

Chapter V

National and International Perspective to Prevent Honour Killing

5.1 Introduction

In previous chapter researcher discussed that, honour killing is an issue of human rights. A harmful traditional and cultural customary evil practice of honour killing violates human rights. Honour killing is one of the extreme violence perpetrated on women by men. Researcher has discussed that, Honour killing is violation of women's rights and violate number of International and National legislations. Basically honour killing are inhuman cruel act which violates the natural right. Unfortunate several times women's life deprived by men under the name of customary practices.

Honour killing includes any kind of abusive behaviour, torture, mutilation, rape, forced married, by confine within the house and even committing murder with intending to preserve and protect the family honour. Honour killing practice is a curse to Indian society. Researcher also discussed that, Honour killing crime is nothing but gender based violence. The gender based violence 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. Honour killing practice is a curse to Indian society and affront to human beings. Researcher discussed that; the role of *Khap Panchayat* in the honour killing crime, as well as how this non judicial system resolves the customary matters and how regulates the society. Researcher discussed the other customary practices which prevailing in the society like sati,

dowry etc. honour killing as well as discussed the role of NGO and proposed legislations. Unfortunately women are unaware of their rights.

After having identifying the problem of honour killing in Indian society and principal causes for its perpetuation, the researcher look into the national and international level legislative perspectives to pernicious social customary evil barbaric practice of honour killing. Honour killings are the extreme form of violence against women. Usually majority of women or young girls are the victims of such violence, at times men and young boys are also become victim's violence. According to customary traditions women and young girls are the repository of her families, communities honour and honour is closely related to respect and standing in particular caste, community, religion. Therefore in order to protect the honour of family the closed relatives use to kill and they used to protect from law by using cultural defence. For example in Pakistan every year hundreds of women, of all ages and in all parts of the country, are killed in the name of honour.¹ Many women face all kinds of gross violence and abuses at the hands of male family members.

It is observed that, every year thousands of women are murdered by their families in the name of customary practices for protecting the honour and reputation of the family. It is very difficult to trace the exact figure of incidents of honour killing on international and national level, because under the fear of social, religious norms which are strictly laid down by the head of the respective community or religious people (*Khap*) no one is ready to register the incident in the office. The concept of the family honour justifies the act in the eye of some societies.

¹. Law Z Vol.10 No. 8 Aug 2010 Issue 108 P.13

According to Marsha Freeman², Most of the honour killing occurs in the countries where the concept of women as a vessel of the family reputation predominates. As per the reports of United Nation Commission on Human Rights show that honour killing have occurred in Bangladesh, Great Britain, Ecuador, Egypt, India, Israel, Italy, Jordan, Pakistan, Morocco, Sweden, Turkey and Uganda.³ In modern and global area in spite of several national and international legislations available even the women are not safe in the house as well as in our society and day by day violence against women increasing in society. Due to patriarchal system women or young girls are unable to enjoy freedom atmosphere which is provided by the national and international instruments. She is suffering saliently violence with the hand of male people. However, patriarchal and traditional patterns of life have relegated Indian women to a position of insignificance. Justice *K. Ramaswamy* stated that, “Indian women have suffered and suffering discrimination in silence Self-sacrifice and self-denial are their nobility and even then they`1 have been subjected to all inequalities and discrimination.”⁴

According to the NCRB report Tamil Nadu occupied the top slot among the southern State for all types of violence including honour killing crime⁵. Honour killing are one of the intra family extreme and terror form of violence against women, where her life is confined by the family members as well as religious society members.

There are several national and international instruments gives about equal rights to women with men from very beginning but unfortunately,

². Director of International Women’s Rights Action Watch at the Hubert Humphrey Institute of Public affairs the University of Minnesota.

³. Journal of Academy of Juridical Studies Volume 8 No. 1, Half Yearly, Feb, 2013 P. 151

⁴. *MadhuKishwar v. State of Bihar, AIR 1996 SC 1864*

⁵. “Women and Honour” Frontline India’s National Magazine , Vol. 29 No. 15 July 28 Aug., 2012, P. 20

women in this country are mostly unaware of their rights because of illiteracy and the oppressive tradition and face several kinds of violence and offensive acts like honour killing. Women have always made the nation proud by earning huge success in the fields that they have chosen so, it is an irony that in spite of the social structure undergoing major change after more than sixty years of Independence,

It is observed that, we have not been able to change our traditional outlook towards women or girls, giving an increasing in the number of crime against them women or girls is one of the gravest of honour killing crime and is the most reprehensible act. It should be condemned in the severest words and dealt with an iron hand⁶. The most heinous and barbaric crime/ violence against women or young girl are honour killing. In spite of a number of rules and regulations to safeguards the interests of the women in our country yet they continue to suffer due to lack of awareness of their rights, sever and strong followers of religious customs and traditions, illiteracy and patriarchal system honour killing crimes increases. The position of women in India is not satisfactory since time immemorial.

It is observed that, in customary practices women have been considered as good and property of male people and wherever they want they use it. Women always treated as chattel and tied with the rope of customary rites. Therefore under the name of customary and traditional rites number of honour killing incidents took place and several women and young girls is killing with the hands of male. Patriarchal society and customary rites withdraw their lives, natural rights and fundamental rights which are provided by the national and international statutes.

⁶. Criminal Law Journal 2010, P. 216.

In this chapter, the researcher discusses and analyse the legislative responses to the problem of such violence in brief.

5.2 International Commitment on Honour Killing

While discussing honour killing as a violation of international human rights law it must be established what is meant by the term of honour and the implication of use of such terms are. Even though crimes of passion and crime of honour are put together in the same category of honour rights abuses in certain United Nation Resolution, these crimes do differ. The point where they differ is the rationale of the crime and the underlying perceptions of honour and passion.

The United Nation has considered the matter of honour killing in a very serious manner in its resolution 55/66 on working towards the elimination of crimes against women committed in the name of the honour, the General Assembly requested the Secretary General to submit a report to it at its work towards the elimination of those crimes⁷.

Attempts were made by international community from time to time to protect women from customary practice and violence. The international instruments protest and condemn unequivocally violence against women. A number of treaties and conventions were adopted by the United Nations in this regard. India is ratified CEDAW and its provisions were read into the Indian Constitution by Supreme Court. Though the court verdict is relevant to killing of women in the name of honour of the family it is equally relevant to the field of violence against women. Several of laws were enacted by the state to check crimes against women in general and customary practices like honour related violence. However the laws are

⁷. Indian Bar Review Vol. XL(1)2013 P. 27

deficient, inadequate and lack of proper effective enforcement is always observed

However an international instrument fails to control and eradication of honour killing crime from the society. There are number of provisions provides for the protection of persons. Customary people's follows strict, precise customs and rites in order to protect the honours of the family, caste and community family members continues to do murders in the name of honour.

5.3 Honour Killing Crime Condoned State

Researcher found that there are number of countries where customary killing are considered as murder in the eye of law and murder are to be punished according to the penal codes. However many countries killing of women by their relatives in the name of honour are excusable from penal laws.

Following are some of the countries provisions murders of women by their family member in the name of honour are considered as legalised killing.

Article 324 of Napoleonic Code state that, murder committed by the husband on his wife is excusable in the case of adultery

Article 458, 239,240 and 242 of the Syrian Penal Code provides immunity or minimise the sentence to a man who kills a female in the name of honour

Article 269 of the Haiti Penal Code provides that whoever found in adultery case as per Article 284 the murder by husband of his wife or her

partner is to be forgiven for his offence of murder, but a wife who kills her husband upon discovering him in the act of adultery is not excused⁸.

In number of other countries discriminatory laws are existed in the National and International laws where by women are not treated equal with men in all matter, it is a sign of indirectly instigating and promoting the perpetration of violence against women in the name of customary practices.

5.4 International Accountability for Honour Killings

The main object of international laws is to maintain peace all over the world, such as to protect fundamental rights of individuals and to eliminate, prevent, discriminations individual basing on creed, caste, class, sex, colour, place of birth⁹ etc. International laws also take efforts regarding to provide protections against violations perpetrated by the state and its officials, or any private person abuses or violation committed in the name of customary practices i.e. honour killing. Traditionally signatory state has binding to protect the individual from any abuses or violations with the hands of perpetrated.

Although any kind of abusive behaviour means violence that occurs within the family such as honour killing are the domestic violence. Most of the countries are failure by state to prevent and control this crime. The U.N. gives the most comprehensive definition of family violence means violence in the family manifest itself as physical mistreatment, often repetitive, which is interrelated to the exercise of mental torture, neglect

⁸. Frequently Asked Questions About Honour Killing The Global Campaign to Stop Killing..http://www.stop-stoning.org/faq_honour accessed on 13/10/2010 on 10.30P M

⁹.Article 7 of the Universal Declaration of Human Rights, 1948, and Article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

of basic needs and sexual molestation. Violence is generally exercised in the closest family unit where there are violence may be distinguished from the occasional occurrence of violence¹⁰. Purpose of international human rights laws are that to protecting individuals against violation and abuses perpetrated by the state and its officials or committed by any person. States are obliged to implement rules and regulations of international laws to eliminate, prevent and minimise discrimination and harmful practices i.e. crimes in the state.

Honour killing crimes are a grave, extreme brutal abuse of Human Rights Law, that violate the right to life, and several International Conventions

5.5.1 International Instruments to Curb the Honour Killing

The United Nations, from the very day of its beginning 1945 till date worked to secure women's legal equality. United Nations have prepared comprehensive programme by means of various general agreements and policies on social life to improve and development of the status of women¹¹. General Assembly recognised the urgent need for the universal application of women's rights regarding equality, security, liberty, integrity and dignity by its resolution.¹² Many parts of the world women's equality always denied by the legislation and practice in life. They are live under the patriarchal male dominated society and are subjugated to variety of discriminations. The United Nation also concerned that violence against women i.e. crime of honour killing is an obstacle to the achievement of equality, development and eradicate crimes and to maintain peace. The United Nations incorporated number of

¹⁰. See "Within the four Walls- A profile of Domestic Violence" edition. by Multiple Action Research Group (1998)

¹¹. Dr. S. C. Tripathi "women and Criminal Law "First edition, Pub, Central Law Publication,107, Darbhngs, Allahabad-2 P. 5

¹². U.N. General Assembly Resolution 34/180, dt 19th Dec, 1979

conventions and treaties for archive the legal equality and natural rights of women as equivalent to men in the world.

Researcher discusses the following some important United Nations Conventions towards the pernicious to social customary evil barbaric practice of honour killing and violence against women

5.5.1.1 Convention on Elimination of All Forms of Discrimination against Women (CEDAW),

The convention on elimination of all forms of discrimination against women (CEDAW) was adopted by the United Nation General Assembly and came in to force on 3rd Sept, 1981¹³. Among International treaties CEDAW is the first legal document which provides legal reliefs against the women violence that suffers due to social, religious, cultural tradition and customary practices like honour killing. The preamble of Declaration state that despite the existence of various conventions protecting the rights of women the discrimination against women continuous. This Declaration is pledged to eradicate the discrimination against women in any form. It re-affirms the principle of equality of right of women in the worldwide scenario.¹⁴

It is observed that, India is legally bound United Nation conventions as state party to ensure all measures to eradicate all forms of customary practice of honour killing, as well as to make certain appropriate actions about all forms of discrimination against women in the subject of marriage, family relations are eradicated and to ensure

¹³. Dr R Revathi "Law Relating to Domestic Violence" New edition 2004, Pub, Asia Law House, Hyderabad, P 41

¹⁴. Dr. S. C. Tripathi "women and Criminal Law "First edition, Pub, Central Law Publication,107, Darbhngs, Allahabad-2 P. 10

equal rights as compare with male people i.e. right to enjoy life¹⁵, with human dignity and enter in to marriage by freely choose their life partners with free and full consent of each other. This includes to avoid interference by the local bodies as well as to eradicate evil customary rules and regulation.

As convention on elimination of all forms of discrimination against women (CEDAW), 1981 provides following certain provision for eliminations of prejudices and barbaric customary evil practices which took place on religious belief they used to kill own close relatives basing on gender. “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: -

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

¹⁵. *Article 21 of the Indian Constitution*

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.¹⁶

This convention also useful to the each signatory state for taking preventive measure on customary and cultural evil practices basing on the gender discrimination of honour killing which going on continuously in the society and loses life of several women or young girls in the state Article 5 (a) of convention on elimination of all forms of discrimination against women (CEDAW), state parties shall take all appropriate measure: to modify the social and cultural patterns of conduct for men and women with view to achieving the eliminations of prejudice and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereo typed roles for men and women.

In Article 16 of the of convention on elimination of all forms of discrimination against women (CEDAW), provides provisions about state take appropriate preventive measures on eradication of oppressive customary, religious and rites i.e. violence in connation of marriage relations on the basis of gender equality and some rights also provides regarding enter in to marriage, rights also given for free choosing and full consent of life partner¹⁷i.e. women have the same right as men to free choice a spouse and not to be coerced in to a marriage.

¹⁶. Article 2 of convention on elimination of all forms of discrimination against women (CEDAW), 1981

¹⁷. Article 16 of convention on elimination of all forms of discrimination against women (CEDAW),

5.5.1.2 Declaration on the Elimination of Violence against Women, 1993

The General Assembly of the United Nations¹⁸ adopted in 1993 notability of this declaration is that exclusively provision dealt with the violence against women and intended to protect the fundamental right of the women. Article 1 of the declaration provides that “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 private life”.¹⁹

Thus in view of the this article word violence we can argue that honour killing is an clearly grander based violence because in honour crime male family members deprived /withdraw the right to life, liberty and security of women under the heading of customary practices.

5.5.1.3. Elimination of Crimes against Women Committed In The Name Of Honour, 2003

The United Nation legal documents Provides number of provisions for eliminations of honour killing in the society. The eradications of customary evil practices the state is required to take serious step for drafting stringent statues against the crime of honour killing. Basing on without discrimination on gender equality, have not been committing any violence in the name on honour of the family, community and caste. The system of Indian society is purely depending on the customary rites and

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women, (a) The same right to enter into marriage, (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent

¹⁸. Resolution No. 48/104, United Nations Document No. A/48/49

¹⁹. Declaration on the Elimination of Violence against Women, 1993

patriarchal routine rusted traditional practices, due to that violence take place in the name of honour.

5.5.1.4. Universal Declaration on Human Rights (UDHR), 1948

The preamble of *the Universal Declaration on Human Rights 1948* declares the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations as well as to promoting respect, freedoms and progressive measures, on national and international level. This declaration provides principles of the inadmissibility of discrimination and inequality and proclaims that all man and women are equal in dignity, rights and freedom and should not discrimination on sex. All forms of honour crimes are the gross violations of rights this declaration.

Universal Declaration of Human Rights provides that '*all human being are born free and equal in dignity and rights*'²⁰. Also provides that "everyone is entitled to all the rights and freedom set forth in this declaration without discrimination of any kind such as race, colour, sex, language, religion, political or other opinion, national of 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".²¹

Article 3 and 5 of the *Universal Declaration of Human Rights*, 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, in human and or degrading treatment in the name of the cultural, customary practices.

²⁰. Article 1 of the *Universal Declaration of Human Rights, 1948*

²¹.Ibid.

Honour crimes violate the Universal Declaration of Human Rights. The perpetrator commits crime of honour intentionally inflicts unauthorised pain and death punishment to victims of dishonour of the family.

It is observed that, India is a member of the *Universal Declaration of Human Rights* has binding to protect the human being. It has to protect the rights, liberty of persons and protect from the heinous types of violence such as honour killing crimes. As per *Article 16 of Universal Declaration of Human Rights* state that the guarantees-

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution,

2. Marriage shall be entered into only with the free and full consent of the intending spouses

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State

It is obligatory duty of family to maintain peace and protection of their family members from the any type of violence, but instead of protection they impose death punishment for protection of their family honour, it is against the human rights that, violet international laws.

Further, more *Universal Declaration of Human Rights* provides that all are equal before the law and are entitled without any discrimination to equal protection²². Article 18 and 19 provides that, freedom to everyone has right to thought, conscience and religion, this

²². Article 7 of the *Universal Declaration of Human Rights, 1948*, and Article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

right include freedom to change in religion or belief either alone or in community, with others opinion and expression

5.5.1.5. International Convent on Civil and Political Rights (ICCPR)

India is a member of International Convention on Civil and Political Rights having authority to provide to all citizen equal rights²³ and equal protection without any discrimination. In this respect the law shall be prohibit any discrimination and guarantee to all person equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status²⁴. The International Convention on Civil and Political Rights also provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks²⁵. International Convention on Civil and Political Rights also recognise that, every human being has the inherent right to life. This shall be protected by law. No one shall be arbitrarily deprived his life²⁶.

5.5.1.6. International Convention on Economic, Social and Cultural Rights (ICESCR), 1976

Under the name of customs and traditional practices family members and their relatives commits crime of honour that involves

²³. Article 14 of the Indian Constitution

²⁴. Article 26 of the International Convention on Civil and Political Rights

²⁵. Article 17 of the International Convention on Civil and Political Rights

²⁶. Article 6 of the International Convention on Civil and Political Rights

mental and physical torture, sexual violence and trying to deprive the health, enjoyment and life of the man and women are treated as violence against life of human being. As per provision of International Convention On Economic, Social And Cultural Rights (ICESCR) State parties have to take all steps to ensure the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health²⁷. Therefore, India country is obligatory prime duty to ensure that every man and women and those who suffer injury or victims of honour crime of provide or avails their highest attainable standards life protects their rights.

Researcher also identified that in order to promote gender equality and opportunity for women on national and international level and studied some important International conferences. There is Three World Conference on women that took place. First Conference held in Mexico in the year 1975 about equality, development and peace at the international level. In 1980 second conference was held in Copenhagen about education, employment and health and Third Conference held in the Nairobi in 1985.²⁸ At the end of decade, legally taken in to consideration Nairobi forward looking strategies for the advancement and development of women status and provides an essential structure for action at national, regional and international levels.

In Vienna and Beijing Conference recognises that human rights of women includes their right to have control over and decide freely and responsible on matters relating to their sexuality, sexual and reproductive health, free of coercion, discrimination and violence²⁹. The Beijing platform for action on women human rights calls upon states parties to

²⁷. Article 12 of the International Convention On Economic, Social And Cultural Rights (ICESCR), 1976

²⁸. Dr. S. C. Tripathi "women and Criminal Law "First edition, Pub, Central Law Publication,107, Darbhngs, Allahabad-2 P. 13

²⁹. www.iosejournals.org assessed on dt.25-11-2014

take urgent action to control and eliminate violence against women which is a human right violation resulting harmful customary evil practices like honour crime.

It is observed that, Customary evil practice of honour crime means violate several provisions of human rights which include right to life, liberty, and security of the person the prohibition on torture or other cruel inhuman or humiliating action, ill-treatment or punishment, the right to freedom from gender discrimination, the right to privacy, the right to marry, right to free from sexual abuse and exploitation, the obligation to amend customs that discriminate against women³⁰. Crime of honour is clearly a violation human right and state and parties have obligation to protect victim from such violence.

As per U. N. there are two documents call for the elimination of customary evil practices of honour crime. The notion of elimination of honour crime found in The Declaration On The Elimination Of Violence Against Women, 1993 and Working Towards The Elimination Of Crimes Against Women Committed In The Name Of Honour, 2003.

5.5.2 National Instruments to Curb Honour Killing

There are ample of domestic provisions available to curb the crimes and protect the persons from the violence. Legal documents also provide several provisions to tackle the crime as well as to exercise his or her rights. In India, there are no any specific laws available to tackle the problem of honour killing crime. But some legal provisions can be useful to curb honour related crimes like honour killing. Such crime is converted into murder³¹ and dealt under the provision of Indian Penal Code, 1860.

³⁰. *Protection of Human Right Act 1998*

³¹. *Sec. 302 of Indian Penal Code, 1860*

History of Indian society speaks that the condition of women not yet changed. Society is helpless to control form suffering in the form of discrimination, degradation, exploitation, oppression and humiliation. Women occupy vital position in the venerable position. Following are the various legislations incorporate regarding the safeguard women.

5.5.2.1 The Constitution of India

The Indian Constitution is the supreme law of our country. It is a complex document and not to be construed as mere law, but as the machinery by which laws are made. It provides for the democratic function of the Government of India. It is an organic document which the powers and functions of the various organs of the state. The Constitution Provides guarantees to its citizens fundamental rights, right to equality, right to freedom and right to constitutional remedies, these rights which are essentials for the development of human personality. We are aware that Constitution was adopted on 26th Jan. 1950 for the protection and exercise rights of citizens.

Preamble is the basic structure of the constitution, it says that- To secure to all its citizens justice, social, economic and political, liberty of thought, expression, belief, faith and worship of status and opportunity.³²The principle of gender equality is enriched in its preamble of Constitution e.g. Fundamental rights, fundamental duties and directive principles of state policies

Constitution do not provide only for realignment of diversified social forces to build-up a new born democratic republic on the

³². Durga Das Basu “Constitutional Law of India” eight edition reprint 2011, pub, LexisNexis Butterworth’s Wadhwa Nagpur, India P. 1

constitutional values of liberty, fraternity and justice to all economic and political³³

Constitution conferred constitutional rights for all citizens. It helps to maintain unity and integrity of nation. Constitution framer had dream at the time of making it, to develop nation and provide happy and free life of each citizen. “No one can be perfectly moral till all are moral. No one can be perfectly happy till all are happy.”³⁴ But unfortunately dream of constitutional father *Dr. Babasaheb Ambedkar* is not fulfilled. Whole world turns into corrupted activities. A leading problem of honour related crime i.e. Honour killing is increasing in rate.

Despite the enactment of an abundance of laws the status of society has not improved properly. An Indian person has not changed the attitude looking towards woman or girls. They are still tied up by the religious and customary evil, practices like honour based crimes i.e. honour killing. Due to ancient old thoughts and patriarchal systems regarding son preference family, customary types of marriage, for persevering family honour parents used to kill their own children and relatives. Mostly in Rural areas religious peoples are not ready to accept modern cultural regarding love marriage, inter-caste marriage, live-in relationship concept.

However, all religious holy books provide principles and guidelines about morality and righteous path to maintain humanity among us. Religion also teaches us, “how to live life with peace and how to let live life with peace”. But unfortunately no one follows principles and instructions which are laid down in religious holy books. All are against the humanity in case of inter-caste marriage, love marriage. Now

³³. Dr. Suresh Mane, ‘Indian constitutional Law; Dynamic and Challenges’, pub, Aarati and co Mumbai,, P. 1

³⁴. Lexis Nexis, ‘The Indian Constitution in 2050’ (accessed on 20th September 2011)

communism becomes enemy of humanism Most of the communal group rejected such types of marriages. They are not ready to accept marriage between different communal youth. If they have decided to marry with each other though they belong to two different castes or choose their life partner of their own choice then they are liable to face music of violence and awarded extra judicial death punishment by the community.

Though the Indian Constitution provides ample provisions to protect the rights of citizen, but Honour related crimes violate the all the rights that all conferred by constitution, fundamental rights and directive principles of state policies for improving and protecting life of citizens, which is soul of constitution, but it is damaged by the honour related crime i.e. honour killing in the case of young youths. Now days all constitutional rights are violated in different ways for different reasons. Unfortunately in honour related crime parents, who are always careful about for their development of their own children from childhood, violate their rights by killing and finish their life in the name of honour. It is very shameful act done by the family members against their own relatives.

Researcher identified that, there are following number of constitutional provisions to removing inequalities, discrimination, and injustice. As well as providing protection of fundamental rights of individual. Honour related crime like honour killing violating constitutional provisions.

5.5.2.2 Equality before Law and Equal Protection of Law

The concept of equality between man and women was unknown to Indian society before enactment of the Indian Constitution³⁵. The idea of equality expressed in preamble of Indian constitution, as Justice, Liberty,

³⁵. *The Indian Constitution adopted by the Constituent Assembly on 26th November 1994*

Equality and Fraternity.³⁶ The main object of Article 14 of Indian Constitution is that, 'to bring the equality of status and opportunity to all Indian citizens. Equality means the equal opportunity, equality before the law and equal protection in the law; it should not discriminate against any person based on sex, religion, caste, and place of birth.³⁷ Principle of gender equality is enriched in constitution in its preamble, fundamental rights, directive principle of state policy and fundamental duties.

Article 14 of Indian Constitution is similar to concept of equality in the Article 17 of UDHR all are equal before the law and are entitled to equal protection of laws without any discrimination.³⁸ In the case of *Jaganth Prasad v. State of Uttar Pradesh*³⁹ Supreme Court stated that, equal protection of law means equal treatment to persons that the like ones should be treated alike without discrimination on the basis of religion, caste race etc. In *Gauri Shankar v. Union of India*⁴⁰ Supreme Court stated that, equal should not be treated unlike should not be treated alike if different needs of classes require different treatment it might lead to classification among the group of persons.

Honour based crime i.e. honour killing is purely violence against women. The main cause of discrimination is the patriarchal system existing in the society. The women are considered as property of male people; they use them just like china dish use and throw. Women have been discriminated and suffered and suffering discrimination in silence and faces all form of violence like honour based crimes. According to *Justice Rama Swamy*, Indian women have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility

³⁶. See preamble of Indian Constitution.

³⁷. Article 16 of the Indian Constitution

³⁸. Article 17 of Universal Declaration of Human Rights 1948

³⁹. AIR, 1961 SC 1245

⁴⁰. AIR. 1995 SC. 55

and fortitude and yet they have been subjected to all inequalities, indignities, inequality and discrimination⁴¹

However, the Article 14 provides equality of status and guarantee is only embodied idea in constitution but, due to customary practices her entire life suffering in various kinds of honour based violence. Right to equality phrase provides equal status and opportunity to women, discrimination is continues as it is deeply rooted in tradition and custom of Indian society.

The guarantee of equal protection of laws is not also embodied in the American Constitution, as - “Nor shall any state- deny to any person equal protection of laws”⁴². Right to equality is one of the fundamental features of the constitution. And run as ‘the state shall not deny to any person equality before the law or the equal protection of the laws within territory of India’⁴³.

According to Dr. Jennings, equality before the law means that among equals the law should be equal and should be equally administered that like should be treated alike, without distinguishing male and female.

According to Prof. M. P. Jain, equality is one the magnificent corner stones of Indian democracy. In Indian constitutional provision Art. 14 is the most significant, it may be noted that right to equality has been declared by Supreme Court as the basic feature of the Constitution.⁴⁴ Constitution of India guarantees the right to equality to every citizen. And provides the general principles of equality before the law and prohibits unreasonable discrimination between persons.

⁴¹ . *MadhuKishwar v. state of Bihar*, (1996) 5 SSC 148.

⁴² . *The 14th amendment of American Constitution*

⁴³ . *Article 14 of the Indian Constitution*

⁴⁴ . *KeshwanandBharati v. Kerala*, AIR 1973 SC 1416

In *Sri Srinivasa Theatre v. Govt. of Tamil Nadu*⁴⁵ Supreme Court has explained that equality before the law and protection of law do not mean the same things even if there may be much common between them. Equality before the law is a dynamic concept having many facets. One facet is that there shall be no privileged person or class and that none of the above the law. Another is the obligation upon the state to bring about through the machinery of the law a more equal society for equality before law can be preceded meaningfully only in an equal society.

Equal protection of the law means man and woman shall be treated as equal in the privileges and liabilities imposed by the laws. Similar law should be applied to the entire same situation and there should be no discrimination based on customary practices. The guarantee of equal protection of laws is also embodied in the American Constitution.

Constitution of India is really guarantor of right to equality and protector of women's right equally. Further with the help of part-III constitution provides special protection to the women, The Indian parliament has taken good steps to protect women's rights e.g. Dowry Prohibition Act, 1061, Sati Prevention Act, 1987, Immoral Traffic Act, 1956 etc.

According to Dr. V. N. Shukla stated that, the rule is like should be treated alike and not that unlike should be treated alike, all are equal before the law in all situation.⁴⁶ Every man or women provides equal laws and equal protection subject to the jurisdiction of courts. Honour killing crime is gender violence. Women always suffered violence within the house and out of the home i.e. in the society, community. Women will be considered as repository of family honour. Customary rites and laws

⁴⁵. AIR 1992 SC 1004

⁴⁶. Dr. V. N. Shukla, *Constitution of India, fifth edition, P. 27*

always treated unequal to the women. Article 14 of Indian Constitution provided equality of status and opportunities for upliftment and development of women in all other places on par with men.

Article 14 of Indian constitution conferred to protection of citizens, but it is not useful so incident of honour killing increases in the society.

5.5.2.3 Prohibition of Discrimination of Women

Constitution of India provides certain special provisions for the treatment and development of citizens in their sphere of life. Article 15(1) and 15(3) of Indian Constitution provides certain fundamental rights to the persons. These rights are regarded as fundamental because they are most essential for the attainment by individual or his full intellectual, moral and spiritual status. The fundamental rights which are provided to citizens are guarantee against state. Honour killing is a violation of article 15 of Indian Constitution.

Article 15(1) state as, 'the state is prohibited to discrimination between on grounds only religion, race, caste, sex, place of birth or any of them' but in case of honour related crimes are the gender based crimes. Women always discrimination in society one and other reason and suffered grate violence like honour killing. Art. 15 (3) and 15(4) provides special provisions in favour of women.

However, Art. 15(3) and 15(4) constitute exceptions to the same while providing for the State to create exceptions or special provisions in favour of women, children and for the advancement of any socially and educationally backward classes of citizens.

In *Shrinivas Aiyer v. Sarawathi Ammal*⁴⁷, Supreme Court stated that, discrimination means to make an adverse distinction or to distinguish unfavourable from others. Family member also discrimination basing on sex and impose customary restriction on her life so that she will suffered in society in several ways. Sometimes society member treat the person basing on higher caste and lower caste. Researcher identified that inter-caste, inter-religion marriages are prohibited by the *panacahyat* member as well as family member. In order to preserving norms of caste, community and religion honour crimes continue in the society.

Since from olden time women are become a victim of male people. In the incident of honour killing generally women is killed at first, whenever she becomes victim of rape, at that time she will be murdering their own family members for preserving honour of the family. Several times they reported as suicide or accident case. Numbers of cases remain unreported by the society. Such inhuman activities are the violation of Article 15 of Indian Constitution.

Thus the Art. 15(3) stated that special provision provided for women, this is a protectionist strategy and not an equalisation measure. Women should be provided with affirmative action by the state in order to help them overcome the weakness which they suffered under patriarchal society. However, Indian Constitution provides certain provision under the Article 15(3) for the upliftment the status of women.

Thus the constitution provides equality of status and of opportunity to women discrimination is persisting in one form or the other discrimination against women continues to exist even today as it is so deeply rooted in the tradition of Indian society.

⁴⁷. AIR, 1952, Mad. 193

5.5.2.4 Right to Freedom

Constitution of India provides fundamental rights which are most important for the development and progress of individual. There are freedom provided by the constitution to all citizens without any gender discrimination, with intending to the development and progress of human being.

Article 19 (1) (a) provides guarantees to '*all citizens the right to freedom of speech and expression*'. This right is one of the basic pillars of the person which provides liberty. This is a natural right no one can withdraw expect God. When he or she enters into world from her mother's womb at time he or she express himself or herself by way crying, crying is an expressing something.

In *Maneka Gandhi Case*,⁴⁸ Supreme Court explains importance of freedom of speech and expression as 'If democracy means Gov. of the people by the people, it is obvious that every person must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential'

Also in case of *State of Uttar Pradesh v. Raj Narain*⁴⁹ Supreme Court held that, Constitution guarantees the freedom of expression and speech to all persons to protection the rights of the citizens to know the firth to receive information regarding matters of public concern.

According to *Dr. J. N. Pandey* 'freedom of speech and expression means the right to express one's view and opinions freely by words of mouth, writing, printing or any other mode. While in case of customary

⁴⁸. AIR 1978 SC 597

⁴⁹. AIR 1957 SC 865

practices fundamental rights are taken away by the family members for preserving honour of the family, community.

Young youth especially young girls prohibited for expressing their views regarding their life at several times by imposing customary practices. If they express their opinion freely regarding marriage under the fear of family honour, family member considered as dishonour of the family and commit murder (honour killing). They cannot take decision of their marriage as per their choice. It is a violation of constitutional provisions.

5.5.2.5 Right to Life

Right to life is a fundamental and inalienable right No one should have right to deprived the life of any person. Everyone has the right to life, liberty and security of the person, which is guaranteed under part III of Indian Constitution, one of these rights is stated that, “*No person shall be deprived of his life of personal liberty except according to procedure established by law*”⁵⁰. This article literally is colourless; so many rights found shelter, growth of individual etc. It gives a positive effect by judicial interpretation it if a fundamental right enforceable against state, and judicial decisions have imposed, on the several positive obligations. Article 21 is the expression of life means something more than mere survival and something more than mere breathing. In *Maneka Gandhi Case*⁵¹ the Supreme Court held that the right to live is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.

⁵⁰. Article 21 of the Indian Constitution

⁵¹. AIR 1981 SC 746

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and others*⁵², Supreme Court held that, right to life includes the right to live with human dignity and all that goes along with it namely the bare necessary of the life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms freely moving about and mixing and commingling with fellow human beings.

Right to life forbids the persons from interfering with the life and liberty of individual without due process of law. It means individual liberty protected by the law. Constitution provides us all such rights to live a life as a human being, do not violate someone's right such as right to privacy, right to live hood, right to dignity etc.

Persons undergoing inter-caste marriage or inter religious marriage are to be protected against harassment, threat or act of violence⁵³. Honour killing is a brutal murder under the impression of saving honour of the family; it is against Art. 21 of the constitution and violates fundamental right. As per *Indian Penal Code 1860*, whoever inspires or instigate to committing murder in the name of customary practice they are liable for punishment as death sentence

The main object of right to life is that to prevent encroachment upon the personal liberty and deprivation of life. These fundamental rights provided against state. Article which deals with prevention of encroachment upon the personal liberty or deprivation of personal liberty.

⁵². *Ibd.*

⁵³. *Lata Singh v. State of U. P.*, AIR 2006 SC 2522,(2006)5 SCC 475

5.5.2.6 Directive Principles of State Policy (DPSP)

Article 39(a) among other things provides that state shall in particular; direct its policy towards securing that all citizens men and women equally have the right to an adequate means of live hood. This Article has been described as having the object of securing a welfare state may be utilized for construing provisions as to fundamental rights⁵⁴ In the name preserving family honour deprived life of victim it is an violation of fundamental rights.

Article 39 (e) and (f) together it is obvious that one of the objectives is that the state should in particular direct its policy towards securing that childhood and youth are protected against exploitation and against growing and material abandonment. It prohibits the tender age of the children from being abused⁵⁵ and violations of his individual fundamental rights. State also has to ensure that the children grows in a healthy manner and are protected from all kinds of exploitations⁵⁶ on ground customary practices like honour related crimes.

Indian Constitution provides provisions provides protections from all kind from exploitation, But in case of customary killing practices young youth, married couples are in secured and unprotected. Most of the young boys and girls are becomes victims of customary practices. The Constitutional provisions provide protect and safeguard the interest and welfare of youth and all citizens of India.

Whoever young boy and girls undergo inter-caste marriage their family members considered as dishonor of family. In order to preservation of family honour they threatened with violence or violence

⁵⁴ . *Shrinivas v. State of Karnataka*, AIR, 1987SC 1518, (1987)2 SCC692, *Keshavananda Bharati v.State of Kerala*, (1973)4 SCC 228., AIR 1973SC 1461.

⁵⁵ . *Article 39 (e) of Indian Constitution*

⁵⁶ . *Article 39 (f) of Indian Constitution*

actually committed on them and deprived their life with the help of community *panchayat*. But in our democratic country once child becomes major⁵⁷ they are entitled to take their decision about their marriage and choose their life partner.

5.5.2.7 Fundamental Duties

Article 51(A) (e) imposes duty of every citizen in India to renounce practices derogatory to the dignity of women. In the name of customary practice one should not infringe dignity of women. It is prime duty of every citizen of this Indian country should take appropriate precaution maintain dignity of everyone in the state as well as to pay respect towards women, so that automatically honour based crime will be eliminated from the society.

5.5.2.8 Indian Penal Code, 1968

The main object of Indian Penal Code is that, to protect the society against the criminals and law breakers. Another object of penal code is to control the crime in the society as well as to complete eradication crimes in the society.

Under the customary practice in order to preserve of family honour they killed their own family member. Honour killing involves the murder of a particular family member especially women or girl that come under the crime against human body in Indian penal code. Honour killing is clearly against the provision of constitution and law of crimes. Those family member's abetment, instigate or encourage murder i.e. honour killing are also liable for punishment under Indian Penal Code.

⁵⁷ .The Indian Majority Act, 1875

Section 299 of *Indian Penal Code* provides as 'whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide' and Section 302 of *Indian Penal Code* provides punishment for murder, 'whoever commits murder shall be punished with death or imprisonment for life, and shall be liable to fine or both'.

5.5.2.9 The Indian Majority Act, 1875

At several times family members and *khap Panchayat* forcefully separated married couples who are of eligible age to marriage it is violation of *The Indian Majority Act*. This Act provides guidelines about majority of person and capable to become major person. They will be eligible to enter into any contract e.g. enter into marriage as per their choice. Section 3 stated that, 1) every person domiciled India shall attain the age of majority on his completing the age of eighteen years and not before

2) In computing the age of any person the day on which he was born is to be including as a whole day and he shall be deemed to have attained majority on his completing the age of eighteen years and not before⁵⁸

5.5.2.10 Special Marriage Act, 1954

The main object of *The Special Marriage Act* is to provide special form marriage for the people of India and all Indian national in foreign countries irrespective of religion or faith followed by the persons. Any major person irrespective of religion i.e. *Hindu, Muslim, Buddhists, Jains,*

⁵⁸. Section 3 of the *Indian Majority Act, 1857*

Sikhs, Christian, Parsi can perform marriage under this Act. Another object is that inter-caste and inter religious marriages are also performed under this Act.

Under the customary practices inter-caste and inter-religious marriage are strictly prohibited by the society. If someone trying to perform inter-caste or inter religious marriage the family member or community members considered it as dishonour of the family member, so that *KhapPhancayat* forcefully separated the couples by announcement of death punishment or serious actions against the victims.

It is most useful Act passed by the parliament for eradication of caste system and customary evil practices. As well as bringing in to all citizens in one umbrella. Implementing *The Special Marriage Act, 1954* in throughout the territory part of India it is first step toward the bringing the Uniform Civil Code. This Act is helpful to curbs the number of customary evil practices concerning with religion and caste in the society

5.5.2.11 Prevention of Atrocities Act, 1989

The object of this Act is to prevent commission atrocities against the members of the Scheduled Castes and Scheduled Tribes⁵⁹. The another object of *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act* is that to prevent from atrocities against Scheduled Castes and Scheduled Tribes and to help the social inclusion of *Dalit's* in to other community peoples and eliminate inferior and superior status of caste, communities from the society.

⁵⁹. *Rajendra Shrivastava v. State of Maharashtra*, (2010) 2 Maha L.J.198 (Feb)

Practices of *untouchability* are flourishing excessively, both between *Dalits* and *non-dalits*, and amongst *dalit* sub-castes. Several times physical, psychological violence took place in between them.

An atrocity means whoever not being a member of the Scheduled Castes and Scheduled Tribes, Force a member of a Scheduled Castes and Scheduled Tribes to drink or eat inedible or obnoxious substances, acts with intend to causing injury, insult or annoyance or forcefully removing cloths from the person or parades him naked or with painted face or body or commits any similar act which derogatory to human dignity, intentionally insult or intimidates intent to humiliate or assault or use for to any women with intent to dishonour or outrage her modesty or being a position to dominate the will of a women or to exploit sexually to which she would not have otherwise agree.⁶⁰

Number of incident of honour killing occurred in the society due to caste system high caste and low caste groups, depending upon community. Hindu caste consisting number of sub-caste, they are raged in nature to follows their own customary practices, in case of violation of it they face music of consequences i.e. customary killings

Number of honour killing incidents took place due to mixed caste-couples. In Guntur East Godavari district (A.P.) P. Deepti twenty five years old belonging to highest cast “*Kamma*” was worked in IT HCL firm she married with her boyfriend who was belonging from lower caste “*Kapu*” her parents known every things about affairs they wanted arrange marriage within the own same caste unfortunately it did not happen due to that her father killed.⁶¹

⁶⁰. Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

⁶¹. “Indian Engineer Dies in Honour Killing” The Teligraph Newspaper edition New Delhi dated, 25/03/2014

In Mumbai, Bandar (Maharashtra state) Sushma belonging to Brahmin community married with her boyfriend Prabhu who was from lower caste man. Family members of Sushma killed Prabhu under impression to preserve the honour of family or community. Now Sushma lived with her in-laws house⁶².

In another case as per statement of S.P. Manavjeet Singh Dhillon in Bihar district Nawawda in the village Mehrama Naveen Kumar was twenty five years old had married with a girl from another Dalit caste in two years back against her parents' wishes in order to preserve honour of family and community he killed by in-laws family members by stabbing in stomach with sharp instruments and hanged with rope⁶³.

A twenty year boy belonging to Dalit who fall in love and proposed in open school in full public view of upper caste fifteen years old girl, her brother felts dishonour of his family he killed him in order to protect the honour of his family, community with the help of friends'.⁶⁴.

*GeetaSabharwal v. State of Haryana*⁶⁵, in this case the court observed that any boy or girl major who under goes that inter-Caste or inter religious marriages with man and woman community or society peoples objected and threatens or harasses or to commits violence against couple, court also directed to state to take appropriate action against such menace.

⁶². "High Price for defying caste, family" The Indian Express Newspaper, dated 20/09/2006

⁶³. "Dalit man Murdered allegedly by in-laws, a honour killing suspected" News form IBN Live, on dated,24/09/2013

⁶⁴. "Boy killed for loving upper- caste girl" Time of India, Edition-New Delhi, on dated, 04/04/2010

⁶⁵. *GeetaSabharwal v. State of Haryana, Criminal miscellaneous No, M- 27548 of 2008 Date of decision, Oct, 22,2008In the High court of Panjab and Haryana, Chandigarh. See also , Asari Manishaben Jivabhai v. State of Gjrta, Criminal Miscellaneous No, 585 of 2011, in the High Court of Gujarat at Ahmedabad, Asmitaben v. State of Gujarat, Criminal Miscellaneous No. 6102 of 2011, in the High Court of Gujarat at Ahmedabad*

5.5.2.12 Protection of Human Rights (Amended) Act, 2006

Human rights are the issue on international law because human rights do not depend on an individual's nationality and therefore these rights cannot be limited to the jurisdiction of any state. Human rights are fundamental and inalienable rights which are essential for human life. Human rights are possessed by every person irrespective of his or her nationality, race, sex, religion etc. without any discrimination.

Human right means "human rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international Covenants and enforceable by courts in India"⁶⁶.

Indian society is more prevalent to follow the rites and customs, particularly in case of honour related matters. In order to preserving family honour the family members committing violence against victim and brutally killed. It is a clearly violation of human rights.

Human Rights Act provides protection of liberty, freedom and to the control the all forms customary violence. Therefore this Act constitute constitutes national Human rights Commission, State Human Rights Commission and Human Rights Court for the development and upliftment of persons

5.5.2.13 Protection of Domestic Act, 2005

The main object of this Act is to protect and elimination offences of violence. An Indian woman faces several customary form of violence since birth to tomb, due to lack of its implementation in proper spirit.⁶⁷ It

⁶⁶. Section 2 (d) of Human Rights Act, 1993

⁶⁷. *Maran Navma v. State of Tripura*, (1210) 9 OAI 833 (Gau)

provides protection to victims of violence in domestic sector who had no proprietary rights. It also provides security, protection and prevention of recurrence of acts of violence⁶⁸. In the patriarchal society domestic violence against women has always been a serious problem. It is considered as the gravest and most persistent of all human rights violation and heinous tolerable crime in the society.

Domestic violence means violence committed by the family members against another family member. It is very compressive and includes physical injury, mental harm, sexual harassment etc. against the victim.

As per Domestic violence Act domestic violence means ‘As –any act omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- a) harm o injury or endangers the health, safety, life, limb or well-being, whether mental or physical of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, sexual abuse, verbal and emotional abuse and economical abuse or,
- b) harasses, harms, injuries or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security or,
- c) has effect of threatening the aggrieved person or any other person related to her by any conduct mentioned in clause(a) and (b) or,

⁶⁸. *Ishpal Singh Kahai v. Ramanjeet Kahi.*(2011) 3 Mah L J 849 (Bom.)

d) otherwise injuries or causes harm, whether physical or mental to the aggrieved person⁶⁹

Whoever suffering from above mentioned violence or acts obtains relief against the person⁷⁰ The occurrence of domestic violence against women is largely prevalent but remains largely invisible and least reported crime. Honour killing a one of the domestic form of violence, in which in order to preserving family honour relatives and family members commits harms, injury, mental or psychological or physically abuses or aggravated form of violence against victim and causes danger to the life of victims i.e. brutally kill the victims. Domestic violence Act provides more effective protection of the rights of women which is guaranteed under the Indian Constitution

5.5.2.14The Indian Evidence Act, 1872

Law of evidence forms an immensely important branch of procedural law. Nevertheless certain doctrines of law of evidence like the rule of relevance and law giving rise to presumptions forms part of substantive law. Therefore any one embarking upon the study of law of evidence has to keep in mind various intricacies involved in the interpretation and application of law of evidence. No case can be decided without the aid of law of evidence.

In every system of jurisprudence before a fact is accepted and acted upon it must be proved or otherwise established. Evidence is foundation of proof. The Indian Evidence Act is unquestionably the most important enactment of all the codified.

⁶⁹. Section 3 of the Protection of Domestic Violence Act, 2005

⁷⁰. *Ajay Kant Sharma v. Alka Sharma*, (2007) 4 MPLJ 193

According to Taylor ‘evidence means and includes all facts except arguments which tend to prove or disprove any matter which is under inquiry in judicial proceeding’,⁷¹

Section 3 of Indian Evidence Act, signifies only the instruments by means of which relevant facts are brought before the court. The instruments adopted for this purpose are witnesses and documents⁷²

Section 13 (a) of Indian Evidence Act dealing with any transaction by which the right or custom in question was created claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence may be proved

Section 13 (b) of Indian Evidence Act dealing with Particular instances in which the right or custom was claimed, recognised or exercised, or in which its exercise was dispute4d, asserted or departed from, may be proved.

This Act provides provision to punish those who conceal facts, either before or after or at the time of the alleged crime.

In the honour killing incident several times no one disclose real facts under the fear of family honour. Therefore no concert official records available about honour killing cases. The act is relevant to bring to justice those who become victim of honour related crime because of the verdicts issued by the local bodies.

⁷¹. Dr. V. Krishnamachari ‘Law of Evidence’ as amended by Act 2 of 2006, Fifth Edition, Pub. S Gogia And Company, Hyderabad.

⁷². *Govarauuz v. Emperor AIR 1930 Nag. 242*

5.6. Legal Perspectives on Right to Marriage

Indian society is closely associated with the religion and customs. They are blindly keeping belief over the customary practices. If someone goes against the customary rites and practices our society punish to wrongdoer. Most of the incidents of honour killing occur due to marriage e.g. inter-caste marriage, inter-religious marriage and denying love marriage or marriages perform against the desire of parents. Even after sixty five years of Independence Indian young boys and young girls are not get freedom about to freely choice their life partner i.e. right to marriage according to their wishes, still they are tied with the customary and traditional practices. Though there are number of laws available, even today some religious people has not ready to accept special Marriage Act.

The Constitution of India is the supreme law of the land. The Constitution of India guaranteed some important fundamental rights to the people and its citizens but it does not speak anything about right to marry for the reason that India is a multi-religious and multi- cultural having several diversities among them. Constitution provides similar constitutional rights and duties to all citizens, but they are abiding by their social and religious beliefs. Marriages governed by their personal laws.

Following are the personal laws available regarding marriages by the parties –

5.7 Hindu Marriage Act, 1955

Most of the Hindu people perform their marriages as per their tradition and customary practices. According to section 5 of the Hindu

Marriage Act a marriage may be solemnized between any two Hindus, A marriage to be valid has to fulfil the following conditions –

- a) Neither party should have a spouse living at the time of marriage;
- b) At the time of marriage the parties should be capable of giving a valid consent to the marriage;
- c) The bridegroom should have attained the age twenty one years and the bride should have attained the age of eighteen years at the time of marriage;
- d) The parties should not be within the degree of prohibited relationships unless the customs or usages permit such a marriage.

Therefore the Hindu marriages under the Hindu Marriage Act, 1955 strictly prohibited between *sapindas* and prohibited relationships.

5.7.1 Muslim Law

Under the Muslim Law Marriage is a contract based on mutual consent. Consent of parties is must for a valid marriage. Any person who is of sound mind and has attained puberty can marry. The marriage will be void if there is no consent. A minor and insane (lunatic) who has not attained puberty can be validly contracted in marriage by their respective guardians. The marriage shall be deemed complete if performed having witnesses as per Islamic Law.

5.7.2 Christian Law

Marriage under Christian Law is in the nature of contract and hence there should be a free and voluntary consent between the parties. When

there is a minor as defined in the act the consent of father or guardian is necessary. Marriage is not permissible between the parties who are within the prohibited degree of relationship under section 19 of the act. There is no legal impediment for marriage between a Catholic and a Protestant

5.7.3 The Special Marriage Act, 1954

The Special Marriage Act was enacted to provide a special form of marriage for any person in India and all nationals in foreign countries irrespective of the religion or faith followed by either party to the marriage.

There is many more honour killing cases occur every day in Indian society. Several youngsters either being killed or being honoured by their families for the crime of inter-caste marriage or marriage against the will of their parents turning relatives and friends hitherto affectionate people into demons. Brother shooting sisters, grandmother killing granddaughters, mother strangulating daughters, father arranging daughter's death, offering a variety of combinations for honour killings. The stories of above mentioned cases reflect a brutal form of patriarchy and caste oppression against women.

For example in *Lata Singh case*⁷³, the Supreme Court observed that there is no dispute that the petitioner is a major and she is free to marry any she likes or like with anyone she likes. There is no bar to inter caste marriage under the Hindu Marriage Act and any other law. The court further held that there are barbaric and shameful acts of murder committed by brutal feudal minded persons who deserved harsh punishment.

⁷³. AIR 2006, SC 2522

As per rule and regulations there is no dispute that any major women are free to marry anyone she likes or live with anyone she likes. There is no any restriction to an inter-caste marriage under the Hindu Marriage Act, which is valid in the eye of law. Marriages within the same *gotra* and marriages within the village are not illegal. That is uncommon in Indian society. India is a free democratic country and once a person becomes major he or she can marry whosoever he or she likes. There is no law that bars two adults from the same *gotra* marrying each other but society sometimes do not accept this⁷⁴.

5.8 National Commission for Women

The committee on the Status of women in India (CSW) recommended nearly two decades ago. The object of CSW is that to fulfil the surveillance functions to facilitate redressal of grievances and to accelerate the socio-economic development of women. To provide the Constitutional and legal remedial legislative measures, and facilitate redressal of grievances as well as advise the Government on all policy matters affecting women.

The Preamble of the NCW Act provides to constitute a commission for women. The commission looks after relating to women as it can investigate and examine all matters relating safeguard for women under the constitution and other laws. Therefore, the Parliament has enacted the National Commission for Women Act, 1990.

In India most of the violence against women cases i.e. honour killing reported in Northern region, mainly in the states of Punjab, Haryana, Rajasthan, Uttarakhand, Delhi, Uttar Pradesh and Bihar as a

⁷⁴. Gurdip Singh and V. K. Ahuja “Human Rights in 21st Century Changing Dimensions” new edition 2012 ISBN No. 978-93-5035-166-6 Pub. Universal Law Publishing Co. Pvt. Ltd. New Delhi, India p.244

result of young boys and girls marrying against the wishes of their parent or sometimes they marrying inter-caste or inter-religion. Therefore family members and their relatives considered that, such marriages bring dishonour of the family, in order to protecting their family honour they use to commits violence activates or commits murder in the name of honour of family. In order to eliminate, address the issues of customary killing and violence against women in 1990 the National Commission for Women⁷⁵ set up a statutory body on national level. This commission reviewed the Constitutional, legal and other provisions as well as challenges women face.

The NCW's activism has contributed significantly towards the reduction of the honour killing in the rural areas of North India. According to *Hina Jilani* and *Eman M. Ahmed*⁷⁶, Indian women are considerably better protected against honour killing by Indian Law and Government of than Pakistani women and they have suggested that Government of countries affected by honour killings use Indian law as a model in order to prevent honour killing in their respective societies

The National Commission for Women voluntarily initiated a study and drafted a Prevention of Crimes in the Name of Honour and Traditional Bill, 2005. The main feature of the Bill is-

- i. It makes guilty the members of *Panvhayat* who participates in or incites of murder or any offence punishable in the Indian Penal Code
- ii. It provides for punishment of harassment which is defined as including both physical and mental acts, including declaration of

⁷⁵. Journal of Academy of Juridical Studies Volume 8 No. 1, Half Yearly, Feb, 2013 P. 153

⁷⁶. Pakistani Activities

married couple as brother and sister, imposing social or economic boycott on the couple or their families etc.

- iii. It shifts the burden of proof on the accused
- iv. It gives the judicial Magistrate powers to pass restrain orders (seeking to sign a bond or surety) on information that any person is likely to commit a crime.
- v. Entitle couples desirous of getting married to declare their intention before a government official who is required to send such information to the nearest police station which would then prevent action against the couples at the instance of third party⁷⁷.

⁷⁷. Clause 9 of *The Prevention of Crimes in the Name of Honour and Traditional Bill, 2005*