CHAPTER: 2

HONOUR KILLING AND THE LAW: AN OVERVIEW

“You can tell the condition of a nation by looking at the status of its women”
– Pt. Jawaharlal Nehru.

2.1 Introduction

India is a country of multi cultural thoughts and perspectives. Here people are affluent educated, ethnic, social worker and cultured in one hand and on the other hand have been suffering from poverty, terrorism, alcoholism, prostitution, drug abuse, unemployment, etc. These tribulations are not individual problems rather it can be termed as ‘Social problems’. It’s very easy to narrate that individual problem affects an individual whereas social problem harm the society or public at large.

The perception of ‘Social Problem’ has been defined by different Jurists in different manner. Each has their own protocols to explain.

According to Reinhardt \(^{13}\), “Social problem is a situation confronting a group or a section of society which inflicts injurious consequences that can be handled only collectively”.

In the words of Walsh and Furfey \(^{14}\) “Social problem is a deviation from the social ideals remediable by group effort”.

So from the above definitions, it can be summed up as:

- One or a few individuals are not accountable for a social crisis.
- One or a few individual cannot manage social difficulty.

• Conscientiousness rests with the society at large.
• A state of affairs is less than ultimate or undesirable.
• It is remediable by cluster exertion.

Social problems revolutionize through time. For example, till the late 1940s in India population explosion was not taken as a Social Problem but since 1950s onwards it has become a severe social issue.

Few characteristics of Social Problems are highlighted hereby,

• All Social Problems refer to situations detrimental to social structure.
• All Social Problem refers to deviations from the ‘ideal’ situation.
• All Social Problems have some common basis of origin.
• All Social Problems are social in origin.
• They are caused by pathological social conditions.
• They are interconnected somehow with each other.
• They affect all sections of society.
• A Collective approach is required to solve a Social problem.
• The liability is collective to curb the same.

2.2 International Law

According to the United Nations\textsuperscript{15}, women’s upliftment mainly has five components. They are depicted hereby-

Thus, women empowerment is nothing but the recognition of women’s basic human rights and creating an environment where they are treated equal to men.

“Every segment of our population and every individual have a right to expect from his government a fair deal.” Harry S. Truman (Speech to Congress 6th September 1945).

The concept of Human rights is not a recent phenomenon. The sense of values upon which our Indian mythology is based made ancient India so great. Our old sages judged the greatness of a state, not by the extent of its empire or by the size of its wealth, but by the degree of righteousness and justice which marked the public administration and the private lives of the citizens. These words of great legal expert Nani Palkhiwala are of great relevance while understanding with respect of one human being by another. If each individual behaves in an accurate and impartial manner, then it would not be required to find the solution to War, Terrorism and Exploitation.

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The Magna Carta of 1215 was the first manuscript dealing with human rights and about the ethos of human rights. The surroundings of Magna Carta is when the King of England despoiled the laws his subjects forced him to sign the Magna Carta, also known as Charter of Liberty.

D.D. Basu\textsuperscript{17} defined \textit{Human Rights as those rights which every individual must have against the State or public authority by virtue of his being a member of the human family irrespective of any other considerations.}

History of Human rights actions in India can be noticed to the beginning of British including freedom progress. The British Indian Rulers distinguished against Indians in all aspects and the Indian people had a feeling that their uninfringeable and immutable human rights and imperative interests had been mistreated and unused by the British Rulers in every situation. Definitions of Human rights have been given by different authors in different perspectives. Human right is explained as something due to a person in a social context because he is a human being. According to R.J. Vincent, Human Rights are the rights that everyone equally has by virtue of his very humanity and also by virtue of his being grounded in an appeal to our human nature."

Human rights are inbuilt in a human being by high merit of his birth as a homo sapien. These rights are naturally adapted, as a human being, is always in a need of civilized society to lead a life of dignity and integrity. These rights are indispensable for the physical, moral, spiritual and social expansion of an individual. Human Rights are concomitant with the poise and solemnity of an individual and after exercising these rights a human being can have the benefit of the right sense of living a commendable life. These rights are incontrovertible because the progressive

\textsuperscript{17}D.D. Basu, \textit{Human Rights in Constitutional law}, 5(Prentice hall of India Pvt. Ltd, New Delhi, 2\textsuperscript{nd} edn., 1994).
principles of the community would not permit the capitulate of a human being by any person on his own preference. These rights are highly crucial to preserve the prominence of an individual as balancing between dignity and integrity is vital to differentiate human beings from animals. Human Rights are those immutable rights which are derived from any country or state rather it is available to a human being as he is a human.

National Rural Employment Guarantee Act, 2005, the National Food Security Bill, 2011, right to health, right to livelihood, right to shelter and employment as against the government etc, identify authorities for monitoring and implementation of the statutory rights. National Commission was set up to keep an eye on the implementation of these rights. Government is under compulsion to afford these statutory rights to its citizens by Directive Principles of Indian Constitution under Articles 39, 41 and 47.

The rights innate by a human being by desirable quality of his birth as a human being are termed as ‘Human Rights’. It is not only a specific dispensation given or conferred upon mankind as State demands it; rather it is owned by a human being by virtue of his birth. Human beings continuous efforts for a civilized society to get a proper recognition of inherent dignity, social security and respect enable to inculcate Human rights among humankind. Human Rights are necessary for the corporeal, religious, ethical and social development of a human being.

These rights are essential for enjoying dignified life and exercise of these rights creates consciousness among human being to lead a worthy life. These rights are also necessary as they create an environment in which people can develop their optimum

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potential and lead productive and creative lives in accordance with their needs and provide suitable conditions for the material and moral fortification of the people. It is a right which is universally recognized differs with topography, history, geography, culture and heritage, stages of developments, gender, class, race, caste etc. and is to be protected by the State. Human Rights are the very essence of an evocative life, and to maintain human dignity is the ultimate resolution of the Government.\textsuperscript{19}

The effort to protect, preserve and encourage Human Rights is as elderly as human evolution. The derivation and enlargement can be noticed in the very formation of existence in society. In prehistoric societies, people had bottomless freedoms but in a structured society unlimited freedoms can create a wretched situation to other class of people. For example, in a feudal society only the rulers, clergy and nobility have freedom and rights others are loaded with only burdens and duties.

During the 17\textsuperscript{th} and the 18\textsuperscript{th} century solicitous men all over the world became conscious of their rights and they began to fight for their rights against feudal dictatorship.\textsuperscript{20} This movement was augmented by the industrial revolution in Europe.\textsuperscript{21} People started recognizing the need and importance of higher law. The higher law in the society was termed as 'Jus Naturale' by the ancient Roman Jurists and 'Lex Naturales' by the medieval Christian thinkers and was christened as Natural Law by modern Jurists.\textsuperscript{22} This was termed as “Dharma” in Hindu religion and culture. Modern jurists name it as Natural Law. The basis of natural law is man’s natural inclination to right reason that is, in accordance with nature, unalterable and eternal. In Jurisprudence, the term “Natural Law” implies those rules and principles

\textsuperscript{21} Ibid.
which are considered to have started from some superlative source other than any political or experienced authority. Different jurists have different opinions about the formation of Natural Law theory. Some propagated that this theory directly has come from God, some discovered its source in nature and others located its source as the product of reason. Heraclitus pointed out that the ‘Reason’ is one of the vital components of Natural Law theory. Aristotle explained that man’s reason is the part of nature, the law created by it is called ‘Natural Justice’. The appreciation of natural law theory gives rise the identification of natural human rights which a human being acquire by birth as this rights are inherent, intrinsic, immutable and inalienable. The Indian Constitution embodies a number of principles of Natural Law. The principle of Natural Justice has been included in Article 311. A recent case where ‘natural justice’ has gained significance in the field of administrative law - *A.K Kraipak v. Union of India*.

The theory of social contract propagated by Rousseau inclined the nations and as a consequence, there came the American Declaration of Independence and the French Declaration of Rights of Man in 1789. As the citizens of France were under misery of King Louis XIV the events in England greatly influenced them. In 1791, Congress did ten Amendments to the Constitution which was known as Bill of Rights. Later, these formed an integral part of the Constitution of the United States of America.

During the second half of the 18th century, the French people started struggling for their natural and inalienable rights to life, liberty and pursuit of happiness when the

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26 Ibid at pg 37.
social, economic and cultural parts are entitled to equal rights. It also proclaimed that
the purpose of all the political and social institutions was the protection and
promotion of the natural and inalienable rights of man such as liberty, property and
resistance to oppression. More political rights were added in 1793 and this
Declaration of the Rights of Man and Citizen guaranteed so many freedoms which
were vital to sustain and endure in society for a basic lifestyle for example, for
freedom of religion, freedom of speech and expression, an accused person is
presumed to be innocent until he is proved guilty.

Apart from all these documents, the constant struggle for the preservation of freedom
and peace from all parts of the country the propagation of various Jurists and
Philosophers influenced the evolution of Human Rights and hence the real
development started at 19th and 20th century. Human Rights are having immense
significance to human beings; Human Rights are sometimes also referred to as
Fundamental Rights, basic rights, inherent rights, natural rights and birthrights.
Human Rights being fundamental or basic rights are often set out in the Constitution
so that they are not taken away by any act of Legislature or Government. “Human
Rights” is a generic term and it embraces civil rights, civil liberties and social,
economic and cultural rights. It is therefore very challenging to give an accurate
definition of the term ‘Human Rights’.  

27Ibid at p.9.
2.3 Human Rights of Women in India

Rights which are absolutely essential for women are hereby ²⁹

![Diagram of Human Rights of a Woman]

Figure II: Human Rights of a Woman

The exclusive duty of a State is to protect its citizens from all sorts of defilements. It is the duty of the State to protect and promote Human Rights of its citizens as it’s the basic rights to survive and sustain. Other State cannot impede in situations entirely dealing within the domestic jurisdiction of the State. Human Rights being essential for holistic development of the personality of the individuals in the society be necessarily protected and be made available to all the individuals. They must be preserved, cherished and defended if peace and prosperity are to be achieved. ³⁰ By the Treaty of Paris in 1814, the British and French Governments decided to collaborate in the

²⁹R. Dhanoa,“Violation of women Human Rights in India” 1, SSIJMAR 125 (2010).
³⁰Ibid at pg 3
containment of traffic in slaves. At the Brussels Conference in 1890, the Anti-Slavery Act was approved and agreed by eighteen States. The Act not only predestined slavery and slave trade but also incorporated instruments for implementation. Exclusion of slavery and slave trade led to the gratitude of the undeveloped rights to dignity and equality of all human beings at international levels. In States where slavery was in vigour and the circumstances of the slaves were miserable, exclamation of the other nations is advantageous to demolish slavery and slave trade. The eradication of slavery is the first international step to assess for the protection of human rights.

One of the most important developments in the field of Human Rights is the advancement of humanitarian law of conflict. It is based on the opinion that the injured or ailing persons are to be treated in the same way as the soldiers of that painstaking nation. In the Geneva Convention of 1864, there was an obligation that the wounded or sick soldiers, whatever their population, may be appreciated and cared for as much as can to give a feeling of security. The Hague Convention of 1899 and 1907 also is reputable for developing humanitarian rules of warfare. After the fatal experiences of the First World War, Geneva Convention, 1927 again tried to revive the situation. In fact, the progression of humanitarian law enabled to the evolution of human rights as a part and parcel of it.

The current frequency of human rights actions is a spectator of lots of experiences of human despondency and destruction as perceived during the world wars. The state of affairs of the people during the administration of Nazi leaders in Germany was

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32 Ibid at p.18.
33 Ibid at p.19.
34 Ibid at p.21.
wretched and there was a complete inhibition and repudiation of human rights and human principles. Hence it was surmised by the nations that international peace and security could be balanced only through the reinstatement of the freedom of the people. At the conclusion of the World War I, the Allied and Associated Powers of Germany signed the Treaty of Peace on 28 June, 1919. This instrument cope up with a number of political, legal and humanitarian issues and it was one of the most noteworthy instruments dealing with human rights fortification. The prime entity of the peace treaty was to esteem the rights of the minorities residing in their region with an observance to equality of civil and political rights and the protection of life and liberty. The League of Nations was an intercontinental organization well-known after World War I to grant peace and security and for the smooth progress of human assistance. It shows international apprehension for human dignity and rights.

According to the treaty, there shall not be any unfairness in admittance to matters of public employment on the ground of race, language or religion and it also documented the right of the minorities to set up and control charitable, religious or educational institution to safeguard their language and religion. But the League of Nations could not do a large amount because it was largely apprehensive with the rights of the minorities and which was not obtainable to majority groups, whose rights were despoiled by the State that are compelled itself by the treaty. The other negative aspect of the treaty was that, it did not connect States other than those against whom the particular treaty was obligatory.

Article 23 of the League of Nations relates to the reasonable and benevolent conditions of labour for men and children and also supported the setting up of International Labour Organization to accomplish that purpose. The International
Labour Organization was established in 1919. The chief objective of the organization was to guarantee social justice and give due admiration to human rights and dignity of every individual without any favouritism on the ground of race, sex, place of birth and the encouragement and security of human rights.

In 1944 delegates to the International Labour Conference adopted the Declaration of Philadelphia which confirmed that labour is not an article of trade that freedom of appearance and alliance are indispensable to the improvement of the same and as there is a proverb, that poverty causes hazard to prosperity should be discarded.

The aims and purposes of the International Labour Organization enclosed in the Preamble and other articles were re-declared in the Philadelphia Declaration 1944. The Philadelphia Convention provides that all human beings irrespective of race, creed or sex have the right to practise both their material interests and other spiritual progress in conditions of freedom and dignity, of economic security and equal prospect. Several Labour Conventions protecting and promoting the human rights were approved to endorse the object of the International Labour Organization.

The pungent experience of the Second World War also shaped a need among the nations for emerging new concepts into international law in order to put off the reappearance of such events in the future. It was again realized by the Nations that safeguarding of human rights was an indispensable condition for the continuation of peace and security in the world.\textsuperscript{35} It has also been renowned that States cannot be reliable to treat their citizens appropriately and humanity has an extensive interest in the handling of people by the governments irrespective of their places.\textsuperscript{36}

\textsuperscript{35}T.S. Batra, \textit{Human Rights: A Critique} 76(Metropoliton Book Publisher,Michigan,1stedn.,1979).
\textsuperscript{36}D.Friedman, \textit{Civil Liberties and Human Rights in England and Wales} 36(Oxford University Press. New York, 2\textsuperscript{nd} edn.,1993).
new inter- governmental organizations such as United Nations, the European Council and the Organization of American States were recognized.

The President of the United States of America and the Prime Minister of Great Britain in a Joint Declaration known as Atlantic Charter concluded in 12 August 1941, declared four freedoms. The freedoms include the right of the individuals to prefer their government and the right to live with liberty from fear and want. In the year 1944, the governments of the Union of Soviet Socialist Republic, the United Kingdom and United States met at Dumbarton Oaks and envisaged that United Nations should make easier solutions for international, economic, social and humanitarian difficulty and uphold respect for fundamental freedoms, distinct the first agreement among nations to support and scrutinize human rights and freedom.

The Dumbarton Oaks offers led to the enterprise of an international organization, the United Nations with the signing of the U.N. Charter, in 1945 as adopted at San Francisco on June 1945, with an intention of the safety and preservation of international peace and security. It was the first agreement among the nations to support and survey human rights and fundamental freedom for all. The Charter itself gave an official and convincing expression to the human rights faction that began at the end of Second World War. Since its inception in 1945, the United Nation has served as an imperative institutional to impel to the development of the movement, as well as serving as a foremost forum for many-sided clashes about it.

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40Developing Human Rights Jurisprudence, Judicial Colloquium 96, (Bangalore 1988).  
Forced or Compulsory Labour constitutes a violation of the rights of a human being referred to in the Charter of the United Nations and enunciated by the Universal Declaration of Human rights. To overturn it, a Convention was resolved for the Abolition of Forced Labour which was adopted by the General Conference of the International Labour Organization on June 25, 1957. The Convention came into force on January 17, 1959.

Article 1 of the Convention provided that each member of International Labour Organization ratifies not to make use of any form of forced or compulsory labour and State parties to the Convention undertake to take effective measures to secure the immediate and complete abolition of forced or compulsory labour. South Asia Project is an example of International Labour Organizations struggle to eliminate and prevent forced or bonded labour.\textsuperscript{42}

The U.N. Charter gave due recognition and respect for human rights and its role in promoting international peace and security. One of the purposes that the Charter spells out is the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedom for all without distinction as to race, sex, language or religion.\textsuperscript{43}

The Charter opens with the words "We the peoples of the United Nations determined to reaffirm faith in human rights, in the dignity and worth of human, in the equal right of men and women and of Nations large and small have resolved to combine our efforts to accomplish these aims." The change of the opening word from the "High contracting parties" from the covenant of the League of Nations to "We the peoples of


\textsuperscript{43} N.R.Sharma,\textit{Human Rights in the World 4}(Pointer Publishers, Jaipur, 1\textsuperscript{st}edn., 1999).
the United Nations" denotes a great human advancement expressing the will of the peoples of the world.

The idea for the protection of Human Rights and fundamental freedoms was conceived in the Atlantic Charter (1941) and the Declaration of the United Nations (1942). The Declaration has exercised a philosophical influence upon the minds of a human being. Not only that, Universal Declaration of Human Rights spread a message of hope, equality, liberation and empowerment all over the world. It has inspired a number of Declarations and International Conventions concluded under the auspices of the United Nations and of the specialized agencies.\textsuperscript{44} The veracity is that the Declaration provided a groundwork upon which the human rights treaties respite.

In \textit{Kesvananda Bharti v. State of Kerala}\textsuperscript{45} Supreme Court observed that ,The Universal Declaration of Human Rights (1948) may not be a legally obligatory mechanism but it shows how India implicit the nature of Human Rights at the time the Constitution was adopted. Thus, although Supreme Court has stated that the Declaration ‘cannot generate a binding set of rules’ and that even international treaties may at the highest inform judicial institutions and instigate legislative achievement,\textsuperscript{46} as constitutional interpretation in India has been strongly predisposed by the Declaration.\textsuperscript{47}

In the judgment given in the \textit{Chairman, Railway Board and others v. Mrs. Chandrima Das},\textsuperscript{48} the Supreme Court experienced that the Declaration has the international

\textsuperscript{44}H.O.Agarwal\textit{Human Rights} 41(Central law Publications, Allahabad, 19\textsuperscript{th}edn.,2014).
\textsuperscript{45}AIR 1973, SC 1461(1510).
\textsuperscript{46}Jolly George Varghesev. Bank of Cochin (1980)474AIR SC.
\textsuperscript{47}Kishore Chandv.State of Himachal Pradesh (1991)76(1)68SCJ.
\textsuperscript{48}2000(1)SCp.265.
appreciation as the ‘Moral policy of conduct’ having been adopted by the General Assembly of the United Nations.\textsuperscript{49}

The following are the instruments of International law concerning Women protection:

1. Universal Declaration of Human Rights (1948)
2. Convention on the Political Rights of Women (1952)
3. International Covenant on Civil and Political Rights (1966)
5. Declaration on the Elimination of all Forms of Discrimination against Women (1967)
11. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999).\textsuperscript{50}

\textsuperscript{49}Ibid at p. 277.
\textsuperscript{50}available at footprints.bligo.com, 2016
2.4 Universal Declaration of Human Rights (1948)

This is one of the vital international instruments and India was a participant to the Declaration. The Indian Constitution which is considered as a permanent and supreme document was greatly influenced by the Declaration. The ‘Preamble’ of the Constitution stated ‘Dignity of the Individuals’ which implied that the worth inherent in the human person was well recognized. Further provisions of Fundamental Rights in Part III and Directive Principles of State Policy in Part IV bears a close resemblance to the Universal Declaration of Human Rights.

A number of Fundamental Rights were guaranteed to individuals in Part III of the Indian Constitution which were similar to the provisions of the Declaration is clear from the following Chart\textsuperscript{51}

<table>
<thead>
<tr>
<th>NAME OF THE RIGHTS</th>
<th>UNIVERSAL DECLARATION</th>
<th>INDIAN CONSTITUTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>EQUITY BEFORE LAW</td>
<td>ARTICLE 7</td>
<td>ARTICLE 14</td>
</tr>
<tr>
<td>EQUALITY OF OPPORTUNITY</td>
<td>ARTICLE 21 (2)</td>
<td>ARTICLE 16 (1)</td>
</tr>
<tr>
<td>FREEDOM OF SPEECH AND EXPRESSIONS</td>
<td>ARTICLE 19</td>
<td>ARTICLE 19 (1) (a)</td>
</tr>
<tr>
<td>FREEDOM OF PEACEFUL ASSEMBLY</td>
<td>ARTICLE 20 (1)</td>
<td>ARTICLE 19 (1) (b)</td>
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<tr>
<td>FREEDOM OF MOVEMENT</td>
<td>ARTICLE 13 (1)</td>
<td>ARTICLE 19 (1) (d)</td>
</tr>
<tr>
<td>FREEDOM OF CONSCIENCE AND RELIGION</td>
<td>ARTICLE 18</td>
<td>ARTICLE 25 (1)</td>
</tr>
<tr>
<td>ELIMINATION OF DISCRIMINATION</td>
<td>ARTICLE 7</td>
<td>ARTICLE 15 (1)</td>
</tr>
<tr>
<td>PROTECTION OF LIFE AND PERSONAL LIBERTY</td>
<td>ARTICLE 3</td>
<td>ARTICLE 21</td>
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<tr>
<td>PROTECTION OF SLAVERY AND FORCED LABOUR</td>
<td>ARTICLE 4</td>
<td>ARTICLE 23</td>
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<tr>
<td>PROTECTION IN RESPECT OF CONVICTION OF OFFENCES</td>
<td>ARTICLE 11 (2)</td>
<td>ARTICLE 20 (1)</td>
</tr>
<tr>
<td>ENFORCEMENT OF RIGHTS</td>
<td>ARTICLE 8</td>
<td>ARTICLE 32</td>
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</table>

Table: 1 Chart showing Fundamental Rights in Part III of the Indian Constitution and their similarity to the Declaration
The Preamble of the Universal Declaration of Human Rights clearly indicates the equality, dignity of status between a man and a woman and promotion of social progress for better standards of life in larger freedom. Human rights are for human beings. Human beings of different origins from all over the world having dissimilar needs and do not have the same antiquity. Evolution and gradual development have influenced the need and urge to meet the needs of human beings. Human needs are deeply rooted in nature. So it’s crystal clear without giving prominence to live life in full essence i.e the basic fundamental rights required to survive, a society cannot progress nor can the edifice of society be measured as an enlightened one. Few Articles which is relevant in this context are:-

To implement the principle of ‘Equal Rights’ as prescribed in the Charter of United Nations this Convention has come up to make responsive decisions about the political rights available to women. Article I to Article XI in all the articles it has been emphasized that all women have equal rights with men without any discrimination to vote as its one of the key fundamental right to sustain in this democratic model. Article III of the Convention clearly depicts that women shall be entitled to hold public office and to exercise all public functions as established by national law on equal terms with men without any discernment. So it’s crystal clear that this Convention marks a history in the political rights of women to make them realize that they are not vulnerable sections of society rather have all powers and glories to shine like a Polestar and to flourish them. Like other rights, Political Rights are very vital in enriching a person to develop his personality and to cultivate full growth.
2.5 International Humanitarian Law

The term ‘Humanitarian Law’ is of moderately recent origin. The Geneva Conventions of 1949 did not mention the term ‘Humanitarian Law’ they mentioned only ‘Humanitarian Activities’ and ‘Humanitarian organizations’. Publicists started using the term ‘Humanitarian Law’ in the early 1950s the term appeared for the first time in 1965 in Resolution XXVIII of the XXII International Red Cross Conference held in Vienna.\(^{52}\) The main objective of International Humanitarian law is to preclude and lessen human suffering in war without discrimination based on sex. International Humanitarian law generally protects both man and woman during the war and some specific provisions for additional protection to women. From 1929 onward, women have enjoyed special protection under the international humanitarian law. In that year, the Powers which adopted the Geneva Convention relative to the Treatment of Prisoners of War sought to take into account a new phenomenon: the participation of a relatively large number of women in the war of 1914-1918. This international legal instrument contained two provisions of particular interest: “Women shall be treated with all consideration due to their sex” (Article 3). “Differences of treatment between prisoners are permissible only if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them” (Article 4).

Treaties and customary international law are the two main sources of IHL rules and regulations. Treaties are agreements between states, and those states that sign on to a treaty are bound by its terms. Though a non-state armed group cannot sign a treaty,

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IHL treaty rules like Common Article Three and Additional Protocol II nonetheless apply to these actors.

Many IHL rules are now considered to reflect the customary international law, as well. The Customary international law consists of rules derived from the consistent practice of states based on a belief that the law requires them to act in that way. Such rules are binding on both states and non-state armed groups. The International Committee of the Red Cross published a study and created a data structure on the customary international humanitarian law.

The key IHL treaties include the 1907 Hague Regulations, four Geneva Conventions, and their Additional Protocols.

- 1907 Hague Regulations (Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907)
- Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949
- Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949
- Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949
- Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
International Humanitarian law is a branch of International law which provides protection to human beings from the consequences of armed conflicts. There are important differences between International Humanitarian Law and Human Rights. The first difference is that, while International Humanitarian Law is applicable during the time of war or armed conflicts alone, the law of Human rights is applicable in peacetime. The second difference is that while a State which becomes a party to a human rights treaty assumes an obligation to treat all persons within the jurisdiction in accordance with the provisions of the treaty, humanitarian treaties, by contrast, are binding only between States which are parties to those treaties. The International humanitarian law applies to all armed conflicts, i.e, international armed conflicts as well as non-international armed conflicts. The distinction between armed conflict and non-international armed conflict was drawn in two Protocols adopted on June 3, 1977, by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in armed conflicts.

2.6 International Covenant on Civil and Political Rights

It was the moment the UN General Assembly\(^5\) which changed the face of international human rights law. Fifty years ago, on December 16 1966, the assembly

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passed a single resolution containing two new treaties: the International Covenant on Economic, Social and Cultural Rights (ICESCR), covering rights to housing, social security and adequate standards of living, and the International Covenant on Civil and Political Rights (ICCPR), regarding rights to fair trial, freedom of expression and physical integrity.

Together, these two treaties constitute the core of the international system that protects human rights. Both treaties entered into force a decade later in 1976, only a few weeks of article and both of them have received approximately the same number of ratification to this day: 168 for the ICCPR and 164 for the ICESCR. Like all other European countries, the UK is a party to both of them.

2.6.1 Article 3 of International Covenant on Civil and Political Rights mentions that parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights. It clearly describes impartiality and fairness in implementing the law.

2.6.2 Article 6 of the Covenant labels about inherent right to life of human being and no one shall be capriciously deprived of his life as the law is there to protect all human being.

2.6.3 Article 7 prescribes that no one shall be subjected to inhuman or degrading treatment or punishment. Hence human being should not be treated in an undignified way.

2.6.4 Article 9 says that everyone has the right to liberty and security and Article 10 mentions that, persons deprived of their liberty shall be treated with humanity. Henceforth, cruel and inhuman treatment is prohibited from all corners.
2.6.5 Article 16 of the Covenant signifies right to recognition as a person before the law. It emphasizes on proper acknowledgement and appreciation of human being.

2.6.6 Article 17 of the Covenant forbids about unlawful and arbitrary interference neither with his privacy, family, home or correspondence nor to unlawful attacks on his honour and reputation. It’s crystal clear from this article that ‘Honour’ is a self-protected topic which cannot be infringed or invaded by anyone.

2.6.7 Article 23 of the Covenant clearly allows right of men and women of marriageable age to marry and to found a family. So a person is free to select his or her own spouse of their own choice. Nothing can be an impediment on it on the basis of many reasons.


This Covenant recognizes inherent dignity, equal and inalienable rights of all members of the human family as it is the very base of freedom, justice and peace in the world. International Covenant on Economic, Social and Cultural Rights was adopted with the notion that human beings should be free from fear and want and can waive economic, social and cultural rights along with civil and political rights.

2.7.1 Article 3 of the Covenant clearly proclaims to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights. This provision depicts impartiality and fairness in enjoying rights.

2.7.2 Article 9 of the Covenant recognizes the rights of everyone to social security including social insurance which is a great aid for women who has been suffering in diffidence and hesitancy.
2.8 Universal Declaration on the Elimination of Violence against Women (1993)

In this Declaration, all sorts of aggression physical, sexual and psychological abuse including any types of threats and terrorizations are absolutely prohibited. Rights which are indispensable for leading an elementary dignified life have been laid down in this Declaration.

An article 1-6 of this Declaration clearly specifies to prepare guidelines to prevent all sorts of violence against women and to apply every protective action to stop violent behavior against women.

This Declaration is a great benefit for women’s freedom, liberty and social security and undoubtedly indicates to put a full stop to any types of vehemence against women.

Figure III: Stop Discrimination against Women
2.9 Convention on the Elimination of all Forms of Discrimination against Women (1979)

The overall development of a country is only possible when the participation of women will be equal with men in all fields. As the contributions of women in the field of family prosperity and thereby towards the development of society is commendable. The social significance of maternity and in nurturing children is an evidence of a women’s struggle and recognition of responsibilities side by side with a man in the advancement of her family. Role of a woman is immense in shaping a family and to assist a family to move in a right direction. The structure of a society gets hampered in all aspects such as political, social, economic and cultural life when dissimilarity between man and woman are delineated. A woman’s potentiality in the service of their countries and of humanity cannot be repudiated. The new International economic order based on Equity and Justice will contribute significantly towards the promotion of equality and at least have the access to food, health, education, training and opportunities for employment and other basic needs for women. The following Convention also relates to the same. It provides for the eradication of all forms of discrimination against women. All forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States are crucial to the full enjoyment of rights of men and women.
Figure IV: Discrimination against Women: What’s with our Country?

Definition of ‘Discrimination against Women’ is defined in -

Article 1 of the above said Convention where it is clearly stated distinction, exclusion or restriction made on the basis of sex which is affecting the recognition, enjoyment or exercise of equality status of a woman with a man.

Article 2 of the Convention states, to exemplify the symbol of equality in their national constitutions or other appropriate legislation to enable real recognition of this principle. To stop this discrimination strong legal supports needed to ensure through competent National Tribunals and other public institutions, appropriate means and also to modify or abolish existing laws, regulations, customs and practices for proper implementation of this Convention.

Article 3 indicates that full enjoyment of Human Rights and Fundamental freedoms develops a woman to flourish in all aspects. Article 4, 5 and 6 states to take all appropriate measures to achieve the objectives of equality of opportunity and treatment. To ensure development and upbringing of children both men and women
should play an equal role as it is a common responsibility to improve social status. State parties shall take all appropriate measures to prevent all forms of traffic and exploitation of prostitution of women.

Under Article 7 political and public life of the country should act on an equal basis to conduct fair election and vote process. Equal opportunity to represent their Governments at the International level and to participate in the work of International organizations has been ensured in Article 8. The nationality of a woman cannot be changed or make them stateless after marriage or cannot force to adopt the nationality of her husband. Due respect to be given to the nationality of children born out of wedlock as assured under Article 9 of the Convention.

Article 10 expresses the importance of education to achieve the particular goal and to gain success. For this, equality from pre-school, general, technical, professional and higher technical education and also in vocational training need to be implemented. Co-education is the medium of education which will help to remove dissimilarities. Scholarships and other study grants need to be operative to provide relief to the needy. To restore the concept of ‘Health is wealth’ sports and physical education need to be instigated to ensure health and well-being of families. Specific educational information needs to be circulated for giving advice on proper family planning. Female student dropout rates and the organization of programmes for girls and women who have left school prematurely should be abridged so that, the concept of equality can be conserved in a composed way.

Article 11 completely disagrees to any type of indiscrimination in the field of employment, as working conditions need to be safe and secured. Equal remuneration including benefits; equality of treatment and evaluation of the quality of work is
prescribed. Social security which includes after retirement life, unemployment, sickness, old age burden and incapacity to work as well as the right to paid leave and protection of health for proper reproduction. Maternity leave with pay or other social benefits without loss of former employment and child care facilities are to be operated as per the Convention.

**Article 12** affirms in the same strain in matters of discrimination against women in the field of health care services, family planning and pregnancy and to provide for proper nutrition and lactation during pregnancy to have an invigorating generation. Article 13 declares of important economic benefits for all by providing the right to bank loans, mortgages and other forms of financial credit. In fact, recreational activities such as sports and cultural life need to be expanded for systematic growth of life.

**Article 14** asserts about the problems faced by rural women and the major role played by them for the economic survival of their families. All the major steps taken by this Convention in respect of discrimination shall be applied in rural women. Equal treatment in land and agrarian reform, agricultural credit and loans, marketing facilities, appropriate technology and to enjoy living conditions in relation to housing, sanitation, electricity, water supply, transport and communications. As a sense of hygiene and asepsis is highly crucial to develop a structured society.

**Article 15** affirms equality of men and women before the law including to accomplish contracts and to administer property and also relating to the movement of persons and the freedom to choose their residence and domicile.
Article 16 renders duties on the state to take all preventive measures to stop discrimination and to ensure equality in matters of family relations marriage and selection of profession.

2.9 Declaration on the Elimination of Violence against Women (1993).

The Declaration on the Elimination of Violence against Women adopted by the United Nations General Assembly in 1993 is the first international human rights mechanism which solely and unambiguously shows concern against the issue of brutality and cruelty against women.

“Violence against women” for the rationale of the Declaration means any action of gender-based violence that fallout, or is likely to result in, substantial, sexual or emotional destruction or affliction to women, including terrorization of such acts, oppression or illogical denial of liberty, whether happening in public or in private life.54

The Declaration is apprehensive with material and mental violence inside the family, sadism devoted by the community and bloodshed that originated by the States and all such other types of hostility.

According to the Declaration55 women are unconstrained to the equal gratification and security of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other aspects.56

54 Declaration on the Elimination of Violence against Women Article 1, 1993.
55 Ibid at Article 2.
56 Ibid at Article 3.
The Declaration required the State Parties to condemn violence against women and to pursue by appropriate means and without delay a policy for eliminating violence against women.\textsuperscript{57}

For this the purpose of the State Parties should:

(1) Sanction the Convention on the Elimination of All Forms of Discrimination against Women if they have not yet ratified;

(2) Abstain from indulging any type of violence against women;

(3) Take all sorts of actions to penalize those who are accountable for acts of violent behaviour against women irrespective of the piece of evidence that it is generated by the State or by private persons, to recommend ratifications in domestic laws to grant effectual remedies and to give admittance to the victims of aggression to impartiality and to notify them about their rights;

(4) To mull over the potentiality of initial national plans of action to encourage the security of women in opposition to cruelty. For this rationale, the State can see collaboration of non-governmental organizations;

(5) To build up pre-emptive process against brutality;

(6) To guarantee psychoanalysis of women subjected to aggression and to their offspring, backing and concern according to the obtainable wealth of the country;

(7) To elevate ample assets for their performance recounting to brutality against women;

(8) To provide guidance to public officials to sensitize them about the requirements of women, keeping in mind about their delicacy and nature;

\textsuperscript{57}Ibid at Article 4.
(9) To implement suitable resources especially in the field of learning to transform the social and cultural and habitual practices that differentiate against women;

(10) To endorse research and collect information about diverse forms of cruelty and recommend process to check violence against women;

(11) To approve measures concentrating towards the eradication of violence against women who are especially susceptible to violence;

(12) To gather records relating to violence against women which integrated the reports submitted to the United Nations by the appropriate human rights mechanisms;

(13) To inspire the development of proper course of action to support in the functioning of the doctrine set forth in the current Declaration;

(14) To distinguish the significant position of the women's association and to activate the role of non-governmental organizations in raising consciousness and wiping out the difficulty of violence against women universally;

(15) To assist and increase the work of the women's interest group and non-governmental organizations and collaborate with them at neighbouring, nationwide and provincial levels;

The Declaration required the organs and specialized agencies of the United Nations system within their respective fields of competence to contribute to the recognition and realization of the rights and principles set forth in the Declaration.\footnote{Ibid at Article 5.}

\footnote{Ibid at Article 5.}
2.11 The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (1962).

The Convention was to protect the interest of teenagers related to marriage, age for marriage and registration related to marriage. This Convention was adopted by the General Assembly on 7 November, 1962 and entered into force on 9 December, 1964. The object of the Convention is to prevent child marriage and marriages without the consent of the parties to the marriage. The Convention provides the following measures to achieve its object. The consent must be articulated by the two intending spouses in person after due promotion and in the presence of two witnesses.\(^5^9\) The States shall take legislative measures to specify a minimum age for marriage \(^6^0\) and all marriages shall be registered in an apposite register by the competent authority.\(^6^1\) The Convention requires the existence of the spouses in order to communicate the consent but in exceptional cases company of one of the spouses can be dispensed with if the competent authority has contented that the conditions are exceptional and the party has voiced the consent before a competent authority and has not inhibited it.\(^6^2\) The Convention also allows an exception in the case of age of marriage, if the competent authority is highly aware of the intending spouses and for severe reasons, established a special consideration as to age.\(^6^3\) Even though the Convention itself has not précised the minimum age for marriage it imposes a compulsion on the State Parties to take legislative feat to this effect.

\(^5^9\)The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, Article 1 1962.
\(^6^0\)Ibid. at Article 2.
\(^6^1\)Ibid at Article 3.
\(^6^2\)Ibid at Article 1(2).
\(^6^3\)Ibid at Article 2.
2.12 Convention against Discrimination in Education (1960).

This Convention was accepted by the General Conference of the United Nations Educational Scientific and Cultural Organization (UNESCO) on 14 December, 1960, and came into force on 22 May, 1962.

The Conference measured that unfairness in education on the ground of sex among other effects is a contravention of the rights mentioned in the Universal Declaration of Human Rights and that the United Nations Educational, Scientific and Cultural Organization (UNESCO) while relating to the multiplicity of national, educational systems, has the responsibility to disallow inequity in education and to endorse equality of opportunity and equal conduct of all in education.

Inequity is explained as any dissimilarity, elimination, restriction or partiality which being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic stipulation or birth, has the rationale or upshot of nullifying or impairing equality of treatment in education and in particular grudging a person or group of persons admittance to education on any intensity or limiting any person or group of an mediocre standard education or set up different educational institutions other than those legally recognized under the Convention and under the boundaries of conditions which are unsuited with the dignity of man.  

The preservation and building up of separate schools with the similar curriculum and teachers with same qualifications for boys and girls, setting up of educational institutions by religious or linguistic minorities to conserve their culture, religion or language and establishment of schools for providing amenities in adding up to conveniences provided by public authorities shall not be considered to be prejudiced,

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provided such schools shall conform to the principles laid down by the suitable authorities.\textsuperscript{65} The Convention requires the parties to the Convention, to take measures to annul or to nullify all laws and administrative directives for the function of eliminating discrimination and for the purpose of promoting impartiality in all aspects of education.\textsuperscript{66}

The steps to be taken by the State shall include:

1. Primary education shall be made free of charge and mandatory
2. Secondary education shall be made obtainable and reachable to all
3. Higher education shall be made equally available to all on the basis of individual aptitude.
4. The values of excellence of education should be made similar in all educational institutions.
5. Providing education for the teaching career without favouritism.\textsuperscript{67}

The State Parties to the Convention have the same opinion to pay concentration to the method approved by the General Conference of the UNESCO for the deterrence of any type of inequity in the field of education and for ensuring equality of prospect and for management.\textsuperscript{68} For the Parties to the Convention it is also requisite to provide to the General Conference of the UNESCO, the process adopted by them to give outcome to this Convention.\textsuperscript{69}

\textsuperscript{65}Ibid at Article 2.
\textsuperscript{66}Ibid at Article 3.
\textsuperscript{67}Ibid at Article 4.
\textsuperscript{68}Ibid at Article 4.
\textsuperscript{69}Ibid at Article 6.
\textsuperscript{69}Ibid at Article 7.
2.13 Declaration on the Protection of Women and Children in Emergency and Armed Conflict

The term ‘Humanitarian Law’ is of recent origin. The International Court of Justice in Nicaragua Case had observed that the principles of humanitarian law are identical with the ‘Elementary Consideration of Humanity’.  

Rules of Humanitarian law may be found in Bible, Quran and Dharma in the Vedic period in India, more specifically in Manu Smriti, a systematic development of modern humanitarian law in armed conflicts originated in the second half of the 19th century when the need was felt to humanize warfare and to protect the victims of armed conflicts. The Convention for the Amelioration of the wounded in Time of War was initiated by the founder of Red Cross Henri Dunant. The principles of Hague Conventions 1899 and 1907 were closely connected with the principles of humanity.  

Non–International conflicts or internal armed conflicts are referred to those conflicts which take place in the territory of a state between its armed forces and dissident armed forces or other organized armed groups.  

The above declaration contains six declarations which express that attacks and bombings, especially on women and children, shall be prohibited. Uses of chemical and bacteriological weapons in the course of military operations perpetrate heavy losses to vulnerable women and children. All States must be abided by the guidelines of Geneva Protocol of 1925 and the Geneva Conventions of 1949 to impart guarantees for the protection of women and children. Military operations in territories

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70 ICJ, 71st Reports on Elementary Considerations of Humanity ,2015 ( August,2016) .  
73 Declaration on the Protection of Women and Children in Emergency and Armed Conflict
and foreign territories should spare women and children from the depredations of war. All types of cruel and inhuman treatment of women and children in the course of military operations will be considered criminal. Lastly, women and children belonging to civilian population and finding themselves underprivileged in cases of emergency and armed conflict shall not be deprived of any shelter or protection in accordance with the provisions of Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights and other instruments of International law.

2.14 Indian Laws dealing with Honour Killing

India is a country where women are worshipped in the name of Goddess but at the same time torment and torture against a woman still today, a blazing issue. Hardly, a day passed where we can deviate our mind from the topic of violence against women in a newspaper or in news channels. From an unborn child to eighty years old women all are in precarious condition. It’s really an oxymoron to find that on one hand a woman was given the status of ‘Devi’ and on the other hand left to ‘Die’ after applying a tremendous brutal form and that too, in the presence of Law and Justice.

A social problem which really enables us to ponder and to combat nowadays is “Honour Killing and the Role of KhapPanchayats”. Killing in the name of ‘Honour’ is something ironical to accept and to accolade. A woman who is considered as an emblem of love, respect and prosperity still are the worst sufferers of various malicious acts. The reasons still unknown and the period of sufferings unspecified in spite of her artistry in all spheres of social, moral, economic and professional life.
An Honour Killing is the homicide of a member of a family or social group by other members, due to the belief of the perpetrators that the victim has brought dishonour or shame upon the family or community. From the definition, one thing is clear that the murderers are somebody known to the victims or indirectly related to victims and secondly, the victim was murdered on the basis of ‘mere belief’. It seems that surmising and predicting is above than the state of realizing.

In British Literature in Shakespeare’s ‘Titus Andronicus’ play Lavina the main character of the play was killed by her father after being raped and it was termed as ‘Honour Killing’. In Britain, for example, the fifth wife of Henry VIII was beheaded based on allegations of adultery. In British literature, Shakespeare's another famous character Desdemona was killed over allegations of infidelity, and Romeo and Juliet tracked an ancient family feud over Honour. King Arthur and the Knights of the Round Table centered on notions of Honour. The premise of the Three Musketeers was the King's guards avenging the betrayal of the king by Cardinal Richelieu. During ancient period Rome, China and Egypt encouraged Honour killing. In India, it has its roots during the time of partition in between 1947-1950 where every day a woman was killed to preserve the Honour of a clan as the influence of religious and social factors was so high. So as today, though the woman has proved and is proving herself in all segments still this social evil persists in our society. The reasons of such killing are- inter-caste marriages, love marriages without family consent, refused to enter into an arranged marriage, being the victim of sexual assault, adultery, lack of cogent laws and lastly, male- dominated society. If a thorough review can be done then in majority, women characters of Indian mythology we will get the instances of ‘Honour Killing’. For example, in the great epic Ramayana where Sita had to sacrifice her life in lieu of Honour, Sati Pratha was nothing but to preserve the Honour of a
family even if, the husband was dead and that Honour is only associated with the female member of that particular family.

In India, Honour Killing started during the time of partition in between 1947-1950 when every day a woman was killed to preserve the Honour of family as the religious and social factors were in elevation. From glimpses of Indian mythology if we need to explore the best example is our great epic ‘Ramayana’, where Ravana killed Surpanakha’s husband an army chief ViduthJulvey whom Surpanakha had done ‘GandharvaVivah’ in a place called ‘Kalikey’. Ravana considered as an insult and in order to maintain his power and position killed her husband. ‘SatiPratha’ was nothing but in the name of the superstitious convention to preserve the Honour of Hindu legacy by burning a buzzing woman with her husband’s dead body irrelevant to the fact of whatever age the husband was at that point of time. If a husband died his wife had no right to survive in this world anymore. It’s very shocking to say mindsets of people are so narrow. From ancient to the modern period, women’s condition-sococially, politically and economically- has not continued same and it kept varying with times. In ancient India, women were having equal status with men; in the early Vedic period they were highly educated and there are references of women sages such as Maitrayi in our ancient texts. But with the coming to the famous treatise of Manu i.e. Manusmriti, the status of women was demoted to a subordinate position to men. Though in Manusmriti cited “Where a woman is respected, God is delighted” [3/56 verse of Manusmriti]. Manusmriti is also known as Manav Dharma Shastra because according to Hindu mythology Manusmriti is words of Lord Brahma and it is categorized as the most influential statement of Dharma.
All kinds of inequitable practices started to take place such as child marriage, devadashipratha, nagarvadhu system, sati pratha etc. Women’s socio-political rights were shortened and they were made fully reliant upon the male members of the family. Their right to education, right to work and right to elect for themselves were taken away. During the medieval period the condition of women got deteriorated with the beginning of Muslim rulers in India also during the British period. But the British rule brought western ideas into the country and injected superstitious mentality amongst all.

Social Reformers like Raja Ram Mohan Roy, Iswar Chandra Vidyasagar were able to bring lots of changes in our slender Indian social structure but unfortunately, ‘Sati Pratha’ was abolished from society but as a balance left dire social problems like ‘Honour Killing’, ‘Dowry Deaths’, and ‘Domestic Violence’ as its successors. Thus, it is evident that Honour Killing is predominant since ancient times and has been continuing without any full stop.

In this twenty-first century when India is developing in different traits, a democratic country which provides for equal rights for both men and women it is very difficult to note that assassination is taking place and that too, in name of ‘Honour’. The old patriarchal, feudal mentality has been evacuated in our Indian mentality in such a manner that in spite of technological developments and innovations India is unable to change its beliefs and thoughts and astoundingly, in the name of ‘Social mandate’ dreadful crime like ‘Honour Killing’ taking place. In this era, due to easy access on internet What’s app, Facebook, Linkedin and other social networks proximity between young boys and girls have become very easy. Moreover, illicit relations are on rise as these Apps and Public sites personal pictures and status are uploaded and
thereby one becoming enticed to another without any hindrances. In lieu of that, kidnapping is taking place of innocent children due to the fault of their parents for updating status habitually and thereby generating information and all details of that particular child. Kidnappers are just simply tracing that particular child and achieving success in such conspiracy without any struggle. The surprising part of Honour Killing is, it’s not confined to the murder of only woman, a man can also be killed if both of them are in a relationship or has married against family’s wishes or consent or involved in inter-caste marriage. Maximum victims of Honour Killing are young couples or youths who have selected their life partners of their own choice. It’s very natural to be in love with other sex at any point in time but to kill them brutally for such step is not a solution.

The reason Honour Killing is coming into spotlight as it’s a gross violation of our Fundamental rights and Natural rights and that too, in this 21st century when people are educated, cultured, proficient and aware of legal protection. Killing is taking place in spite of youths at their marriageable age and being reputable. Several incidents took place where marriage was already solemnized even partners were leading a very happy married life still, for the reason of inter-caste marriages parents are after their lives and don’t think twice about the consequences, as their anger and honour are of so high stretch. Rich or poor, upper caste or lower caste, at a certain level all women are vulnerable to various forms of violence. But while the rich can “buy” safety by sequestering themselves in gated communities and with personalized transport, the poor have nowhere to hide. As the lives of so many poor women living in cities demonstrate, their poverty, their inability to get secure housing combined with cities

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that only cater to the needs of the rich, increases their vulnerability.\textsuperscript{75} The term ‘Honour Crimes’ is a misnomer as there is nothing honorable about them. However, it has come to encompass a variety of violence against women, such as murder, assault and detention, most of which involve preventing a person from exercising their choice in marriage or relationships. Such crimes are often committed by the family or by members of the community which perceives that there has been a “threat to Honour” thereby giving the crime a social sanction. In this context, there is a publicly articulated ‘Justification’ that is attributed to a social order claiming to require the preservation of the concept of ‘Honour’ vested only in male (family and/or conjugal) control over women, and specifically women’s sexual conduct; actual, suspected or potential (Lynn Welchmen and Sara Hossain).

Reports submitted to the United Nations Commission on Human Rights show that Honour killings have occurred in Bangladesh, Great Britain, Brazil, Ecuador, Egypt, India, Israel, Italy, Jordan, Pakistan, Morocco, Sweden, Turkey, and Uganda. In countries not submitting reports to the UN, the practice was pardoned under the rule of the fundamentalist Taliban Government in Afghanistan and has been recounted in Iraq and Iran. But while Honour killings have stimulated considerable attention and outrage, human rights activists argue that they should be regarded as part of a much greater problem of violence against women. In India, for example, more than 5,000 brides die annually because their dowries are considered inadequate, according to the United Nations Children's Fund (UNICEF). Crimes of passion, which are preserved extremely compassionate in Latin America, are the same thing with a different name, some rights advocates say, “In countries where Islam is practiced, they're called Honor killings, but dowry deaths and so-called crimes of passion have a similar

dynamic effect in that women are killed by male family members and the crimes are perceived as excusable or understandable,” said Widney Brown, Advocacy Director for Human Rights Watch. The practice, she said, "goes across cultures and across religions." Alliance with other women in the family and the community strengthens the concept of women as property and the insight that violence against family members is a family and not a judicial issue. "Females in the family—mothers, mothers-in-law, sisters, and cousins—frequently support the attacks. It's a community mentality," said Zaynab Nawaz, a Program Assistant for Women's Human Rights at Amnesty International. Hundreds, if not thousands, of women, are murdered by their families each year in the name of family ‘Honour’. It's difficult to get specific numbers on the occurrence of Honour killing; the murders frequently go unreported, the offenders unpunished, and the concept of family Honour justifies the act in the eyes of some societies.

2.15 Constitutional Provisions Related to Women

The Constitution of India which is considered as a permanent and supreme document of India guarantees certain Fundamental Rights, Directive Principles of State Policy and Fundamental Duties. The very Preamble of the Constitution starts with the ringing words “We the people of India….”. Here, ‘We’ denotes both men and women. Part III of the Constitution guarantees certain Fundamental Rights such as, Article 14 ensures for Right to Equality that is, equality before the law and equal protection of the law. Article 15 of the Constitution assures that State shall not discriminate on the grounds of religion, race, sex, caste, place of birth to any citizen subjected to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and palaces of public entertainment; or the use of

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76M.P Jain, Indian Constitutional Law 5 (Lexis Nexis, New Delhi, 7th edn., 2014).
wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. Article 15(3) of the Constitution empowers to make special provision for women and children as they belong to a most vulnerable category. Article 16 of the Constitution provides for equality of opportunity in matters of public employment. No one is denied equality in matters of occupation as it is the basic means of livelihood to run a family. Article 19 guarantees certain rights most important among it is freedom of speech and expression. Until and unless a citizen is having the flexibility of being eloquent and prompt a State cannot reach its destination of success. Other rights included under Article 19 are to assemble peaceably and without arms; to form associations or unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practice any profession, or to carry on any occupation, trade or business. Article 21 of the Constitution proclaims that no person shall be deprived of his right to life and liberty except according to the procedure established by law. Article 23 prohibits trafficking in human beings, Article 25 freedom of religion and so on. Certain Directive Principles of state policy which are fundamental in the governance of the country some provisions related to women are noteworthy. Article 39(a) provides right to an adequate means of livelihood, Article 39(d) provides equal pay for equal work, Article 39(e) directs the State not to neglect the health and strength of workers, both men and women, Article 42 provides just and compassionate circumstances of work and maternity relief, Article44 provides for Uniform Civil Code which actually aims to achieve gender justice. Though the State has not been able to introduce Uniform Civil Code in India, the Judiciary has recognized its necessity in the application of Civil Laws such as the law of marriage, succession, adoption and maintenance etc. and Article 47 provides to elevate the level of nutrition and thereby providing safety and security to all citizens. Among different Fundamental Duties provided in the Constitution the most vital duty related to women
is Article 51(A) (e) which renounces practices derogatory to the dignity of women. The prime document Constitution of India has openly allowed all these freedoms for the citizens of India. Apart from India marriage is considered as a religious practice and each religion has its own traditional practice and ideas and is sanctioned by their own personal laws.

The Indian Constitution is the fundamental law of the land. It assures the dignity of individuals irrespective of sex, community, age or place of birth. The Preamble of the Constitution of India highlights certain goals including “We the people of India” and “the equality of status and opportunities” to all its citizens.

2.16 Relevant cases related to women in India:

*MX of Bombay Indian Inhabitant v. M/s.ZY*\(^{77}\)

It has been held that a person cannot be regarded as medically unfit and denied employment merely on the ground that he has been detected to be HIV-positive.

*Mathura Rape Case*\(^{78}\) (1972)

This is one of the most important cases in the country, because the protests that followed the verdict, forced some important changes in rape laws in India. Mathura, a young tribal woman, was raped by two constables within the premises of the Desai Ganj Police Station in Chandrapur district of Maharashtra. The Sessions court judge found the accused not guilty. The reasoning behind this was (believe it or not) that Mathura was habituated to sexual intercourse. This, according to the judge, clearly implied that the sexual act

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\(^{77}\) MX of Bombay Indian Inhabitant v. M/s.ZY, AIR 1997 Bom 406

\(^{78}\) Indian Constitutional Law,India,available at:https://www.scoopwhoop.com/inothernews/indian-court-cases(visited on July10,2016)
in the police station was consensual. The amendments to the law that were forced by the protests got one thing right - submission does not mean consent.

**K.M. Nanavati v. State of Maharashtra**

This case was the last time when there was a jury trial in India. KM Nanavati, a naval officer, murdered his wife's lover, PremAhuja. A jury trial was held to decide whether it was a crime of passion (carrying a ten-year sentence) or pre-meditated murder (life imprisonment) to which Nanavati pleads 'not guilty'. The jury ruled in favour of him but the verdict was dismissed by the Bombay High Court and the case was re-tried as a bench trial.

**Mohd. Ahmed Khan v. Shah Bano Begum**

A 62-year old mother of five, Shah Bano Begum was divorced by her husband, Mohd. Ahmed Khan. She filed a criminal suit against him in the Supreme Court and claimed alimony, which was then granted to her. But then the Islamic orthodoxy protested the judgment claiming the practice of granting alimony as anti-Islamic. Congress government, the then political party in power succumbed to the pressure and passed the Muslim Women (Protection of Rights on Divorce) Act, 1986 which diluted the Supreme Court judgment and further denied destitute Muslim divorcees the right to alimony from their ex-husbands. This case is regularly mentioned during talks about 'Uniform Civil Code' in the country.

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79 K.M. Nanavati v. State of Maharashtra AIR 1960,605SC
**Tarakeswar Case**\(^{81}\) (1874)

This case was so renowned and famous that authorities had to sell tickets to permit people come inside the Sessions Court. And the anecdote itself is nothing but a short of a chartbuster. Nobin Chandra slit the throat of his 16-year old wife, Elokeshi, who had a rumored illicit relationship with the *Mahant* of the local Tarakeswar temple. Even though Nobin Chandra surrendered to the police and disclosed his crime, the local netizens were mostly on his side. The police had to let him go after two years, even though he was allocated life imprisonment while the *Mahant* was arrested and put behind bars for three years.

On the other hand, there were also gossips that the *Mahant* had raped Elokeshi on the semblance of helping her out with "fertility issues". This case was really significant for that time phase because this was seen by the society as one of those moments where the British rulers meddled in the affairs of the Bengali *bhadralk* and a temple priest, something that was very exceptional, back in those days.

**Vishakha v. The State of Rajasthan**\(^{82}\) (1997)

Before the Vishakha guiding principle came in, the place of work was hazardous for many women particularly in case of sexual harassment. In 1992, Bhanwari Devi was gang-raped by superior caste men in her village because she tried to move up her voice against child-marriage. Due to foul carelessness, the vaginal scrubs compiled from her body were taken 48 hours after the occurrence. Normally, it should be done within 24 hours. Horrifyingly, the judge presiding over her case (this was the seventh judge after six others were discharged) released the accused, even going so far to say, with a notion that since the offenders were upper-caste men and incorporated from a

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\(^{81}\) Tarakeshwar Case, 1874 retrieved from en.m.wikipedia.org

\(^{82}\) Vishakha v State of Rajasthan AIR 1997,SC 3011
Brahmin caste, the rape could not have taken place because Bhanwari Devi hailed from a lower caste. The fury of the crowd subsequently over this acquittal, enabled Vishakha and some other women's groups to file a Public Interest Litigation against the State of Rajasthan and the Union of India, forcing the latter to approve the Vishakha Guidelines which now actually assuring working women all over the country.

*Air India v. NergeeshMeerza*83 (1981)4SCC 335

This became popularly known as the Air Hostesses case84. It was a significant case. It involved an examination of reasonableness — unconscionability — of certain terms in the air hostesses' contract of employment with Air India. The impugned conditions of service compelled an air hostess to retire from service in any of the three contingencies viz. on marriage if it took place within four years of service, on first pregnancy, or on attaining the age of 35 years. The Supreme Court approved the first condition prohibiting marriage for four years. The other two conditions of service were struck down. Rejecting the argument of the airlines that "A woman after bearing children becomes weak in physique or in her constitution”. The Supreme Court held that “It amounts to an open insult to the institution of our sacred womanhood. Such a morbid approach is totally against our ancient culture and heritage as a woman in our country occupies a very high and respected position in the society as a mother, a wife, a companion and a social worker”.

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The Indian Evidence Act, 1872 provides provision for punishment for those who conceal facts, either before or at the time of, or after the alleged crime.

Section 3 of the Indian Evidence Act, 1872 signifies only the instruments by means of which relevant facts are brought before the Court. The instruments adopted for this purpose are witnesses and documents.

Section 13 of the Act states that: Facts relevant when right or custom is in question:

a) any transaction by which the right or custom, in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with his existence:

b) particular instances in which the right or custom was claimed, recognized, or exercised or in which its exercise was disputed, asserted or departed from.

In India, the Criminal jurisprudence came into existence from the time of Manu as the main motto of Hindu mythology is to attain ‘Moksha’. As Manu has recognized assault, theft, robbery, false evidence, slander, and criminal breach of trust, cheating, adultery and the rape. Different laws have come into existence in the reigns of different Rulers and encouraged different forms of implementation of laws. The Indian Penal Code was drafted by the first Indian Law Commission under the observance of Lord Macaulay and was submitted to the Governor-General of India in Council in 1837.

The sections of Indian Penal Code dealing with “Offence affecting the Human Body” are sections 299 and 300. Section 299 deals with Culpable Homicide whereas section 300 deals with Murder.

availability at http://www.ncw.nic.in/Acts/THEINDIANEVIDENCEACT1872.pdf
Section 299 of Indian Penal Code provides as follows:

That whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury 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.

Section 300 states as follows:

Culpable homicide is murder if the act by which the death is caused is done with the intention of causing the death or if it is done with the intention of causing such bodily injury as the offender knows it will cause death of that person. So in all probabilities “Death” will be the ultimate occurrence in case of Murder.

Now there are differences in between Culpable homicide and Murder. Murder is the species and culpable homicide is the genus. As all murders are culpable homicide but all culpable homicides are not murders. Rampal Singh v State of Uttar Pradesh, (2012) 8SCC 289.

There are Legal differences between Murder and Homicide. Homicide is the killing of one person by another. Murder is a form of criminal homicide, where the wrongdoer intended to kill the other person, sometimes with contemplation (a plan to kill). Manslaughter is another type of criminal homicide. Homicides are criminal, explicable, or defensible. A criminal homicide is unjustifiable, with consequences being severe. An excusable or justifiable homicide is one without criminal intent to kill someone. An important starting point is that not all violence against women in the family is honour-related. Nor are all murders of girls and women in family’s honour.

Ratanlal and Dhirajlal, Indian Penal Code 484 (Lexis Nexis, 33rd edn., 2016).
killings. What differentiates honour-related violence and murder from ‘ordinary’ family violence is that the misdeed is often decided by the family as a whole – it is premeditated – and a perpetrator is appointed on the basis of given criteria and is treated with respect and pride by the family. Restoring the family’s honour – washing away the shame’ – is seen as a social obligation and the right of the offended group, i.e. the family and relatives. The misdeed is often met with understanding and silent acceptance by the local community, e.g. a village or ethnic group. Both men and women are subject to honour killings, but most victims are women. Honour killings in Iran are often perpetrated by close male relatives of the victims (Asia Pacific Women’s Watch 2004).

Section 304 of the Indian Penal Code provides punishment for culpable homicide not amounting to murder and it is clearly stated punishment can be extended up to 10 years or fine or with both. Section 307 of Indian Penal Code deals with attempt to murder and shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is triggered by any person by such act, the offender shall be liable either to imprisonment for life or to such punishment as is hereinbefore mentioned. Section 308 provides attempt to commit culpable homicide where it is said, will be punished either imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused by any person, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Section 120-A120B provides punishment for criminal conspiracy, Section 107-116 penalizes for abetment of offences and Sections 34 and 35 provides for criminal acts done in furtherance of common intention.
Relaxation in the Special Marriages Act\textsuperscript{87} is highly essential as the recent procedure of getting a registered marriage is a long term process. It takes 45 days to complete all the formalities which are a long-term prospect. During this period a couple can be vulnerable and can take any bold step to complete the marriage. So measures need to be taken to simplify the registration process so that the couple should not face any dreadful threat.

Section 3 of the Indian Majority Act, 1875 describes every person domiciled in India shall attend the age of majority on his completing the age of 18 years and not before. So during numerous times, family members and Khap Panchayats forcefully separated married couples who are of suitable age to marriage is a sheer violation of the Act.

Honour Killing is falling under the category of both homicide and murder as in this crime intention and death both are criminal components which play a vital role to diminish the victims. Indian society comprises of people belonging to almost all kinds of religious dogmas. In every religion, women are given a distinct place and every religion imparts us to treat women with respect and dignity. But somehow the society has so established that various sorts of ill practices, both physical and mental, against women have become a custom since ages. For instance, sati pratha, the practice of dowry, pardapratha, female infanticide, wife burning, sexual violence, sexual harassment at work place, domestic violence and other wide-ranging kinds of prejudiced practices; all such acts entails physical as well as the mental element.

\textsuperscript{87} available at http://www.legalserviceindia.com
Other Indian laws related to women protection and empowerments are:

- The Dowry Prohibition Act, 1961 (28 of 1961)
- The Immoral Traffic (Prevention) Act, 1956
- The protection of women from Domestic Violence Act, 2005

Table 2 : Women specific Legislations

Women related Legislations:-

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<td>The Special Marriage Act, 1954</td>
<td>The Inter-State Migrant Workmen</td>
<td>The Muslim Personal Law (Shariat) Application Act, 1937</td>
<td>The Hindu Minority and Guardianship Act, 1956</td>
<td>The Employees’ State Insurance Act, 1948</td>
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Table 3 : Women related Legislations