant fear of violence. In patriarchal society women suffering violation, she is not safe within the house and outside the house. Honour killing crime is deprived the all human's rights, which offered by national and international laws.

Honour killings are an extreme form of violence perpetrated on couples, According to *Kavita Krishnan*⁷, secretary, of *All India Progressive Women's Association (AIPWA)* 'It is needed to examine the much larger prevalence of violence towards couples who married inter-caste or inter-religious defying societal norms. Not all these cases end in a terrible death. More often than not families manage to dissuade or force girls from picking their own partners. There is very little outrage over these cases because communities are more or less agreed on the need to rein in women's autonomy. Girls are often held captive or forcefully married off against their wishes. Across caste, society and religion, a woman's autonomy, when it comes to marriage, is considered negligible. This forms the backdrop for honour killings in India'.

⁷. 'Urban Honour Killings: Backlash against change' Times of India News Paper Dated 23rd Aug,2015, Edition Pune

The National Record Bureau reveals that almost in every six hours a young married woman is burnt alive or beaten to death or abetted to commit suicide, latest crime statics are love affairs cases as follows

Sir No.	Years	Love affairs Cases
1	2001	2512
2	1009	2256
3	2010	2365
4	2011	2688

These data of love affair cases are recorded and it indicates that the rate of cases increasing every year; it is the biggest killers in India⁸.

According to survey done by Delhi based Indian Population statics survey in 2009 almost 695 homicidal cases have been registered as honour killing in India as follows

Sir No.	State	Percentage
1	Haryana and Delhi	32%
2	Uttar Parades	25%
3	other states	43%

It is observed that, in the state of Punjab have a large number of honour killings. According to data compiled by the Punjab police, thirty four honour killings were reported in the state between 2008 and 2010, 10 in 2008, 20 in 2009 and 04 in 2010⁹.

Human rights are may be regarded as fundamental rights and inalienable rights which are essential for life as human being. Human rights are the rights which are possessed by every human being,

⁸. Love and Sex Claim more Lives than Terror, Show Crime Stats” Times of India Newspaper, edition Aurangabad, dated 16/09/2013, , P.1

⁹. Honour killing in India English Samay live .com, (210-06-23), Criminal Law Journal ,September 2012, vol. 118, Part 1353, P. 24

irrespective of his or her nationality, race, religion, sex, etc. Simply because he or she is a human being, Human rights are thus those rights which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedoms allow us to fully develop human qualities¹⁰. According Protection of Human Rights Act, Human rights¹¹ means “As the rights relating to life, liberty, equality and dignity of the individual guaranteed by constitution or embodied in the international Covenants and enforced by courts in India”.

Human rights are rights relating to the life, liberty, equality and dignity of the person guaranteed in the constitution or embodied in the international Covenant and enforceable by courts in India.

In patriarchal system, a harmful traditional and cultural customary evil practice such as honour killing violates human rights rules and regulations. The most pathetic aspect of disrespect for human rights includes various brutal practices such as; honour killing includes rape, forced marriage, torture, imprisonment within the home and even murder. Honour killing violates the most cherished and basic human right to life of the victim persons. In order to protect family honour the family members commit violent actions against the victims.

Human rights are the natural rights which are available by birth of human beings and no one have right to deprived life, freedom and liberty of person by any means, but in case of honour killing customary practice deprived the life by committing torture, mutilation, forced married, by confine within the house and even committing murder with intending to preserve and protect the family honour and reputation due to violating norms of society. All these activity violates the human rights.

¹⁰. Dr. S. K. Kapoor “Human Rights under International Law and Indian Law” Pub. Central Law Agency, Allahabad, Fifth Edition 2011, P.01

¹¹. Under Section 2 (d) of Protection of Human Rights Act, 1993

As per the Human Rights watch defines “Honour crimes are acts of violence, usually murder, committed by male family members against female members, who are held to have brought dishonour upon the family. A woman can be targeted by (individuals within) her family for a variety of reasons, including: refusing to enter in to 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 “dishonour” her family is sufficient to trigger an attack on her life”¹².

According to Justice *J. S. Verma Committee* notion of *Khap Panchayat* is to regulate religious and customary practices and upholds of village norms in the society. Strictly prohibits the inter-caste marriage, marriage in same *gotra*, and inter-religious marriage. They do not allow violation of social norms of the community or society. In case of violation of social norms of community or cast or religion or against the *Khap Panchayat* they impose upon the social boycott or excommunication as a punishment it is sever and gross violation of human rights.

4.3 Honour Killing Violation of Women Rights

After having identified the problem of Honour killing practice violates basic human rights of women which are given under national and international parameter. Crime of honour may involve violation of number of women’s rights. Women occupy a unique position in the society due to the importance in the procreation of the human race. Woman is having equal rights to the man because all human beings are equal before the law¹³. Moreover it is a constitutional right that no one

¹². Violence against women and honour crimes: Human Rights watch. Criminal Law Journal, Oct, 2012, Vol. No. 118, Part- 1354, P.290

¹³. Article 14 of the Constitution of India

should discriminate on ground of sex¹⁴. A woman has always been an object of gross and severe violation at the hands of man. She is often become victim of customary practices. Not only in the house but also outside the house her human rights are always violate by the male person. Women are deprived of basic freedom and thereby are easily exposed to exploitation in socially. Moreover, patriarchal traditional system life of women becomes insignificance. Women suffer violence in silence; she is unable to raise her voice against perpetrator, because her life is tied with the rope of the patriarchal customary practices. Women's rights always deprived by the custom and tradition. There are number of legislations are available even her rights are violated by showing number of reason by the society. Honour Killing is a murder committed against women for actual or perceived immoral behaviour that is deemed to have breached the honour code of a household or community. It is observed that, murdering of women or girl with intention to restore the honour of the family.

It is observed that, Human rights may be regarded as those fundamental and inalienable rights, which are essential for life. It is entitled by the every citizen of India and aliens irrespective of his or her religion, race, sex, colour etc. Honour killing crimes violate Constitutional rights and equality principle which explain Under Article 14, 15 (1) and (3) , 17 and 19 of the Indian Constitution .The right to life is the most fundamental rights which is enshrined in Article 21 of the Constitution of India provides that, "*No person shall be deprived of his life, liberty or personal liberty except according to a procedure established by law*" it means that every person have right to protect the fundamental right no one deprived or infringement this right, otherwise it will be treated as violation of Article 21 of Constitution.

¹⁴. Article 15 of the Constitution of India

Honour killing includes any kind of abusive behaviour, torture, mutilation, rape, forced marriage, by confinement within the house and even committing murder with intention to preserve and protect the family honour. Honour killing crime deprives the life of the person it is an extreme form of violation of the fundamental right of the victim person. When the girl is killed for choosing a life partner of her own certainly it takes away this right. Right to life very well includes the right to privacy, the right to bodily integrity and it also the right to marry and to have a family of her own. Honour killing crime also violates Indian penal provisions; it will be amount to culpable homicide¹⁵ and murder¹⁶, because the honour killing took place with intention to kill the victims, in order to protect the family honour. Honour killing practice is not only violates the provision of the legislations but, it violates the women's rights, which are provided by birth as natural rights.

Basically honour killing are inhuman cruel acts which violate the natural rights which are inalienable rights of the victims. Honour killing purely violence against women perpetrators withdraws the right of the person¹⁷. Also violates Article 2 of the *Universal Declaration of Human Rights* 1948 "Everyone is entitled to all the rights and freedoms set forth in this declaration without discrimination of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or other status. Therefore, no discrimination shall be made on the basis of the political, jurisdictional status of the country to which a person belongs".¹⁸ But, in Honour killing crime whoever performs marriage outside the caste or inter-religion against the wishes of parents these persons become victims of customary killing practice.

¹⁵. U/S 299 of Indian Penal Code, 1860

¹⁶. U/S 302 of Indian Penal Code, 1860

¹⁷. Article 1 of the *Universal Declaration of Human Rights* 1948

¹⁸. Ibid.

Article 3 and 5 of the *Universal Declaration of Human Rights* 1948, stated that women are entitled to enjoy the right to life, liberty and security of person and right to be free from torture or cruel, inhuman and degrading treatment in the name of the cultural, customary practices. Honour crimes violate the right to life and prohibiting from enjoyment of life of victim. The perpetrator commits crime of honour intentionally inflicts unauthorised pain and death punishment to victims of dishonour of the family. There are near about sixteen articles of the *Universal Declaration of Human Rights* which will enjoy women without any discrimination. Even though women all over the world every day challenges to customary practices, particularly honour killing practice violate women's rights. In honour killing practice deprived the right to life free from torture, degrading treatment of victim with intending to inflict severe mental and physical pain on the women; it amounts to gross violation of women's rights.

An honour crime that includes Physical violence, mental violence, sexual violence, not allow enjoying freedom of life and confining within the house etc. are nothing but violation of women's rights. As per *Article 12 of the International Convention of Economic, social and Cultural Rights*, It is obligatory duty of state to ensure highest attainable standard of physical and mental health to the victim of honour related violence. State parties have taken appropriate measures to protect women's rights. It is observed that, customary killing practice violates women's rights.

State have obligation to respect and protect the rights of human being within its jurisdiction without discrimination *Article 2 (1) of the International Covenant on Civil and Political Rights 1966*, it also stated that, 'Every human being has inherent right to life'¹⁹. This right shall be

¹⁹. *Article 6 of the International Covenant on Civil and Political Rights 1966*

protected by law. No one shall be arbitrarily deprived of his life. It is primary duty of state has to take precaution about protection of life of human beings. Under the customary practices like honour killing the State has failure to protect the life of the victims. Honour killing crime usually murder committed by the family members who disobey the social norms of the family.

The United Nation is also concerned with violence against women is an obstacle to the achievement of equality, development and peace. It is observed that, *The United Nation Charter* having obligatory duty to promote respect for the principle of equality and observance of human rights²⁰. It seems that, In order to promote gender equality and opportunity for women, there had been three United Nations World Conferences on women. First Conference held in Mexico in 1975, second conference held in Copenhagen in 1980 and third Conference which took place in Nairobi in the year 1985.

Vienna Declaration

United Nation convene a world Conference on Human Rights in the year 1993 where in declaration calls for action to integrate the equal status human rights of women stresses the importance of working towards the elimination of violence against women in public or private life and encourage the eradication of all forms of discrimination against women. The Declaration also affirmed that the human rights of women should form an integral part of United Nations human rights instruments and to encourages the government institutions, non- governmental institutions to

²⁰. Article 55(c) of the United Nation Charter, Provides that, 'Universal respect for all and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'

intensify their efforts for the protection and promotion of human rights of women

Beijing Conference

In the year 1995 Fourth world Conference was held in Beijing. This conference was review and appraises the advancement of women since 1985 in terms of the objectives of Nairobi Forward looking Strategies for advancement of women to the year 2000 and adopt a platform for action concerning on some of the key issues identified as fundamental obstacles to the advancement of majority of women in the world. This conference mainly concerned on issues like discrimination against women, violence against women and to improve the status of women. Beijing conference arranged for action on women's human rights asked for states to take urgent action to combat and eliminate violence against women, which is violation resulting from the cultural and customary practices such as honour killing.

It is observed that, The Vienna and Beijing conference have acknowledged that violence against women is undoubtedly a human rights issue and serious deterrent to the development of the nation and also recommended that state parties should act to protect women against violence of any kind, particularly that occurring in the name of customary practice like honour killing.

Among the international human rights, *Convention on Elimination of all forms of Discrimination against Women*, takes importance place on bringing the women half of humanity into the frame work of human rights concerns. It is first important international legal document which gives specific focus on the violence against women which suffered from, dowry, sati, cultural and traditional customary practices of honour killing

etc. India is ratified the Convention on elimination of all forms of discrimination against women, and stated as violence includes any act of person that results in or physical sexual , physiological harm to women or likely to cause death or some time causes death or it includes coercion or arbitrary deprivations of life whether occurring in public or private

The CEDAW Committee has emphasised that, honour killing are violation of human right to life and security of persons. The committee has urged Government to respect and promote the human rights of women over discriminatory cultural practices and to take effective and preventive measures to eliminate discrimination and violence against women in general and in immigrant and minority communities In addition to enacting criminalizing harmful cultural practices, such measures should include awareness raising programmes, to sensitize the community to combat patriarchal attitudes, practices and stereotypical roles.

It is observed that, honour killing or honour crimes are violence and harassment against the young couple intending to marry against the wishes of family or community members in the name of dishonour of the social norms of the family or community it is gross violence against the humanity,

4.4 Honour Killing: Gender Based Violence

Indian history proves that, the discrimination and unequal treatment meted out from immemorial times. There has been discrimination between the male and female. Women are considered as, goods and chattels. They considered as objects, and under the name of customary practices women position becomes and china dish like use and throw. According to Justice *K. Ramaswamy* “Indian women has suffered and suffering discrimination in silence self-sacrifice and self-denial are their

nobility and even then they have been subjected to all inequalities and discrimination”²¹

Women constitute about one-half of the global population, but they are placed at various disadvantageous positions due to gender difference and bias. Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women. They have been the victims of violence and exploitation by the male dominated society all over the world. In Indian society traditionally bound where women have been socially, economically, Physically, Psychologically and sexually exploited from time immemorial. Some times in the name of religion, in the name of customs and tradition²². Honour crime is a clearly gender based violence.

The gender based violence (GBV) haunts a woman at all stages of her life. In patriarchal society the birth of daughter is considered as bad luck. A growing girl child is considered as a burden for the family. It is observed that, life of women withdrawn by the male people, as under the childhood she is under control of their parents, after the marriage she is under influence under her husband and during old age she is under influence of their son.

It is observed that, the much progress has been made by the country. But even today nowhere in the world can woman claim to have to same right and opportunities as men and they still face in equality. Gender equality and women’s empowerment are fundamental to the global mission of United Nation Organisation (U.N.O) to achieve equality rights and dignity for all. Honour killing are a made of intera-family

²¹. *Madhu Kishwar v. State of Bihar*, AIR, 1996 S.C.1864

²². DR. A. N .Sen. “Human Rights” third edition 2013 Pub. Shri Sai Law Publication, Faridabad, P 14

violence, where women, who are seen as the repositories of the man's or family's honour, and as such guard their virginity and chastity are killed by their male relatives, because they are seen to have defiled their family's honour and must be killed in order to restore it. It is known as the act of killing a person usually a female relative who is taught to have brought dishonour to the family by engaging in unacceptable social behaviour²³. Mostly women are victims of honour killings

Honour killing practice is a curse to Indian society and affront to human beings. Honour killing incidents identified in number of countries, particularly in India state of Punjab, Rajasthan, Haryana, and Western area of Utter-Pradesh and in some parts of Bihar²⁴ prevailing customary evil practices from times immemorial. Honour killing practices is a gender based crime, because number of incidents identified women or girls are found victims of honour killing.

Honour crime is baneful by product of an evolving patriarchal social construct, where women are killing for a variety of reasons which for supposed illicit sexual, having extra-marital illegal relation, marriage perform against their parent wishes, inter-caste and inter-religion marriage, refuse to arrange marriage, being victim of sexual assault, seeking or getting a divorce from an abusive husband, or allegedly committing adultery or suspicion behaviours, etc. The common perception of the society is that a woman must be castigated or even assaulted and murdered for bringing dishonour to her family; from her so called dishonourable behaviour. Dishonourable acts that ultimately culminate in to honour killing also include divorce, adultery, premarital

²³. Indian Bar Review, Vol. XL (1) P.25

²⁴. Legal Era Vol.1 Issue IV Aug 2010 P.7.

sexual relations, and prenatal pregnancy or being the victim of a sexual assault or rape²⁵.

An honour suicide may be a substitute for an honour killing. It is occurred when people order or pressure a woman to kill herself: this may be done so that the people avoid penalties for murdering her²⁶. This phenomenon appears to be a relatively recent development. The state machinery's the police have to be more proactive rather than reactive to the horror of honour killing. Many a times the cases are reported as suicide and then nothing goes through in order to be tried in the courts²⁷.

4.5 Role of *Khap Panchayat* in Honour Killing

Khap Panchayat system is not new to the Indian society. It is a social institution. The exact origin of *Khap Panchayat* is not known but it is believed that, it starts back in 600 AD. Since ancient time it worked as social non judicial administration justice in the society particularly in rural areas. It is also known as caste *Panchayat*. It is a cluster of several villages combined by the caste and community people. The all-boys and girls within the *Khap* are considered as *siblings*. The ten to fifteen men who belongs to upper caste or same *jats* and constitute common meeting called as *Khap Panchayat*. It is observed that, peoples believes that *Khaps* were constituted during the region of King *Harshvardhan* in the seventh century with intend to assist during the administration judicial system and managing his empire. *Khap* are different from the village *Panchayat*, technically, each village has two *panchayat* whose members

²⁵. Mazna Hussain, "Take my riches, give me justice: A Contextual Analysis of Pakistan's Honour Crimes Legislation" 29 Harvard Journal of Law and Gender 226(2006), Cri. Law Journal, Dec.2013, Vol.119-part-1368, P. 187

²⁶. Turkey, a waif-like girl of 17, named Derya fallen in love with boy. When news of the love affairs spread to her family then her mother warned her that her father would kill her. But she refused to listen. Consumed by shame and fearing for her life, ultimately she decided to carry out her family's wishes and committed suicide. , criminal Law Journal, Oct, 2012, Vol. No. 118, Part-1354, P. 291

²⁷Freedom in the world: India 2010, Freedom House, Indian Bar Review, Vol. XL (01)2013, P.55.

go to represent the village in a *Khap Panchayat*. Even after sixty nine years of Independence of India most of the people use to go towards *Caste Panchayat* system in case of settlement of social, family and community disputes. It is observed that, *Khap Panchayat regulate* the social norms in the caste, community.

Even in twenty first century several place in India particularly in rural area *Caste -Panchayat* conducted by the community people and decide matters. People accept the decision of the *Caste Panchayat* considering that *panchayat* is a *punch-permeshwer* so whatever decision awarded that is binding compulsory to the parties. Moreover Caste, community people have strong belief over the *Caste panchayat*. These *panchayat* had some role in settlement of community, family disputes in presence of people.

Khaps largely exercise their authority over the *jat* community of big land holders around Delhi, including some districts of Haryana, Uttar Pradesh and Rajasthan. Traditionally in these areas marriage is not allowed within same *gotra*, which loosely means a sub caste or clan. But *Khaps* extend this prohibition to all inhabitants of a village and it adjacent villages. *Khap* members have instilled fear that in case of marriage by choice, the girl or her husband would stake claim in ancestral property. By declaring adjacent villages as siblings, they lessen the possibility of young individuals getting in to matrimonial alliance. It shows, in an arranged marriage girls do not demands share in paternal property²⁸.

According to women rights activist *Jagamati Sangwan Khap* screate false impression that they are opposed to same *gotra* marriage because it is incestuous. They actually oppose the women's right to choose a life partner. A study Commissioned by the National Commission of Women found that Seventy two per cent of the *khap* dictated honour

²⁸. 'Dictated by land' Publ. in 'Down to Earth' special Report Nov. 2012, P. 34 and 35

killings were related to inter-caste marriages, while those treated to same *gotra* marriages was only three per cent. 'As couples are selectively targeted, it is clear that the real motive of *Khap Panchayat* is control women's sexuality to ensure that property remains within the patriarchal caste domain'

It is observed that, *Khap Panchayat* prevalent in Haryana, western Uttar Pradesh, Punjab and some portion of Rajasthan. The *pradhan* (Head) of each *Khap* is elected in an informal meeting held by the elders of a particular *Khap*. It is a cluster of villages and castes, it is organised through clans and *gotras*, and they uphold social norms in the community. They have provided justices to village people in case of violation of social norms. *Caste Panchayat* or *Khap Panchayat* or *Katta- Panchyats* encourage honour killing or other atrocities in an institutionalized way on boys and girl of different caste and religion, who wish to get married or have been married or interfere with the personal lives of people. Very harmful practice of *Khap Panchayat* and the like taking law in to their own hand and pronouncing on the invalidity and impropriety of *Sagotra* and their inter-caste marriages and handing over punishment to the couple and pressurizing the family members to execute their verdict by any means amounts to violation of rule of law and invasion of personal liberty of the persons affected. In several cases *Khap Panchayat* used to drastic action including wrongful confinement, persistent harassment, mental torture, inflicting bodily harm even death is restored to either by close relations, social boycotts and other illegal sanctions affecting to the young couple²⁹.

According to *Fateh Singh*³⁰, 'Same *gotra* marriage is wrong. It should not be encouraged in our society, whatever the court say the *Khap*

²⁹. 'Indian Bar Review' vol. xl (1) 2013 P. 41,

³⁰. A member of the jat community in Bharatpur

Panchayat will continue to give their verdict'³¹. *Khaps* are self-styled *panchayats* acting as a parallel judicial system. These are based on the principles which governed everyday life since medieval periods³². *Khap Panchayat*, stated own rules and regulations by functioning their parallel to the judicial system. Inter-caste marriage or marriage in same *gotra* or inter-religious marriage or the act committed by parties so that dishonour of the family or community *Panchayat* declare such marriages are invalid in the eye of custom. In order to preserve or restore the reputation or honour of the family or community for that they go beyond by awarded death as a punishment in number of cases.

Verma Committee observed that, women have largely been targeted in customary killing practice. Caste or community *Panchayat* perform important role to addressing the common social problems and amicable settle the dispute in Caste *Panchayat* level, matters relating to matrimonial, interfere in the inter-caste marriage, young couple marrying against wishes of their parents outside the caste, *Khap Panchayat* have been assuming to themselves the role of social or community guardian³³.

The Law Commission of India suggested in its 242 Report on Prevention of Interference with the Freedom of Matrimonial Alliances (in the Honour and Tradition) and *P. Sathasivam*, *Chief Justice* of India, stated in the judgement of suomotu writ petition (Criminal), 'In order to keep a check on 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

³¹. The Times of India Dated 1st April, 2010.

³². 'Indian Bar Review' vol. xl (1) 2013 P. 58,

³³. Prevention of interference with the Freedom of Matrimonial Alliances (in the name of honour and tradition) a suggested Legal Frame work Law Commission of India, Aug. 2012; Verma Committee Report.

that there should be a threshold bar against the congregating or assembly for the purpose of disapproving such marriage or intended marriage and the conduct of the young couple. The members gathering for such, purpose, i.e, for condemning the marriage with a view to take necessary consequential action, are to be treated a members of unlawful assembly for which a mandatory minimum punishment has been prescribed’.

Researcher observed that, some following Characteristic Features of *Khap Pancahayat*;

1. A *Khap Pancahayat* is usually a collective of at least ten to fifteen or more village *pancahayats*.
2. It is more active in Haryana, Rajesthan, Uttat Pradesh and Punjab states with a sizeable jat population.
3. There is five biggest *Khaps* in Haryana state are Palam, Sonipat, Hisar, Jharsa and Jhajjar
4. There is one Sarve-*Khap* in the country which includes all the *Khap Pancahayat*
5. *Khap Pancahayat* regulates the social norms in the caste, community.
6. Pradhan of each *Khap* is elected in an informal meeting held by the elders of a particular *Khap*, there is no formal election.
7. It is general belief that *Khap* constituted during the region of King *Hrshvardhan* in the seventh century.
8. It is different form village *pancahyats*, which are legally elected under *Phancahayat Raj*.
9. They are strong follower of religious, rites, customs and traditions
10. Their decisions are binding to caste, community people

11. In case of violation norms of religious practices they impose punishments like fine or declare boycott or sometimes death punishment.

Bench of Justice *Markandey Katju* and *Gayan Sudha Mishra* said that, *Khap Panchayat* means 'Kangaroo Court' and declared as illegal system. Moreover a new trends of *Kangaroo Courts*, Honour killings, *Khap Panchayat* in north India and *Katt-Panchayats* in Tamilnadu were barbaric and illegal the perpetrators of which required of which required the harshest punishment³⁴.

In case of *Arumugam Servai v. State of Tamil Nadu*³⁵ Supreme Court strongly expressed disapproval the practice of *Khap Panchayat* taking law in to own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice

The Supreme Court issued notices³⁶ to the Centre and nine States on a PIL seeking direction to the Union Government to make law to protect young couples from honour killing. A bench comprising *Justice R. M. Lodha* and *A.K. Patnaik* issued notices on a petition filed by an NGO *Shakti Vahini* alleging that young couples who dare to defy their families or *Khap Panchayat* in the matter of marriage are under constant threat from them.

Judiciary has right to adjudicate the offense committed by the citizens. The Constitution of India has been given to the Supreme Court, Various High Court and Subordinate courts but the *Khap Panchayat* violated the law of the land. It is observed that Government has failed to eradicate

³⁴. Journal of Academic of Juridical Studies, Feb., 2013, Vol 08, No 1 Half yearly ISSN No. 2278-456

³⁵. (2011) 6 SCC 405

³⁶. Ibid

prejudice, particularly in rural areas. Caste based village council, extra judicially punish inter-caste marriages, marriage took place in the same *Gotra* with public lynching of couples or their relatives, murder of the bride or the bridegroom, rape, public beatings, socially declaration boycott, sometimes asked to breakdown the marriages etc. *Khap Pancahayat* sometimes parade naked and blackened the faces by their families in order to regain family honour. It is also observed that, after the decision of Manoj- Babli case a *Maha Khap Pancahayat* was demanded that the Government should amend the Hindu Marriage Act, 1955 to facilitate a ban on marrying from the same *gotra*. The *Khap Pancahayat* also demanded, to ban the same village marriages and disallow the recognition given by the *Arya Samaj* to the weddings of eloping couples conducted in temples³⁷.

4.6 Accountability *Khap Pancahayat*

After observing the number menace of honour killing cases in the society it shows the truth of the strong influence of *Khap Pancahayat* in the mind of the peoples. *Khap Pancahayat* gives more important to family honour, than life of the women. It is observed that, there are many more incidents of honour killings which are said to be instigated by the decision of *Khap Pancahayat* some of them are as follows-

In Uttar Pradesh Mehrana village, middle class girl Roshini eloped with Jaatav which untouchable caste, boy Vijendra. One of the boyfriends helped them. The village people caught three. Village *Khap Pancahayat* ordered to hang them with tree and burn them. In the morning the order

³⁷. GurdipSingh, and V.K. Ahujs “Human Rights in 21st Century Changing Dimension” Edition 2012, Pub, Universal Law Publication Co. Pvt. Ltd, Delhi, P. 244, 245

of the *Khap Panchayat* was executed and all three burnt alive to death in front of whole village people³⁸.

In another case *Khap Panchayat* ruling based on assumption that, Manoj and Babli belonged to the Banwala *gotraa jat* community, and therefore considered to be siblings despite not being directly related. The couple went ahead with their marriage, following which they were abducted and killed by Babli's relatives.

In Jharkhand *Nirupama* a journalist, who comes from a Brahmin Community fell in love with boy from another caste and thus brutally killed in the name of honour of the family and community.

4.7 International Accountability for Honour Killings as Violation of Human Rights

The purpose of human rights law has been protecting individuals against abuses perpetrated by the state and private persons have traditionally been excluded from the ambit of international human rights law. It is observed that state has accountability only for breaches of international obligations. States are therefore obliged to exercise due diligence to eliminate and prevent evil customary practices like honour killing crimes and are responsible for violation, if they have not exercised due diligence to prevent the honour killing acts or respond to it. In addition to the obligation to respect the human rights of citizen, states also have a positive obligation to protect and ensure the human rights and fundamental freedoms³⁹.

It is observed that honour killings are crimes under the domestic laws of most of the countries; it is the systematic failure by states to

³⁸. A question of silence The sexual Economics of modern India, edited by Janaki Nair, 1999, pp.328

³⁹. Article 19 to 22 of the Indian constitution

prevent and investigate these incidents and to punish the perpetrators that is the reason why honour killings are and should be on the international agenda. The issue of honour killing is not expressly stated in any human rights instruments. Violence against women (honour killings) remains an area untouched by international human rights instruments. Despite this honour killings are in violations of number of human rights. Honour killing self-evidently violates the right to life. There are number of international human rights instruments, including ‘everyone has the right to life, liberty and security of person’⁴⁰*Universal Declaration on Human Rights (UDHR)*. Article 6 of *International Covenant on Civil and Political Rights (ICCPR)* state that, ‘every human being has the inherent right to life, this right shall be protected by law. No one shall be deprived his life’. Article 6 of the *Convention on the Rights of the Child (CRC)* and Article 2 of *the European Convention on Human Rights (ECHR)*. Moreover, the right to life in the context of violence against women is reaffirmed in the UN General Assembly (UNGA) and Article 3, Article 1 of the Declaration of the Elimination of Violence against Women⁴¹

Under international law state are obligatory to ensure the protection of human rights to all persons, without discrimination. In addition to that state must ensure that all persons enjoy the right to equal protection of law and equality before the law⁴². The UDHR prohibits discrimination in Article 2 and provides for the right to equality before the law in Article 7. The ICCPR includes a comprehensive non-discrimination provision in Article 26 in addition to the equality provision in Article 3. Article 2 (1)

⁴⁰. Article 3 of the *Universal Declaration on Human Rights 1948*

⁴¹. Article 1, Article 3 of the *Declaration of the Elimination of Violence against Women* as ‘any act of gender based violence that result in or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’.

⁴². Article 14 of *Indian Constitution*

of the Covenant obliges all states to respect and ensure to all persons within its jurisdiction the rights recognised in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion. Article 15 (1) of Convention on the Elimination of All forms of Violence against Women (CEDAW) provides that state parties 'shall accord to women equality with men before law'. Similarly ICCPR provides that 'All persons shall be equal before the courts and tribunals'⁴³.

It is observed that, honour killing constitute discrimination where the laws applicable to these crimes treat men and women on an equal basis as they provide for excuses only for men who commit honour killing (customary practices) or where the application of laws applicable to honour killing s results in unequal treatment of men and women. Furthermore, the act of honour killing itself may also constitute discriminatory customary practice. Honour killing violates other rights, including the prohibition against torture and inhuman treatment⁴⁴, the right to personal liberty and security of person⁴⁵, as well as the right to privacy⁴⁶. Honour killing violate right to health⁴⁷.

4.8 Honour Killing; As Discriminatory form of Violence

The International Bill of Human Rights laid down a comprehensive set of rights to which all persons; including women are entitled additional means for protecting the human rights of women were considered as necessary because the mere fact of their humanity has not been sufficient to guarantee women the protection of their rights. The preamble of the *Convention on the Elimination of All Forms of Discrimination against*

⁴³. Article 14 of International Covenant on Civil and Political Rights

⁴⁴. Article 5 of UDHR, Article 7 of ICCPR,

⁴⁵. Article 3 of UDHR, Article 9 of ICCPR,

⁴⁶. Article 17 of ICCPR,

⁴⁷. Article 12 of CEDAW

Women explains that, despite the existence of other instruments, women still do not have equal rights with men. Discrimination against women continues to exist in every society. The Convention define the term ‘discrimination against women’ any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field⁴⁸. In patriarchal societies, mostly women fall victim of honour crimes by the members of family. It is one form of manifestation of male dominance. Honour killings are one of the most extreme forms of violence against women, and therefore the act of honour killing is not only violation of the right to life but also a form of discrimination. State parties to the Convention condemned discrimination against women in all forms⁴⁹ of violence.

4.8.1 Honour Killing in the Context of Violence against Women

Among the international Human Rights Treaties CEDAW takes an important place in bringing the women half of humanity into the framework of human rights concerns. It is the first significant international legal document which lays specific focus on the violence that women suffer due to legal, social and cultural traditions. As such CEDAW is in conformity with the provisions of Indian Constitution. Consequently, India ratified the Convention. CEDAW defines violence against women as any act of gender based violence that results in or is likely to result in physical, sexual or psychological harm to women

⁴⁸. Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women

⁴⁹. Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women

including threats of such acts, coercion or arbitrary deprivation of life of liberty. Although beliefs and customary practices do not change radically with the ratification to treaties, they lay ground work for on-going social and legal reform. Therefore efforts are underway to bring CEDAW to life. In Botswana and Zimbabwe, judges have used CEDAW to prevent decimation against women in citizenship laws. However, the majority of countries that ratified CEDAW have yet to incorporate their principles into domestic law and practice.

It is observed that, GBV is violence that is directed against a woman because she is a woman. In patriarchal societies, mostly women fall victim of honour crimes by the members of family. Sometimes men can also be the victim⁵⁰ of honour killing from the family members. It is one form of manifestation of male dominance. The gender specific violence is omnipresent. It cuts across all boundaries of caste, creed, class, religion, wealth or nationality. But In India, customary practices, religious beliefs, social conditions, patriarchal notions and above all her subjugate nature is making women more vulnerable. In India so, the family violence against women is on the rise in the country⁵¹. The basic reason for violence is their inferior status in male dominated society. Honour killing we normally understand that killing or murder is for the sake of honour⁵². Violence includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. The General Assembly followed in the CEDAW Committee's footsteps and adopted the Declaration on the Elimination of Violence against Women. There are various types of violence against

⁵⁰. Amnesty International, Pakistan: Honour Killing of girls and women, 1999 ASA 33/18/99., Criminal Law Journal, Oct, 2012, Vol. No. 118, Part- 1354,P.290

⁵¹. Cri .Law Journal April 2009, p.84

⁵². Indian Bar Review Vol. XXXIX(3), July- September, 2012, P. 145

women including violence in the family⁵³, violence in the community. The Convention defines violence against women as any act or conduct, psychological harm or suffering to women, whether in the public or the private level. None of these documents explicitly mentions honour killings as a form of violence against women. Even though honour killing is not explicitly mentioned and a form of violence against women in the Declaration, dowry death in its specific recommendations the Women's Committee lists measures that are necessary to overcome family violence. Such measures include legislation to remove the defence of honour in regard to the assault or murder of a family member.

Honour killing are the most extreme form of physical harm of violence that occurs within the family. Therefore, honour killings are clearly a form of violence against women in the family as defined in these international instruments. CEDAW has been described as the International Bill of Rights for women. It is comprehensive treaty on the rights of women and establishes legally binding obligation on the state parties to follow the legal standards set by it to end discrimination against women. Its goal is to achieve equality between men and women. Women are given formal equality under the law in public sphere but in the private sphere even this farce does not exist.

4.8.2 Honour Killing as a Human Rights Issue

The Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10th Dec.1948 articulates the basic urges and aspirations of mankind. This was the first attempt to universalize human rights emphasizing the inherent dignity and inalienable rights of all human beings recognizing them as the foundation of freedom,

⁵³Article 2 (a) *Declaration on the Elimination of Violence against Women*, violence includes sexual abuse, sexual abuse, nattering, marital rape, dowry related violence female genital mutilation and other traditional practices harmful to women.

justice and peace in the world. Violence against women and girls is the most pervasive violation of human rights in the world today. Honour killing practice is deeply embedded in the culture and traditions most of the countries. During the last sixty nine years awareness of human rights has increased, but violation of human rights continues unabated. The primary focus has been on the public sphere and far from the private sphere where women's lives are circumscribed. Honour killing thus contravenes as per Article 3 of the *Universal Declaration of Human Rights*⁵⁴. Therefore human rights mean the rights relating to life, liberty and security and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by the courts in India⁵⁵.

As per *Jhon Hopkins School of Public Health and Centre for Health and Gender Equality* records that one woman in every three throughout the world has been beaten, coerced into sex or otherwise abused in her lifetime⁵⁶. The National Record Bureau (NRB) reveals that almost in every six hours a young married woman is being beaten to death or abetted to commit suicide. The stories may vary but what remains constant is the sordid story of inhuman torture and brutality. Latest honour crime or crime statistics are love affairs cases in 2001- 2512 cases, in year 2009- 2556 cases. In year 2010- 2365 cases in the year 2011- 2688 and in the year 2012- 2549 cases recorded rate of cases increasing every year, it is the biggest killers in India⁵⁷.

Now the agenda of integration of gender specific form of violation into the general human rights framework is fulfilled by the *Convention on*

⁵⁴. Article 3 of the *Universal Declaration of Human Rights*, provides that 'Everyone has the right to life, liberty, and security of person'

⁵⁵. U/S 2 of the *Human Rights Act, 1993*

⁵⁶. See Kamala Chandra Sekhart, 'Are they not human rights?', *The Hindu* July 18, 2000

⁵⁷. "Love and Sex Claim more Lives than Terror, Show Crime Stats" *Times of India Newspaper*, edition Aurangabad, dated 16/09/2013, , P.1

*Elimination of All forms of Discrimination against Women (CEWDA)*⁵⁸. The recommendation of CEWDA cast an obligation on the state to take all legal and other measures necessary to provide effective protection to women against gender based violence⁵⁹. The majority of countries that have ratified CEWDA are yet to incorporate its principles into domestic laws and practice. Recently, the Supreme Court issues time to time suggest provides guidelines or sometimes issues notices to the state and Central government to take appropriate precaution to protections of the society or persons⁶⁰ from such bad natures of customary practices.

It is observed that, honour killing is a brutal, bad and barbaric nature of customary practice and violation of human rights. Judiciary always tries to control or eradicate honour killing practice through the judgements and decisions of the court. Therefore, on 21 June 2011, a bench of *Justice R.M. Lodha* and *A.K. Patnaik* issued notice to the centre and some states, the state of Punjab, Uttar Pradesh, West Bengal and Haryana for taking appropriate measures on the growing issue of honour killing on filing petition by the NGO '*Shakti Vahini*'⁶¹.

In case of *Lata Singh v. State of U.P. and Another's*⁶² where *Justice Ashok Bhan* and *Markandey Katju* expressed views on honour killing issue that, over the several instances of harassment, threats and violence against young men and women who marry outside their caste and held that, Such acts or threats or harassment are wholly illegal and those who commit them must be severely punished". Court also gives trace on that, Inter-caste marriages are in fact the national interest as they will result in destroying the caste system.

⁵⁸. Adopted by the U.N. General Assembly on 20/12/93 wide General Assembly Resolution 48/04

⁵⁹. Article 2,3,4 of the CEWDA

⁶⁰. *Visakaha v. State of Rajasthan* AIR 1997 SC, 3011

⁶¹. www.dnaindia.com/india/report accessed on 22/4/2014

⁶². AIR 2006 SC, 2522 decided on 07 July 2006

4.8.3 State Failure to Protect and Prevent Honour Killing

In patriarchal societies, mostly women fall victim of honour crimes by the members of family. Sometimes men can also be the victim⁶³ of honour killing from the family members. It is one form of manifestation of male dominance. The gender specific violence is omnipresent. It cuts across all boundaries of caste, creed, class, religion, wealth or nationality. But In India, customary practices, religious beliefs, social conditions, patriarchal notions and above all her subjugate nature is making women more vulnerable. In India so, the family violence against women is on the rise in the country⁶⁴. The basic reason for violence is their inferior status in male dominated society. Honour killing we normally understand that killing or murder is for the sake of honour⁶⁵. Honour killing is the murder of a member of a family for social group by other members, due to the belief of the perpetrators (and potentially the wider community) that the victim has brought dishonour upon the family or community⁶⁶. Mostly women and girls are the victims of honour killings as compared to men.

It is observed that, honour killing are one of the most extreme forms of violence against women, and therefore the act of honour killing is not only violation of the right to life but also a form of discrimination. It must also be emphasised that discrimination under CEDAW is not restricted to action by or on behalf of the government but also covers discriminatory acts committed by any family members or any person. Therefore the state is under an obligation to take measures to eliminate such discrimination. State parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without

⁶³. Amnesty International, Pakistan: Honour Killing of girls and women, 1999 ASA 33/18/99., Criminal Law Journal, Oct, 2012, Vol. No. 118, Part- 1354,P.290

⁶⁴. Cri .Law Journal April 2009, p.84

⁶⁵. Indian Bar Review Vol. XXXIX(3), July- September, 2012, P. 145

⁶⁶. RaoArif Ali Khan "Honour Killing; Root and Remedies- Global View", Mittal Publication, New Delhi, First Edition, 2012

delay a policy of eliminating discrimination against women⁶⁷. It is also observed that the state has failed to take measures to eliminate honour killings. In this respect, the fact that the existing legislation is not enough; the laws must be enforced effectively, the killings investigated and the perpetrators prosecuted and perhaps most importantly, the state must have taken preventive measures, particularly general awareness and gender sensitising programmes.

Similarly, Article 2(b) of the CEDAW provides that, state parties to adopt appropriate legislative and other measures, including prohibiting all discrimination against women and Article 2(f) also stated that, appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. It is observed that, in the case of honour killings the state has failed to provide for appropriate penal provisions or failed to setup shelter homes for women at risk of honour killings has not taken such measures that are required by CEDAW to eliminate discrimination and is thus in violation the Convention. Similarly, in Article 2 and 3 of ICCPR The state parties failure to protect women against honour killings to prevent such crimes from taking place or to effectively respond to such treatment of constitute discrimination and a failure to fulfil the requirements of equal treatment of men and women in relation to the rights protected, particularly the right to life.

4.9 Human Rights Committee

The human rights committee is the body of independent experts that monitors implementation of the international covenant on civil and political rights by its state parties. All states parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the

⁶⁷. Article 2 of CEDAW

Convention and then whenever the committee examines requests usually every four years. It is observed that, the Committee examine each report and address and recommendations to the state party in the form of concluding observations⁶⁸. This committee has also taken up honour killings in its concluding observations and noted with concern the occurrence of honour killing cases. Honour killings constitute serious violations of human rights

4.10 National Commission for Women

The National Commission for Women (NCW)⁶⁹ is certainly an institution that can monitor the effective functioning of the institutions charged with the dispensing justice to women. The Central Government shall constitute a body⁷⁰ to be known as National Commission for Women to exercise the powers conferred on and to perform the function assigned to it under this Act. The Commission shall perform all or any of the functions mentioned under section 10 of the Act, such as, investigating and examining all matters relating to the safeguards provided for women under Constitution and other laws, reviewing the existing provisions of the Constitution and other laws affecting women and recommendation of amendments thereto so as to suggest remedial legislation, taking the cases of violations of the provisions of the Constitution and other laws relating to women, looking into complaints and taking *suomotu* notice of matters relating to deprivations of women's rights and non-implementation of laws enacted to provide protection to women⁷¹, and evaluation of the progress of the development of women under the Union and any State etc.

⁶⁸. www.ochr.org/EN/HRBodies/CCPRIndex.aspx accessed on 11/7/2015

⁶⁹. The National Commission for Women was constituted in 1990. The Act came into force on 31/01/1992, vide Notification No. S.O. 100 (e)31/01/1992

⁷⁰. *Under Section 3 (1) of the National Commission For Women Act, 1990*

⁷¹. Dr.AnjaniKant "Law Relating to Women and Children" Third edition 2012, Pub, Central Law Publication,Allahabad, P. 43.

4.11 Honour Killing and Other Social Issues

Indian society is a multicultural and pluralistic where lot of beliefs and faith regulate the human life of the individuals. As we have multi-religious society and many religious gurus, social reformers guides the society their and create influence is observed over Indian culture. The gender specific violence is omnipresent. It cuts across all boundaries of caste, creed, class, religion, wealth or nationality. But In India, customary practices, religious beliefs, social conditions, patriarchal notions and above all her subjugate nature is making women more vulnerable. In India so, the family violence against women is on the rise in the country⁷². Number of customary evil practices existed in all societies and in all periods. Now our country is rusted with number of social issues such as dowry death, Sati, Sexual abuses, Child-marriages, Infanticide, Feticide, Rape, Sexual- harassment, Domestic violence, Murder, Honour Killing etc. These practices violate human rights of the victim person. Honour killing is one of the extreme violence perpetrated on women by men.

4.11.1 Domestic Violence Is a Form of Honour Killing

A woman has always been an object of gross and severe violence at the hands of men. She is often a victim of physical and mental violence not only outside her house but also within her house. However, patriarchy and traditional patterns of life have relegated women to a position of insignificance. Women suffer this discrimination in silence. They are victims of violence like female foeticide, honour killing, sati, cruelty, torture, rape, murder, immoral trafficking etc. Despite the enactment of a plethora of laws the status of women has not improved. Womanhood is

⁷². Cri .Law Journal April 2009, p.84

still tied up by the rusted chains of religious customary and traditional practices. Domestic violence is to be viewed not merely as a private matter but as a social problem. It is observed that, domestic violence is of most serious type of violence because it is caused silently within the four walls of a house and violation of human rights.

According to *Navi Pillay*⁷³, 'It has been estimated that, as many as one in three women across the world has been beaten, raped or otherwise abused during the course of her lifetime and most common source of such violence comes from within the family. Amongst the most extreme forms of violence and abuse is what is known as honour killing'

It is observed that, most of the honour killings reported in the world⁷⁴ the married forms of violence inflicted on women and girls by husbands, fathers, sons, brothers, uncles and other male and sometimes even female family members. In the name of preserving and protecting family honour women and girls are shot, stoned, burned, and buried alive, strangled stabbed to death. Reason for these murders is considered to have breached family or community honour simply because of sexual conduct, wishes to divorce, choice of life partner, inter-caste marriage, inter-religious marriage, etc. Raped victims are considered as dishonour of families and are killed by them as means of erasing the stigma.

It is said that, majority of women have borne violence without any of protest whatsoever. Traditionally domestic violence is viewed as a private family matter females family life means physical, sexual, emotional or economical violence at the hands of a partner or other family

⁷³. The United Nations High Commissioner of Human Rights

⁷⁴. www.ohchr.org/en/News_event/pages/DisplayNews.aspx?NewsId=9869&LangID=E accessed on 22/07/2015

members⁷⁵. Domestic violence involves any kind of abusive behaviour which violates human rights. Accordingly, violence in the family manifests itself as physical mistreatment, often repetitive, which is interrelated to the exercise of mental torture, neglect of basic needs and sexual molestation. Honour killing is generally exercised in the closet family unit where there are dependency relationships, which may result in death.

The phenomenon of domestic violence is widely prevalent but remains invisible in the public domain, presently where a woman is subjected to cruelty by her husband and their relatives'. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. It means any act omission or commission any act⁷⁶ or threatened act of violence, including any fearful detention of an individual which results or threatens to result in physical injury and is committed by a person against another individual to whom such person is related by blood or marriage or otherwise legally related or with whom such person is lawfully residing. Systematic pattern of abusive behaviour, occurring over a period of time that may become more frequent and severe and indulged in for the purpose of demand valuable things such behaviour may include verbal, physical, psychological and sexual abuse. Honour killing are the form of domestic violence and intra family violence where women who are seen as the repository of the man's or family's honour and as such must guard their virginity and chastity, in order to protect and preserve the honour of the family they killed.

Honour killing crimes are the domestic violence which occurs within the families or between the life partners. *State of Karnataka v.*

⁷⁵. See 'Within the Four Walls-A Profile of Domestic Violence' ed. By Multiple Action Research Group(1998)

⁷⁶. Under Section 3 of the Protection of Domestic Violence Act, 2005

*K.S. Manjunathachari*⁷⁷ in this case cruelty of the husband was exposed and it was because of his allegation that the wife was not a virgin when she was married. The court in this case agreed that there was a cruelty meted out to the deceased but this was because of suspecting the chastity of the deceased at the time of marriage. Cruelty comes under the domestic violence. Honour killings are most brutal form of violence in which mostly women are killed for the variety of reasons, which include being a rape victim, alleged adultery or having extra marital relations apart from husband, choosing her life partner or sometimes even speaking to a man who is not familiar to the family member or violating dress code, violating customary regulations. Domestic violence means physical, psychological or sexual, threaten, abusive act of violence committed among the family members for the reason to protect and preservation of family honour.

For example, recently a father in Yemen burned his daughter to death after discovering that she had spoken with her fiance on cell phone before they were married.

In another example, in India in 2012, a fourteen year old girl who had been in an arranged marriage, returned to her parent house complaining of being tortured by her in laws family members. A few days later she disappeared. Her brother found her living with an ex-boyfriend. The brother dragged her into the street, cut off her head, and walked to the police station to surrender while carrying her head⁷⁸.

⁷⁷. *State of Karnataka v. K.S. Manjunathachari* 199, *Cri L. J.*, 3949

⁷⁸. http://www.un.org/apps/news/story.asp?NewsID=33971#.Vd_SzyWqqko accessed on 22/08/2015

One more example is that, Eknath Kumbhakar killed his twenty years own daughter who was found pregnant from someone⁷⁹ for the reason of family honour and reputation in Nashik, Maharashtra State.

4.11.2 Dowry Death is legalised honour killing

Honour killing is the homicide of a member of a family by other members, due to variety of reasons to the perpetrators belief that the victim has brought shame or dishonour upon the family or violation of social norms of the caste, community or religion. It is also called a customary killing the murder of a member of a family for social group by other members, due to the belief of the perpetrators (and potentially the wider community) that the victim has brought dishonour upon the family or community⁸⁰. In India mostly women are the victims of dowry death and honour killings. Customary practice of dowry is undoubtedly a human rights issue and serious deterrent to women.

It is observed that, dowry death is a legalised honour killing in India. There are several women killed under the heading of dowry perpetrators are the husband and their family members. The phenomenon of dowry death incidents is widely prevalent in the public domain; presently where a woman is subjected to cruelty by her husband and their relatives sometimes it causes death of the victim. Customary evil practice of dowry took place in every family. It has been a matter of serious concern to everyone in view of its ever-increasing and disturbing proportion. Dowry deaths became a common news of every day, it deep-root social problem like honour killing. Dowry means any property or valuable security given or agrees to be given either directly or indirectly by one party to the other party in the marriage called as dowry.⁸¹ In this

⁷⁹ . IBN Live News on dated, 29/06/2013

⁸⁰ . Rao Arif Ali Khan "Honour Killing; Root and Remedies- Global View", Mittal Publication, New Delhi, First Edition, 2012

⁸¹ . Under Section 2 of the Dowry Prohibition Act, 1961

dowry death or legalised honour killing there are women are not only harassing her husband but whole family of in-laws even distant relatives of husband are commit violence against women, or sometime causes death of victim.

In case of *Ashok Kumar v. State of Rajasthan*,⁸² Justice R.M. Sahsis stated that, killing of women in the name of social evil practice of dowry by using burning is shame of our society. In another case *S. Gopal Reedi v. State of Andhra Pradesh*⁸³ Supreme Court, observed that, the alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides has always sent shock waves to the civilized society but unfortunately the evil has connected unabated. *Pawan Kumar v. State of Haryana*⁸⁴ in this case of suicide but such a suicide shall be presumed to have been abetted by her husband and her-in-laws because they were not satisfied with the dowry she brought. Aforesaid cases we can conclude that due to customary evil practices are violations of human rights.

It is observed that, taking more valuable things or dowry from the bride side they will considered as prestigious thing and feels proudest in the society so that in order to protect and preserve the reputation family members demanded huge dowry otherwise they use to kill by the family members. Similarly honour killing in order to protect and preservation of family reputation or honour of family who brought dishonour these members are liable for facing death consequences.

4.11.3 Female Foeticide Is the Form of Honour Killing

Female foeticide is one of the customary practices which are still remains since ancient times in the Indian society. Practice of infanticide

⁸². *Ashok Kumar v. State of Rajasthan*, 1991 (1) SCC 166

⁸³. *S. GopalReedi v. State of Andhra Pradesh* 1994(4) SCC 596

⁸⁴. *Pawan Kumar v. State of Haryana* 2004, Cr.L.J. 1679 SC

and foeticide is considered as a part of their custom and tradition. Female foeticide is murder committed by the family members it gives rise to another evil of honour killing. Honour killing has grown as a deep-rooted social evil as like honour killing evil customary practices has become bane for our society. Female foeticide is the cause of atrocity on human beings. It is an extreme form of violation of human rights.

Though people are educated and well groomed but still they are overlooking the importance of female child. In order to have a son the family members intentionally and deliberately use to kill female foetus. The birth of a daughter is considered as a bad luck. A growing girl child is considered as a burden for the family. This practice observed everywhere in India, and it has become more common with the advent and easy availability of technology such as amniocentesis and ultrasonography that enables the determination of the gender of the foetus. Despite of enactment of a plethora of laws and government measures against it, practice of infanticide and foeticide has not been seen a decreasing in its rate of sex ratio⁸⁵ on the contrary it is increasing rapidly.

‘Female foeticide is the practice of female foeticide in India, causing the death of the foetus in the womb because of the gender, has resulted in an all-time high birth sex ratio in India’⁸⁶

*Baljiit Malik*⁸⁷ stated that, in the minds of the younger generation have been corrupted due to invasion of obscene and vulgar culture. Our youngsters have forgotten the rich values and customs of our society. People kill their daughters out of fear that one day they might elope with men of the same *gotra* or another caste or religion due to this reasons killing female unborn child in the womb or killing the female foetus after

⁸⁵. Mukta Gupta, “Issues Relating to Women” First edition, 2000, Pub Sarup and Sons, New Delhi, P. 26

⁸⁶. The Ministry of Health and Family welfare of India,

⁸⁷. Baljiit Malik member of Gathwala Khap Pancahyat

sex determination test or pre-diagnostic test which includes, foetoscopy, ultrasonography, placental tissue sampling, or Amniocentesis or termination of the life of a foetus within the womb on the grounds that its sex is female or female infanticide means to reduce or eliminate female offspring. With an aim to regulate illegal abortion in India, the Parliament has enacted the *Medical Termination of Pregnancy Act (MTP)* in 1971 and *Pre-natal Diagnostic Techniques (prevention of sex selection) Act 1994* to prevent female foeticide

4.11.4 Honour Killing is New Form of Sati

A customary practice varies from culture to culture, religion to religion and place to place. Women in all societies are the transmitters of history, custom and traditions of their community. Significance of family honour is considered as ideal and cultural family unit in the society. All Indian societies' family members are bound with the various principles of religious rites, customs and traditions. Sati is a traditional practice of widow immolation. Sati is an awesome practice of Indian womanhood, carrying both the association of barbaric society and of the mystique of the Hindu woman who voluntarily and cheerfully mounted the pyre of her husband. There are mythological stories behind the sati customary practices, which every woman who burns herself with dead body of her husband, will reside with him in heaven during a like number of years.

There are several women loses their life in the name of such evil customary practice. According to Commission of Sati (Prevention) Act, stated that sati means the burning or burning alive of any widow with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative or any woman along with the body of any of her relatives, irrespective of whether such brining or burying is claimed to be voluntary on the part of the widow or

the woman or otherwise⁸⁸. With an aim to regulate Sati customary practices in India, the Parliament has enacted The Sati (Prevention) Act, 1987.

It is observed that, burning the widow of a dead body of her husband on his pyre was an honour killing, it was a ritual performed by the Brahmin families for long. Nobody dared to protest against this cruel, inhuman custom because of societal norms until a great reformer like Raja Ram Mohan Roy raised his voice against these socially organised murders and had it banned.

It is also observed that, in Bengal region also women were considered as a commodity, which could be beaten, torture, killed or sold in the name of marriage. In Hindu upper castes, women were doled out to men, irrespective of their age. The men received dowries in cash and kind. Males of lower rungs did not get brides. Thus polygamy and *Koulinyo system* made Sati out of young widows or pushed them into flesh trade. Endless social customs treated a woman as a subhuman being. All these were done in the name of honour (*izati*)⁸⁹. This type of evil practices other family members also involved and instigate and inspire for committing sati, so that it is new form of honour killing. Such types of crimes are the extreme violation of human rights and very dangerous to human being. In the year 1829 with the efforts of Raja ram Mohan Roy and General William Bentinck issued regulation prohibiting sati customary practices.

4.12 Public Interest Litigation and Honour Killing

Honour killing is social evil customary practices, in order to eradicate or minimises such evil practices. Number of social organisers file Public interest litigation for protection the victims' rights. Public interest

⁸⁸ . Under Section 2 of the Commission of Sati (Prevention) Act, 1987

⁸⁹ . m.deccanherald.com/content/21137/honour-killing-from-sati.html/ accessed on 28/08/2015 at 5.30 Pm

litigation is an effective tool for protecting the rights of the victims, disadvantages, especially women. It has been defined⁹⁰ a legal action initiated in a court of law for the enforcement of public interest or general interest (PIL) in which the public or class of the community has pecuniary interest or have some interest because it will affect their legal rights or liabilities are affected. Public interest litigations aim to provide an effective remedy to weaker sections of the society. Justice *P.N. Bhagwati* explained in the case of *S.P. Gupta v. Union of India*, 'any member of the public or social action group acting benefited 'can invoke the writ jurisdiction of the High Court or the Supreme Court seeking redressal against violation of a legal or constitutional rights.

In *smt. Laxmi Kahawaha v. The State of Rajasthan*⁹¹ a public litigation filed in the High Court, drawing attention of the court to illegal regimes of caste *Panchyats* on the weaker section of the society, especially on women. The Court observed that, these *Panchyats* had no any jurisdiction whatsoever to pass boycott or impose any punishments, fine on any one and to violate the basic rights of the person.

In *Sheela Barse v. Union of India*⁹², PIL is traditional dispute resolution mechanisms; there is no determination or adjudication of individual rights. It is effective to prevention of violation of the rights of the persons.

After studying seriousness of honour killing *Shakti Vahini* filed complaint through Public interest litigation in 2010 Supreme Court, vacation Bench comprising Justices *R.M. Lodh* and *A. K. Patnaik* issued notices to nine states, alleging that young couples who dare to defy families or *Khap Panchayat* in matter of marriage and in the face of

⁹⁰ *Janta Dal v. H. S. Choudhary*, AIR, 1993, SC, 892

⁹¹ *AIR, 1999, Raj, H. C*

⁹² *AIR 1988, SC, 2211*

rising honour killing across the country and also wanted to know that the steps were being taken to curb such grave violence⁹³.

4.13 NGO and Honour Killing

Non-Governmental Organisation (NGOs) is increasingly concerned with the promotion and protection of women's human rights and consequently also honour killings are on the agenda of some human rights organisations. It is observed that, NGOs are non-governmental organised collectives with some purpose. Non-governmental implies that the organisation is not managed or directed by the state power and not accountable to receive operational finances, from a Governmental department. This does not mean that it cannot collaborate with the Government to plan and implement programs.

It is observed that, the Indian NGO sector is vibrant, diverse and growing. Not only all NGOs targeted women specially and only very few targeted women exclusively. Women's NGOs have role in changing women's perceptions about their position and status. Some of them focus on particular needs of women. For example struggle-oriented ones fights for women's rights and service-oriented ones provide training in skill and financial assistance or assistance to establish self-employment shall scale units.

NGOs are playing a great role in the eradication or minimising the customary evil practices like honour killings and violence against women. It is also helpful to emancipation of women; it means giving or obtaining all or some of the rights, opportunities etc., one who has free from the conventions or restriction of community to which belongs. These NGOs help the women in need of help, protection of human rights, other rights

⁹³. Country of Origin Reports India, 2010 United Nation right Commissioner for Refugees <http://www.org/ref.world/pdfid/48aec-db2pdf>, accessed on 04/01/2011

and assistance. Its role in the sphere of human development is now widely recognised and accepted in most of the country. It deals with a victim seeking assistance based on its organisation policy, expertise, resources, infrastructure and the background of the women and the stage of violence against her.

There are number of NGOs and each may offer a special type of assistance while some NGOs will themselves assist in generating the options, it always helps to have an idea of the kind of assistance the victim wants. They are service providers to the victims. Some of them are fight for the women's rights, as *All India Democratic Women's Association (AIDWA)*, *Jagrati Mahila Samiti Vahini*, *Delhi Mahila Samiti*, *The Feminist Association for Social Action (FASA)*, *National Federation of Indian Women*, *Legal Aid Center for Women (LACW)*, *Centre for Enquiry into Health and allied themes (CEHAT)* etc.

For example after studying seriousness and increasing rate of honour killing *Shakti Vahini* filed complaint through Public interest litigation in 2010 Supreme Court, vacation Bench comprising *Justices R.M. Lodha and A. K. Patnaik* issued notices to nine states, alleging that young couples who dare to defy families or *Khap Panchayat* in matter of marriage and in the face of rising honour killing across the country and also wanted to know that the steps were being taken to curb such grave violence⁹⁴.

These NGOs collaborate with *National Commission for Women, New Delhi* to conduct the *parivarki Mahila Lok-Adalats*. They monitor vulnerable famines through home visits. However, their major constrain is the paucity of funds as the funds provided by the Central social welfare

⁹⁴. Country of Origin Reports India, 2010 United Nation right Commissioner for Refugees [Http/ www.org/ref.world/pdfid/48aec-db2pdf](http://www.org/ref.world/pdfid/48aec-db2pdf), accessed on 04/01/2011

Board (CSWB) are meagre⁹⁵. In order to minimise or eradicate crime of customary evil practices like honour killings from the society NGOs can help the victim to register a First Information Report at Police Station and file Public Interest Litigations. There are several NGOs representatives have taken up honour killings in their speeches before the Human Rights Commission and in concern officials of Government for the protection and promotion of human rights to eradicate violence against women and other crimes.

Public opinion is a powerful tool in any democratic society. The Government have to take the public opinion into consideration in framing their policies. The women NGOs start agitations to bring changes whenever the existing law is not helpful to them. The administrative machinery generally, neglects the voice of victims and women and then the NGOs bring pressure on government by organisation through mass rallies. Under these circumstances many NGOs stated to file public interest litigations.

For example in *Vikram Deo Singh Tomar v. State of Bihar*⁹⁶ case Care Home Patna was brought to the notice of the court through public interest litigation. That the inmates were provided insufficient food and not provided medical facilities etc., In this case Supreme Court held that, right to live with human dignity is the fundamental right to every citizen and the state is under duty to provide minimum conditions ensuring human dignity. NGOs focus on increasing awareness and works with grassroots organisation to promote rights of women safe world for women connects women and women's organisation from different parts of world.

There are many cases of couples being punished for defiance, but most honour killings are 'Punishment' for breaking the caste boundary.

⁹⁵ . VeenaPoonacha, DivyaPandey, "Responses to Domestic Violence" at 566-574, EPW Vol.XXXV No.7-2000

⁹⁶ . AIR 1988, SC, 1782

For example twenty five years old Kasturi and her husband Basavraj were stabbed to death in Bengaluru allegedly by her brother, soon after they eloped from their houses.

In another incident less than a year ago, Bhavana Yadhav twenty one year a Delhi University student, was reportedly strangled by her parents for marrying outside her caste. In 2014, a chunni was reportedly used to strangle Pachala Deepti, a Software engineer from Hyderabad. She was allegedly killed by her family for marrying a colleague.

According to Kavita Krishnan, NGO secretary, of *All India Progressive Women's Association* "We need to understand how big a deal caste is. It is not merely cultural, but an intrinsic part of the social and economic fabric, cutting across religions. You can't maintain the caste system unless you control women",⁹⁷.

On petition filed by NGO *Shakti Vahini* Supreme Court issued notice to the Central Government, Haryana and other six states, for taking necessary precautions and measures against evil customary practice honour killing⁹⁸. Neither the Central Government nor the State Government were taking steps to curb the menace due to 'vote-bank' NGO also demanded that, state constitute a special cell in each district that, inter-caste, inter-religious married couples can approach for their safety.

Honour killings are wide spread in Uttar Pradesh. Though reported just from western district of the state on NGO *Association for Advocate and Legal Initiative* (AALI) working for women's rights in a report claimed in 2009 there were seventy nine honour killing in the state number of incidents took place due to influence of only *Khap Panchayat*.

⁹⁷. 'Urban Honour Killings: Backlash against change' Times of India News Paper Dated 23rd Aug,2015, Edition Pune

⁹⁸. infochangeindia.org/human-right/news/sc-notice-on-honour-killings.html accessed on 22/06/2014