CHAPTER 5

LEGAL FRAME WORK FOR THE PROTECTION OF WOMEN
AND JUDICIAL RESPONSE TO HONOUR KILLINGS IN INDIA

Half of the Indian population are women. Women has always been discriminated sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.¹

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5. Introduction

Though woman in India has achieved great advances in the academic and professional fields after independence, however she is still facing discrimination based on conservative ideas, especially in traditional societies. In those societies, the woman is still treated in a conventional manner, with neglect to her basic human rights. She is regarded as being inferior to man, and not deserving to enjoy the identical rights. This belief is based and built upon a long succession of customs and traditions. Despite the fact that in India, woman has attained some rights under various laws including the equality rights under the Constitution of India, but there are still several instances of discrimination and violence committed against her. Some of those are reflected in the phenomenon of killing women on the milieu of the honour of the family. Honour killing is considered to be a crime that threatens the unity and harmony of the community, and it acts as a barrier preventing woman from enjoying equal rights, equal opportunities and to live a dignified life with her counterparts of her choice². Killing of women on the basis of family honour is considered one of the forms of discrimination against woman and is a stern contravention to her basic human rights. Yet it is an observable fact that

continues in India. Honour killing dealt with a barbaric custom of murdering women for immoral activities, at the hands of male family members, including fathers, brothers, and even husbands, to maintain the purity of honour or restore the family honour. The daughters who disobey their parents and decide to marry with a man of their choice are considered to bring dishonour upon their family—and commit an offence that could be purified only with blood.

The Nation, in the Weber concept, can be characterized as an arrangement of institutions that control the legal use of rule, regulation and power making inside a given region. Imposing business model of physical power is the very basic existence on which the very presence of State rests. Such imposing business model supplies the Nation with force to make commanding as well as binding pronouncement and to execute other tasks or functions. The Nation can't be valued to be effective without having such power.

A self-governing nation like India, banks on the proper working of the three organs of State i.e., the Judiciary, the Legislature and the Executive. Theses organs of the State work in turn according to the rule of law and principles of natural justice. Kangaroo courts in the form of khap Panchayats, which are without any uncertainty exceptionally dominant in the regions they exist, by their weird decisions which apparently possess a approval of the masses and lot of social sanction, question the efficiency of the State with bold insolence.

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3 Mohamad K. Yusuff, Honor Killings in the Name of Religion, Posted March 9, 1999. This article was printed in the February/March 1999 issue of the Voice of Islam newsletter. (This newsletter is published by the Islamic Society of the Washington Area). Available at: http://www.irfi.org/articles/women_in_islam/honor_killings_in_the_name_of_re.htm, last visited on 1-11-16
5 Andre Munro, State monopoly on violence, Available at: https://www.britannica.com/topic/state-monopoly-on-violence, (last visited on July 8, 2016)
5.1. Constitutional Protection to the women in India

A Constitution is the basic document of a country having a supreme legal sanctity which sets the framework and the principle functions of the organs of the government of a States and declares the principle governing the operation of these organs. The Constitution aims at creating legal norms, social philosophy and economic values which are to be affected by striking synthesis, harmony and fundamental adjustment between individual rights and social interest to achieve the desired community goals.\(^7\)

The Constitution of India has been given the power to the State Government to enact laws which are focused on the women. It provides the various provisions which provides the equality and prohibits discrimination on the ground of race, sex, caste, religion, place of birth or any of them,\(^8\) though all of which some last years have been observed to some landmark judgements of the Apex court with directions and explanations regarding violence against women. The Constitution of India guarantees under Article- 14\(^9\), equality before the law or the equal protection of the laws within the territory of India as the right to equality to any person\(^10\) and ensures prohibition of discrimination on the grounds of race, religion, sex, caste or place of birth. Equality before the law is an aspect of what dicey calls the rule of law in England.\(^11\) Rule of law requires that no person shall be subject to harsh, uncivilized, discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.\(^12\) The rule of natural justice is also inherently implicit in the article 14 of the Constitution of India which provides the two rights: firstly no one can be judge of his own cause and secondly right to be heard. The word

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\(^7\) S.R. Myneni., Women And Law, Asia Law House Hyderabad (1\(^{st}\) ed., 2002) at page-64
\(^8\) Const. of India, part III, Art. 15(3).
\(^9\) Const. of India, part III, Art. 14.
\(^10\) Chiranjeeet lal v. Union of India AIR 1951 SC 41
\(^12\) Rubinder Singh v. Union of India, AIR 1983 SC 65.
‘any person’, in Art. 14 of the Constitution denotes that the guarantee of the equal protection of laws is available to any persons it includes women also. The equality before the law is guaranteed to all without regard to caste, religion, race, colour or nationality.\(^{13}\)

The Constitution of India also provides the special provisions for the well being of the women these special provisions do not violate the right to equality as guaranteed in the Constitution but it is one of the exceptions to the general rule laid down in Art. 14 or clauses (1) and (2) of Art. 15. Art. 15(3) empower the state to make special provisions for women\(^{14}\). Women require special treatment on account of their very nature. The basis is that female’s corporeal construction and the performance of maternal capacities put her off guard in the fight for survival and her physical prosperity turns into a question of public interest land care so as to safeguard the quality and power of the race\(^{15}\). Thus women worker can be given special maternity relief\(^{16}\) and this effect of law will not infringe right to equality. Again state are established educational institutions exclusively for women\(^{17}\).

The Constitution of India provides the protection of life and personal liberty\(^{18}\) to all persons and the persons includes women also. The right to live is not restricted to mere animal existence. It means something more than physical survival. The right to ‘live’ is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes “the right to live with peace with human dignity”, and all that comes under the right to life, namely, the bare requirements of human dignity, such as clothing, shelter over head for living, sufficient

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14 Const. of India, part III, art. 15(3).

15 Richa Jhanwar, HNLU, The Need for Maternity Benefits for Women Employee, ACADEMIKE (ISSN: 2349-9796), November 16, 2014, Available at: https://www.lawctopus.com/academike/the-need-for-maternity-benefits-for-women-employee/ (last visited on December 5, 2016).

16 Const. of India, part IV, Art. 42.

17 Dattatraya v. state, AIR 1953 Bom 311.

18 Const. of India, part III, Art. 21.
nourishment, amenities for writing, reading, studying and expressing ourselves in various forms, to move freely regarding and integrating and commingling with fellow human being.\textsuperscript{19} It also provides the gender equality and guarantee against sexual harassment. It guaranteed gender equality, which includes right to work with human dignity and the safeguard against sexual harassment.\textsuperscript{20}

Part IV of the constitution of India set out the aims and objectives to be taken by the states in the governance of the country. At one time it was mainly concerned with the maintenance of law and order and the protection of life, liberty and property of the subject, and in the era of welfare state the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy for this purpose the state shall promote justice-social, economic and political.\textsuperscript{21} The concept of ‘social-justice’ consist of diverse principles essential for the orderly growth and development of personality of every women. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, dalits, tribals and deprived section of the society and so elevate them to the level of equality to live a life with dignity of persons.

The concept of social justice enables equality to flavor and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of Law, therefore, is a potent instrument of social justice to bring about equality.\textsuperscript{22} It also provides equal pay for equal work for both men and women\textsuperscript{23} and to protect health and

\textsuperscript{19} Francis Coralie v. Union Territory of Delhi, AIR 1978 SC 597.
\textsuperscript{20} Vishaka v. State of Rajasthan, AIR 1997 SC 3011.
\textsuperscript{21} Const. of India part. IV, Art. 38- State to secure a social order for the promotion of welfare of the people
  (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life
  (2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations
\textsuperscript{22} Air India Statutory Corporation v United Labour Union, AIR 1997 SC 645.
\textsuperscript{23} Const. of India, part IV, Art. 39(d)- that there is equal pay for equal work for both men and women;
strength of women and to ensure that they are not forced by economic necessity to enter avocations unsuited to their strength.

State also directs to secure a Uniform Civil Code applicable throughout the territory of India. Its particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce a Uniform Civil Code in India, the judiciary has recognized the necessity of uniformity in the application of civil laws relating to marriage, succession, adoption, divorce, maintenance, etc. but as it is only a directive it cannot be enforced in a court of law. The State shall take necessary step to organize village panchayats and the 73rd and 74th amendments to the Indian Constitution effected in 1992 provide for reservation of seats for women in elections to Panchayats and Municipalities. The Constitution of India enumerates the fundamental duty of citizen of India to renounce practices derogatory to the dignity of women, but its true realization in spirit is much awaited.

5.2. Legal Protection to the Women Against violence on the Name of Honour in India

Indian laws do not treat such crimes in a specific or separate clause. Indian laws pertaining to such crimes aren’t covered under any statute directly, but provisions related to murder, attempt to murder, (attempt to) suicide, grievous hurt, outraging the modesty of women, rape, criminal intimidation,

24 Const. of India, part IV, Art.39(e)- that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

25 Const. of India, part IV, Art.44 - Uniform civil code for the citizens The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.


27 Const. of India, part IV, art.40.

28 Const. of India, Parts IX & IX –A- Part IX, The Panchayats, Art. 243 to 243 O & The Municipalities Art. 243 P to 243 ZG.

29 Const. of India, part IV-A, art. 51A, (e). The Constitution of India enumerates the fundamental duty to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women.
protection of women from torture, prevention of atrocities against SCs and STs, etc., in the Indian Penal Code, 1860, Protection of Women from Domestic Violence Act, 2005, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Code of Criminal Procedure, 1973 respectively, can be constructively construed to cover the violence against women on the name of honour.30

5.3. Protection under Criminal Law

There are lot of provisions under the IPC which combat the violence against women. There are some offences introduced under the IPC which are indirectly combat the crime against women on the name of honour that are murder,31 Culpable homicide,32 Attempt to murder,33 Attempt to commit culpable homicide,34 Dowry deaths,35 suicides36 and abetment of suicide37.

In Brij Lal v. Prem Chand38 case Supreme Court stated that:

…… the degradation of society due to the pernicious system of dowry and the unconscionable demand made by the greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women has shocked the legislative conscience to such an extent that the legislature has deemed it necessary to provide additional provision of law, procedural as well as substantive, to combat the evil.

30 The Justice Verma Committee’s Report on Criminal law of India(Amendments), December 23, 2012: A three-member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law, Chapter 8, Khap Panchayats and Honour Killings, Available at: http://www.manupatra.com/manaFeed/contents/PDF/634946234449650140.pdf, last visited on July 9, 2016
31 Indian Penal Code (1860). S. 300
32 Indian Penal Code (1860). S. 299
33 Indian Penal Code (1860). S. 307
34 Indian Penal Code (1860). S.308
35 Indian Penal Code (1860). S. 304-B
36 Indian Penal Code (1860). S. 309
37 Indian Penal Code (1860). S. 306
38 (1991) SCC (Cri) 394.
Indian society is patriarchal in nature with inborn desire for the birth of a male child in the family. This desire along with the many prevailing superstitions, leads to indiscriminate abortion of female foetuses. Therefore in order to prevent such illegal acts sections 312-318 of the Indian Penal Code deal with the causing of miscarriage with or without consent. Thus these provisions deal with causing miscarriage,\(^{39}\) without women consent,\(^{40}\) death caused by an act done with the intent to cause miscarriage without women’s consent,\(^{41}\) act done with intent to prevent child being born alive or to cause it to die after birth\(^{42}\) or causing death of quick unborn child by act amounting to culpable homicide\(^{43}\). The exposure and abandonment of child under twelve years by parents or persons having care of it\(^{44}\), concealment of birth by secret disposal of dead body\(^{45}\) are some of the problems dealt with under the provisions of the Indian Penal Code.\(^{46}\)

IPC prohibits the trafficking\(^{47}\) and all forms of exploitation.\(^{48}\) Exploitation includes any act of physical exploitation or any form of sexual exploitation, slavery or practices alike to slavery, servitude, or the forced removal of organs. Selling minor for purpose of prostitution,\(^{49}\) buying minor for purpose of prostitution,\(^{50}\) forced labour\(^{51}\).

In *Gaurav Jain v. Union of India*\(^{52}\) case Supreme Court stated that:

> Women found in flesh trade, should viewed more as victims of adverse socio-economic circumstances rather than as offenders in our

\(^{39}\) Indian Penal Code (1860). S.. 312  
\(^{40}\) Indian Penal Code (1860). S. 313  
\(^{41}\) Indian Penal Code (1860). S. 314  
\(^{42}\) Indian Penal Code (1860). S. 315  
\(^{43}\) Indian Penal Code (1860). S. 316  
\(^{44}\) Indian Penal Code (1860). S. 317  
\(^{45}\) Indian Penal Code (1860). S. 318  
\(^{46}\) Malik & Raval, Law And Social Transformation In India, Publisher: Allahabad Law Agency, (3\(^{rd}\) ed. 2011), at page- 164-165  
\(^{47}\) Indian Penal Code (1860). S. 370  
\(^{48}\) Indian Penal Code (1860). S. 370-A  
\(^{49}\) Indian Penal Code (1860). S..372  
\(^{50}\) Indian Penal Code (1860). S. 373  
\(^{51}\) Indian Penal Code (1860). S. 374  
\(^{52}\) (1997) 8 SCC 114.
society. The commercial exploitation of sex may be regarded as a crime but those trapped in custom-oriented prostitution and gender oriented prostitution should be viewed as victim of gender-oriented vulnerability.

Women have been depicted in the most respectable and aesthetic manner on the one hand and on the other hand they have also been victim of indecent, vulgar and obscene depictions. This contrast is difficult to balance especially where women are treated as “goods” to promote sales. The terms obscene, indecent and vulgar are difficult to define as they are intricately linked to the moral values in a society. Section 292-294 of the IPC, 1860 deal with the offence of obscenity. They deal with sale, hire, distribution, public exhibition circulation, import, export or advertisement, etc. of any matter which is obscene to a young persons and sings, recites or utters any obscene songs or does any obscene act in a public place to cause annoyance of others.

Modesty is an attribute which a female possess right from her birth. It is not easy to lay a comprehensive test for determining whether modesty of women is outraged or not. When any persons assaults or uses criminal force to any women, intending to outrage modesty of women and that act is done with the intention of disrobing or compelling her to be naked or make any word, sound and gesture to intrudes upon the privacy of women and watches or captures the images of women engaging in a private act shall be punishable under this code.

One of the important reasons, inter alia, given for the acceptance and the commission of offences against women is economic independence. Now as

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53 Indian Penal Code (1860). S. 292
54 Indian Penal Code (1860). S. 293
55 Indian Penal Code (1860). S. 294
56 Indian Penal Code (1860). S. 354
57 Indian Penal Code (1860). S. 354-B
58 Indian Penal Code (1860). S. 509
59 Indian Penal Code (1860). S. 354-C
women try to fight economic disparity with men a new form of crime is emerged- sexual harassment\textsuperscript{61} at the work place. This offence is most glaring example of human right violation, gender inequality, and injustice. Each incident of sexual harassment at the work place also result in violation of fundamental rights under the constitution, namely, right to gender equality and right to life and liberty. That sexual harassment of a female at work place is incompatible with the dignity and honour of women.\textsuperscript{62}

In the penal laws of all countries, sexual offences against women occupy a significant place and out of all the crimes, the one which shocks the conscience, and shakes its roots and is the most heinous is rape. The only crime, perhaps, where instead of being sympathized with a victim is socially ostracized and morally degraded with a lifelong stigma on her dignity and character. The mental torture is deep and agony unbearable. The offence of rape occurs in chapter XVI of the IPC. It is an offence affecting the human body, that sections are 375 and 376, 376-A to 376-E, IPC. Sections related to rape have been substantially changed by the Criminal Law (Amendment) Act, 2013 which introduced new definition of rape and also introduced several new sections, namely, 376-A to 376-E which provide harsh punishment extend to life imprisonment or death for the offence of rape.

The code of criminal Procedure provided that the court may take appropriate measures to ensure that the women is not confronted by the accused where the evidence taken of women below the age of eighteen years who has a victim of rape or other sexual offences\textsuperscript{63} and such inquiry or trial shall be conducted in camera\textsuperscript{64} or as far as possible be completed before the period of not more than two months from the date of commencing of file as charge-sheet\textsuperscript{65}. It also provided compensation for victim under section 326-A

\textsuperscript{61} Indian Penal Code (1860). S. 354-A
\textsuperscript{62} Indian Penal Code (1860). S..293
\textsuperscript{63} Criminal Procedure Code (1973). S. 273
\textsuperscript{64} Criminal Procedure Code (1973). S. 327 (2)
\textsuperscript{65} Criminal Procedure Code (1973). S. 309 (1) pro.
and 376- D\textsuperscript{66} and provides a first aid or medical, treatment free of cost, to the victim of any offence covered under section 326-A, 376, 376-A, 376-B, 376-C, 376-D or 376-E of the Indian Penal Code.\textsuperscript{67} Police officers especially empower to make investigation in to cases of suicides and other unnatural or suspicious deaths\textsuperscript{68} and send the body for postmortem examination if:

(a) the case involves suicide by women within seven years of her marriage;

(b) the case relates to the death of a women within seven years of her marriage in circumstances raising reasonable suspicion that the women was the victim of an offence;

(c) that any relative of women made a request in that behalf when she died within seven years of her marriage;

(d) there is any doubt regarding the cause of death.\textsuperscript{69} If death is caused in the police custody the inquiry shall be conducted by a Magistrate\textsuperscript{70}.

The Indian Evidence Act, provide to penalize those who hide facts, either before or at the time of committing crime, or after the affirmed crime\textsuperscript{71}. It also provides that even the prosecutor stated in her evidence that she did not consent to the sexual intercourse the court shall presume that she did not consent\textsuperscript{72} and burden of proving consent shift to the accused.\textsuperscript{73} If prosecution is made under section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 376, section 376-A, section 376-B, section 376-C, section 376-D, section376-E, of the IPC, evidence of previous character of the victim or previous sexual experience of with any other person’s shall not be relevant on

\textsuperscript{66} Criminal Procedure Code (1973). S. 357-B
\textsuperscript{67} Criminal Procedure Code (1973). S. 357-C
\textsuperscript{68} Criminal Procedure Code (1973). S. 174
\textsuperscript{69} Criminal Procedure Code (1973). S. 174(3)
\textsuperscript{70} Criminal Procedure Code (1973). S. 176
\textsuperscript{71} The Indian Evidence Act (1872), S. 8. Motive, preparation and previous or subsequent conduct. (Illustrations- e)
\textsuperscript{72} The Indian Evidence Act (1872), S. 114-A.
the issue of such consent or quality of consent.\textsuperscript{74} To make the amendment in the IPC more effective, amendment in the Indian Evidence Act, 1872 was considered to be necessary. Thus, Section 113-B which raised presumption as to dowry death was added. The provision of this section, although mandatory in nature, simply enjoin upon the court to draw such presumption of dowry death on proof of circumstances mention therein which amounts to shifting the onus on the accused to show that the married women was not treated with cruelty by her husband soon before her death.\textsuperscript{75}

5.4. Special Legislation for Protection of Women

The matrimonial legislation consists of a set of provisions that govern family relationship and rights of spouses and children during and subsequent to marriage. The Special Marriage Act of 1954 gives the right to women to choose his own spouse and marry him. It gives the freedom of choice. The Hindu Marriage Act of 1955 give the women who is Hindu various rights related to marriage, divorce, maintenance, custody etc. The Hindu succession Act, 1956 gave Hindu women right to inheritance. However, the son’s had an independent share in the ancestral property, while the daughter shares were depend on the share received by their father. Hence, a father could effectively disinterest a daughter by renouncing his share of the ancestral property, but the son will continue to have a share in his own right. After the amendment of Hindu Laws in 2005, now women have been provided the same status as that of men.\textsuperscript{76}

The Hindu Minority and Guardianship Act give the right of guardianship to women and the Hindu adoption and Maintenance Act gives the right to claim maintenance to women. It provides equal rights to both men and

\textsuperscript{74} The Indian Evidence Act of (1872), SS. 53-A & 146.
\textsuperscript{75} Krishna Lal v. Union of India, (1994) CrLJ 3472.
\textsuperscript{76} Women in India, Wikipedia. Available at: wikipidia.org/wiki /women-in-india. (last visited on april.2, 2016).
women to adopt a child. In 1986 the Supreme Court of India held that Shah Bano an old divorced victim who was eligible for maintenance. However the decisions were voice furiously opposed by fundamentalist Muslim leaders, who alleged that the court was interfering in their personnel law. The Union Government subsequently passed the Muslim Women (Protection of Rights Upon Divorce) Act.

In 1961, the Government of India passed the Dowry Prohibition Act, making the dowry demands in wedding arrangements illegal. In 1985, the Dowry Prohibition (Maintenance of Lists of presents to the bride and bridegroom) Rules were framed. The Immoral Traffic (Prevention) Act, was passed in 1956. However many cases of trafficking of young girls and women have been reported. These women are either forced into prostitutions domestic work or child labour. The Commission of Sati (prevention) Act, 1987 was passed by central government under the direction of the Supreme Court in its writs jurisdictions. The Act provide for the more effective prevention of the commission of sati and its glorification.

Child marriage has been traditionally presence in India and continues to this day. Although child marriage was outlawed in 1860, it is still a women practice to prohibit child marriages and save the girl child from hard practices. The prohibition of child marriage Act was enacted in 2006. The female foeticide is still prevalent in India. All medical tests that can be used to determine the sex of the child have been banned in India, due to incidents of these tests being used to get rid of unwanted female children before birth. Therefore the Parliament passed The Medical Termination of Pregnancy Act, 1971 to regulate termination of pregnancy in certain cases only by registered medical practitioners on the ground that if it involves a risk to the life of the pregnant women or gave injury to her physical or mental health or where there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped and where the

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77 Ibid.
pregnancy is alleged to have been caused by rape or as a result of failure of contraceptive used by a married women or her husband, and The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 provides the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorder or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre natal sex determination leading to female feticides.\textsuperscript{78}

Half of the total number of crimes against women reported in 1990 related molestation and harassment at the work place. So, in 1987 The Indecent Representation of Women (Prohibition) Act was passed to prohibit indecent representation of women through advertisements, or in publications, writings, paintings. Figures or in any other manner.\textsuperscript{79} In 2005 The Protection of Women from Domestic Violence Act, 2005 accommodates more powerful assurance of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for issues associated therewith or incidental thereto. This Act, For the purposes to know, it defines Domestic Violence under Section 3 of The Protection Of Women From Domestic Violence Act, 2005,\textsuperscript{80} can be explained in other words as any act, omission, commission or conduct of the respondent shall commit domestic violence if there is any harms or damages or injures the health, safety, life, extremity regardless or well-being of whether mental or physical, of the victim or has a tendency to do as such and incorporates causing physical abuse, sexual abuse, verbal and psychological abuse and financial abuse, or harasses, hurts, harms or injures or endangers the victim with a view to pressure her or some

\textsuperscript{78} Ibid.
\textsuperscript{80} The Protection Of Women From Domestic Violence Act, 2005, Chapter- II, Section 3, Domestic Violence, (Definition Of Domestic Violence).
other person related to her to meet any unlawful demand for any dowry or other property or valuable security, or has the impact of debilitating the effect of threatening the aggrieved person or any person related to her by any conduct mentioned as above, or otherwise injures or causes hurt, whether physical or mental, to the victim.

Labour laws that protect women at the workplace include various Acts. The Equal Remuneration Act, 1976 provides for equal remuneration to men and women workers to get equal pay for equal work or similar work, and prohibits discrimination. The Mines Act, 1952 prohibits the employment of women underground, and provides for restricted timings of work for women employed above the ground. The Factories Act, 1948 has many provisions protecting women at the workplace, including issues pertaining to occupational safety, provision of sanitation and crèche facilities. The Maternity Benefit Act, 1961 provides for maternity leave and benefit in order to protect the dignity of motherhood and gender justice.  

In illustration where the khap panchayats have forcefully separated wedded couples who are of sufficient age to get marital. The Indian Majority Act, 1857 Section-3, provides that anyone who reside in India shall be called major after completing the 18 years of age and not before it. Unless a particular personal law specifies otherwise, anyone who reside in India is considered to have attained majority after completion of 18 years of age. But, in the case of a minor regarding individual or property, or both, a guardian has been appointed or declared by the court of justice before the age of 18 years, and in case of each and every minor the superintendence of whose property has been suspected by the Court of Wards, age of majority will be 21 years and not 18. The Act is relevant in cases where the khap panchayats have forcefully

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separated wedded couples who are of adequate age to get marital. It is a violation of the provisions under this Act \(^{82}\).

The chief purpose behind the passing of The Special Marriage Act, 1954 was to illustrate an exclusive institute of marriage for the people of India and all Indians living abroad, irrespective of the faith or religion pursued by any of the party, to succeed the willing marriage. The Indian Parliament had enacted Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to prevent atrocities against Scheduled Castes and Scheduled Tribes. The motive of the Act was to assist the social attachment of SC/ST into Indian society. It defines acts such as compelling an SC/ST to drink or eat any unbearable substance or uneatable, dishonouring, assaulting, removing clothes, parading naked or with painted face or body, sexual exploitation of an SC/ST woman, outraging the modesty of an SC/ST woman or threatening or ordering an SC/ST to leave his or her village or house as punishment\(^{83}\).

The Act is linked to crime on the name of honour because numerous incidents of crime on the name of honour are being found closely linked to caste and religion. The Protection of Human Rights (Amendment) Act, 2006 provides the provisions regarding protection of human rights of individual and the creation of a Human Rights Courts, State Human Rights Commission and National Human Rights Commission for better safeguard of individual human rights of human being. Facts are relevant when custom or right is in question - Where the question is as to presence of any custom or right, the following facts are relevant:

(i) Any matter dealt by which the custom or right in question was recognized, asserted or, claimed, created, modified, or which was conflicting with its presence;

(ii) In the cases in which the custom or right was acknowledged, claimed, or practiced, or in which its practice was departed, uncertain or denied from. The

\(^{82}\) Supranote at 2 (Puneet Kaur)

\(^{83}\) Ibid.
Act is appropriate to provide justice to those who become sufferer because of the orders issued by these unlawful assemblies i.e. khap panchayats.\(^8^4\)

Despite these laws, violence against women on the name of honour is on the rise. Honour crimes in the name of family and caste honour and ethnic culture are the most degrading human act and the woman continues to suffer due to the utter failure of the criminal justice system and inadequate protective measures\(^8^5\). Thus, these are the various legislations which show that law acted and has been acting as an instrument of social change for women.

5.5. **Initiation of the Government for Combating Crime against Women on the Name of Honour**

Despite hundred of couples marrying against social barriers being hounded out or killed at the behest of Khap Panchayats in northern India, Uttar Pradesh, Rajasthan and Haryana have prepared no legal framework to counter the menace. The State of Uttar Pradesh submitted in its affirmation of affidavit that There was no particular law or legal framework to deal with the problem of such incidence of honour killings, though, the Director General of Police and additional Director General of Police have issued circulars to verify achievement with the guidelines provided under *The Protection of Women from Domestic Violence Act, 2005*.\(^8^6\)

The Rajasthan government depended on two circulars, one issued in 2001 and another in 2006, to check activities of Panchayats based on caste. The State of Haryana, on the other hand, observed that it needs an action plan

\(^8^4\) *Ibid.*


rather than any circulars to hold down honour killings. This communication was assembled by _amicus curiae_ Raju Ramachandran from the affidavits filed by the States in reply to a Public Interest Litigation by _Shakti Vahini (NGO)_ looking for the Supreme court’s interference to protect young couples, who were compelled to break up their inter-caste marriages or killed for disobedience. The Central Government stated that it was clearly planning to make honour killing as specific offence to amend the Indian Penal Code.\(^{87}\)

The then law minister M. Veerappa moily said that we have already finalized a draft and Government is planning to bring this bill in the Monsoon Session of Parliament in 2011 to provide for deterrent punishment for honour killings. Meanwhile, the Government has announced setting up of a Group of Ministers (GoM) that will considered amendments to the law to deal with the issue\(^{88}\). An Amendment bill was expected to be tabled in Parliament in monsoon session of 2011, proposed to include a clause under section 300 of the IPC to deal exclusively with honour killings\(^{89}\), but it could not be tabled.

Here the Amicus curie Raju Ramachandran’s report\(^{90}\) overviewed to show the legislative vacuum for the idea of war against Khap Panchayats and honour killings by them, emphasized that it would be need of the day for the Apex Court to give appropriate guidelines or directives to stop atrocities in the name of custom and honour. He further advised that it is must be the duty of the States must be immediately directed to identify the areas, where Khaps are occurred or active in such wrongs and administration of these areas or the police officers must take appropriate step to protect the young couple from any threat and harm including their performed inter-caste marriages. The amicus also suggested that the police must take forward action and take action to stop

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87 _Ibid._

88 _The time of india, lucknow, july 9, 2010 , Available at: https://www.timesofindia.com, (last visited on February16, 2015)_

89 _The Hindu, OPINION, Of love and honour killings, by Radhika Santhanam, Sruthisagar Yamunan, March 17, 2016, Available at: http://www.thehindu.com/todays-paper/tp-opinion/of-love-and-honour-killings/article8362486.ece, (last visited on September 16, 2016)_

90 _In re Shakti Vahini case, 2011, Report submitted by Amicus curie Raju Ramachandran._
Khap Panchayat meetings having to take decisions against these couples in the name of honour and if necessary arrest key members to destroy the gatherings\(^91\).

A question like had honour killing be a specific offence under a specific law, or such a condition would not have taken place yet, the answer must be given by the legislative assembly as well as judicial authority, till the answer coming out there would not be any force on the High court’s especially to minimise the punishment from Capital Punishment to life imprisonment. Regarding above discussion Former CJI P. Sathasivam also advised a special law to curb and control Honour Killings. In this regard he said that there it is need a special legislation which will indeed be a welcome step as it will assist in making additional effort to protect the victims. However the existing law punishes the offences of murder and homicide, which does not directly punish the members of such group for the sake purpose. The aim and objectives of the proposed Bill coupled with those provisions in the IPC would successfully restrain the honour killings and will be a direct safe guard to save from harm the young pairs and their relatives who are the sufferers of this social wrong.\(^92\)

Unless “the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliance) Bill, 2011” the proposed bill is passed and comes into effect, there is no any effective law created to combat or curb the act of honour killings especially in North India commonly known states like Haryana, Punjab, Rajasthan and Uttar Pradesh. There is no explicit lawful enactment to control the honour killings which is to be exactly provided under

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the provision of Indian Penal Code\textsuperscript{93}. In nonappearance of specific offence in the Indian Penal Code, 1860, honour killings must be consider as murder and must be approached to the category of section 300, IPC.\textsuperscript{94}

Though, Section 300(4) of Indian Penal Code, 1860\textsuperscript{95} can be explained in other words as about knowledge of result of committing act that if the person commit the act that it is so imminently dangerous according to his knowledge that it must, in all plausibility, cause death or such bodily harm as is expected to cause death, and executes such act without any defence for obtaining the risk of resulting death or such bodily harm as abovementioned, confers the offence of murder.

This is in explained way to define the act of killings which are committed in the name of honour. At this point the act is deliberately, consciously dangerous and in all possibility has the chances of executing death, so it can be easily to say that the offenders involved in honour killings must be punished as the offenders of murderer and death sentence should be imposed on murderers\textsuperscript{96}.

5.6. Efforts made by the Commission

It was the first time The National Commission for Women (NCW) outlined a bill that is “Prevention of Crimes in the name of Honour and Tradition” Bill: 2010 Through this bill it was suggested certain preventive and penal method to control the jumble of killings and dishonourable crimes in

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\textsuperscript{94} Section 300 Murder.

\textsuperscript{95} The Indian Penal Code (1860), Section 300- Murder , clause (4).

the name of honour. The bill very emphatically stated every individual’s right to choose her spouse either in marriage or else. Clause 3 of the bill, in other words, provides that all persons including young couples and major girls have the right to freedom of expression, right of association and movement, right to life, liberty, bodily integrity and right to control their own lives. They have a right to choose their own spouses either in marriage or else and no action to be stop the exercise of these rights, shall be a crime to restrain under the provisions of this Bill. Therefore any action in preventing a life partner or spouse of their choice should be an offence under this act. The Bill had made provision of sanction for any act of killing in the name of honour by punishment provided under the provision of Indian Penal Code, 1860. It had also made provision to punish the distressing of any woman or her spouse in order to prevent them to execute their right to marry out of their own choice. The bill made punishable both mental and physical acts of harassment and explains the acts of harassment with particular aspects.

Explaination I of clause 5, in other words, provides that any act of harassment and prevention in this Section shall consist of mental and physical both acts such as, Declaring the young couple as a sister and brother, who have got married, provided that they are not daughter and son from the natural parents and such weddings are approved by any law or tradition for the time being in power, extraditing the young boy and girl or their family or kith and kin from area they live in or the village, asking the young boy and girl or anyone related with them or supporting them to pay damages a fine, extraordinary social punishment or social cut-off on the young boy and girl or on their family or on anyone related with them, imposing financial sanctions or boycott on the young boy and girl or their family related with them, depriving the young boy and girl or their family including the family of the male spouse of any property or land belonging to them, constantly harassing the young boy.

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97 Prevention of Crimes in the name of Honour and Tradition, 2010, Sec. 3.
98 Id. at Sec. 5.
and girl or one of them not to live, associate or meet with or reside with each other, by corporal visit them or through any means of contact, threatening the young boy and girl or anyone of them or their family or anyone related with them of deterrent and penal action of any kind whatever, causing injury or harm to the young boy and girl or anybody related with them, intimidation, acts of harassment or any other act whether psychological or mental or physical to evade the young boy and girl or any of them from get-together or spending life with each other. A mere support of killings or of harassment by anybody in public is a punishable offence under the bill as punishable with a term of imprisonment up to two years and with punitive fine.

The bill additionally moved the burden of proving where any individual or people is or are indicted for an offense under this bill, on the person/persons so accused that they have not committed or involved in the offence or offences.

The authority to forbid certain acts under the act is on the the District Magistrate or Collector. Where the District Magistrate or Collector has received information or is of the view that any of the crimes under Sections 4, 5 or 6 are likely to be committed, he shall by order prevent/prohibit the commission of such offences and further prohibit the gathering of any persons or body of persons likely to discuss the commission of the said offences. Whoever contravenes any order made under Sub-Section (1) shall be

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100 Prevention of Crimes in the Name of Honour and Tradition, Bill 2010 Sec. 5 - Explanation I
101 Prevention of Crimes in the Name of Honour and Tradition, 2010, Sec. 6 - If any person or persons, including a body of persons by whatever name it is called, eulogises or publicly supports or incites, .....fine.
102 Prevention of Crimes in the Name of Honour and Tradition, 2010, Sec. 7.- Burden of Proof – Where any person or persons is or are prosecuted for an Offence under Sections 4, 5 or 6, the Burden of proving that he or they have not committed the offence or offences under the said sections shall be on him or them.
103 Prevention of Crimes in the Name of Honour and Tradition, (2010), Sec.8 (1) - Where the Collector .....said offences.
punishable with imprisonment for a term which shall not be less than six months but may extend to two years and with fine\textsuperscript{104}.

When an Executive Magistrate receives information that any person or persons acting in accordance with, or, at the order of, a member of the family or a member of a body or group of the caste or race or community or caste panchayat is likely to commit any wrongful act and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person or persons acting in concert with, or, at the behest of, a member of the family or a member of a body or group of the caste, race, community to these panchayats to show cause why he/they should not be ordered to implement a bond with sureties for keeping peace and maintain good behaviour for such period, not exceeding one year, as according to the discretion of the Magistrate. Any Executive Magistrate can start Proceeding under this section when any of the place where the breach of the annoyance or peace is happened in his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the annoyance or peace or agitate the public tranquillity or to do any criminal act as above mentioned in such jurisdiction.

A Magistrate shall make an written order when he is performing under this provision to any person to show cause, It deems compulsory under such section, setting forth the fact of the information received, the sum of the bond to be executed, the expression for which it is to be in force, and class, character and the number of sureties required\textsuperscript{105}.

The bill also makes a provision for the needy couple to notify about their objectives to marry to the police or government officials. Yet, the provision falls tiny of providing any category of security to the couples who notify government officials of their objective to marry as there is no obligatory

\textsuperscript{104} Prevention of Crimes in the Name of Honour and Tradition, (2010), Sec.8 (2) - Whoever ……with fine.

\textsuperscript{105} Prevention of Crimes in the Name of Honour and Tradition, 2010, Sec.8 (3) - When an Executive Magistrate ……(if any) required.
duty cast on such authorities, so notified to protect these couple\textsuperscript{106}. Clause 10 of
the bill also makes a provision to provide obligation on confined persons to
report to commission of the evil doing under this Bill\textsuperscript{107}. The provisions of this
Bill shall be in accumulation to the, and not in adjacent to any other existing
law, which is already in effect\textsuperscript{108}.

The draft bill proposed by National Commission for Women, was a
appreciable step trying to combat the inhuman and shameful activities done in
the shadow of honour, though, as the Law commission pointed out rightly in its
report\textsuperscript{109}, where it missed the desirability and requirement of the focusing on
dealing directly on illegal gathering and their brutal persuade. Then after, the
law commission presented the proposed legislation as a bill namely, the

\textit{Prohibition of Unlawful Assembly (Interference with the Freedom of
Matrimonial Alliance) Bill, 2011} with exactly focusing on illegal gathering
i.e. unlawful assemblies. According to the Law commission they assembled on
community or caste, where they presumed themselves to have the authority and
right to adjudicate and pronounce on those marries which are objectionable in
their eyes and show minimum respect for life and liberty and are not prevented
by any law or the court of justice. Such unlawful assemblies harass and abuse
innocent youngsters and carry on to exercise unrestricted power and also
appear to be against any suggestion regarding social tradition, rule and culture
in that particular society.\textsuperscript{110}

\textsuperscript{106} Prevention of Crimes in the Name of Honour and Tradition, 2010, Sec. 9 - Declaration by a Couple
.....said couple.
\textsuperscript{107} Prevention of Crimes in the Name of Honour and Tradition, 2010 Sec. 10 - Obligation of certain ..... to fine.
\textsuperscript{108} Prevention of Crimes in the Name of Honour and Tradition, 2010, Sec. 11 –Bill, not in derogation ..... in force.
\textsuperscript{109} A Suggested Legal Framework, Prevention Of Interference With The Freedom Of Matrimonial
Alliances (In The Name Of Honour And Tradition):. Report No.242, Law Commission Of India,
\textsuperscript{110} The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill
2011 - Suggestions and Recommendations, by The West Bengal National University of Juridical
Sciences, Available at: http://www.nujs.edu/downloads/nujs-the-prohibition-of-unlawfulassembly
.pdf, (last visited on Jan. 23, 2016)
Law commission also indicated and tried to define unlawful assembly in
the bill which is quite differently defined in section 141 of the Indian Penal
Code not same to unlawful assembly. The proposed law intends to deal with
the performance of local bodies or caste assemblies and to strike at the blind
faith of such assemblies performing against life and liberty of persons. A
different form of illegal association should be punished differently, therefore,
the commission has recommended as much as possible in better importance.
The bill and its provisions are not in contrary or derogation to the Indian Penal
Code but it is in its accumulation. The Commission already rejected the
proposal to include ‘honour killings’ within the definition of murder to amend
Section 300 of the Indian Penal Code on the ground that the existing provisions
are enough to pay attention of the position leading to define and punish the acts
of killing or causing physical injury to the intended person who supposedly
damaged the honour of the community, caste or society. The object behind
killing a human does not creat the reason to introduce a additional provision in
section 300 of IPC. However, shifting the burden of proof on to the offender
facing allegation of taking part in the gravious offence of murder or homicide
or abetment of it is not fortunate. Such a step will be against the fundamental
ideology of criminal jurisprudence acknowledged and cover up into our
criminal justice system. If onus has to be shifted in such offence, rationally, it
will be converted in to the other heinous crimes\textsuperscript{111}.

The Bill, 2011 is forwarded by clause 2(1) provided in other words that
no person or any assembly of persons shall assemble with premeditated to
intended plan, or smash any marriage, not banned by law, on the grounds that
such marriage has ruined the community or caste custom or brought disregards
to all or any of the persons to being part of the gathering or the relations or the
person of the locality or of the society. The explanatory part contained the
intended or proposed marriage within the meaning of ‘Marriage.’ Provided
under Clause 2(2) directs any such assembly or meeting or gathering to be

\textsuperscript{111} Supranote at 109 (A Suggested…..)
considered as an unlawful assembly and everyone convening or organizing such meeting and every member thereof participating shall be punishable with imprisonment for a term which shall not be less than six months but may extend to one year and shall also be liable to fine up to rupees ten thousand\textsuperscript{112}.

According to clause 4 of the bill any member of such gathering who only or in group with other such members supports, encourage or brings force upon any person or persons so as to disapprove, or condemn of the marriage which is objected to by the said members of the prohibited gathering, or creates an atmosphere of aggression towards such youngsters or one of them or their supporters, relatives or family members, shall be deemed to have acted in endangerment of their life and liberty and such an action of jeopardize shall be punishable with imprisonment for a term of not less than one year but which may be extended to two years and shall also be liable to fine up to twenty thousand rupees. Clause 4 (1) provides punishment for criminal intimidation of the young couple or their family members\textsuperscript{113}. The bill further tightens the noose on persons participating in the assembly by presuming his intention to commit the act. The clause 6 of the proposed bill reads- “In a hearing under section 3 or 4, if it is established that any accused person involved himself or continued to involve in an illegal gathering, the Court shall presume that he deliberated and determined to take all essential steps to put into effect the decision of such gathering including the completing of acts provided in Sections 3 and 4\textsuperscript{114}.”

The District Magistrate or the Collector has been delegated with the task of certifying the security of the persons targeted in case any verdict is taken by the khap Panchayat and she / he shall take essential steps to forbid the

\textsuperscript{112}The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill 2011, Available at: http://lawcommissionofindia.nic.in, (last visited on 23 June ,2015)

\textsuperscript{113} The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill, 2011 clause(4)

\textsuperscript{114} The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill, 2011, clause(6)- In a prosecution under section 3 or section 4, if it is found that any accused person participated or continued to participate in an unlawful assembly, the Court shall presume that he intended and decided to take all necessary steps to put into effect the decision of unlawful assembly including the commission of acts referred to in Sections 3 and 4.
summoning of such illegal gatherings\textsuperscript{115}. Any act against the provision provided under proposed law will be punished by imprisonment can be extent up to three years and a fine extent up thirty thousand rupees. The cases are to be decided by Sessions Judge or Additional Sessions Judge in a Special Court\textsuperscript{116}. The Special Court would be authorized to \textit{su o motu} cognizance of case concern to the technical development and incorporate practical participation via social networks and as the same. It should incorporate both indirect and direct involvement\textsuperscript{117}. The act proposed in section 2 may not always be joint action. As stated in the common inspection above, if coercion, threat or intimidation can occur from either of the member of the family or within family. Such actions do not always need to break marriages but might also be to compel someone into marriage. So, under the forbidden action in section 2, such actions must be mention. Clause 6 uses the word ‘participation’ which should be defined to mean not only the influence of corporeal existence but also financial, political and others. With the expansion in the gathering of such gathering it is because of expanding cell phones and the use of social media, there must be a cell to control these cyber supports. Much the same as the bill proposed by NCW, the LCI's Bill likewise does exclude disciplines for exclusion on part of the expert, which gets data about the said offenses yet neglects to make fitting move. Expansion of responsibility with respect to aware officer/officers in the area must be considered to make the law viable and implementable\textsuperscript{118}.

Further the Law Commission, draft a legislation ‘The Endangerment of Life and Liberty (Protection, Prosecution and other measures) Act, 2011’ to deal with the threat of ‘honour killings' in several parts of the nation and grip

\textsuperscript{115}The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill, 2011, cl. 8- (1) Where the Collector.......unlawful assembly.

\textsuperscript{116} The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill, 2011, cl. 9- (1) Notwithstanding anything ….in the notification.

\textsuperscript{117} The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill, 2011, cl. 10- (1) A Special Court .....Court of Session

\textsuperscript{118} Supranote at 110 (The Prohibition.....)
with unlawful commands delivered by ‘khap panchayats,' the Law Commission has drafted a legislation to prosecute either the member or the group concerned in such jeopardize activities and conduct. The proposed draft, ‘The Endangerment of Life and Liberty (Protection, Prosecution and other measures) Act, 2011,' prepared by the member of Law Commission and senior advocate R. Venkataramani, has been discussed and approved by the Commission, which is chaired by Justice P. Venkatarama Reddi.\textsuperscript{119}

The Commission has refused again as for last bill, the claims for a separate clause in Section 300(murder) of the Indian Penal Code to insert ‘honour killings' under the provision of this specific Section. The commission stated that there is no need to insert a additional part i.e. honour killings within the scope of this section 300. It may creat interpretational difficulties and confusion inserting such a new clause. The current provisions in the Indian Penal Code are sufficient to deal with the situations relating to clear acts of such killing or other acts of physical harm to the intended person who allegedly undermined the honour of the caste or community.” Under the drafted law, the act of putting life and liberty in danger shall mean and include any way of acts of exhorting, encouragement, commending, threat and creating an situation to squash of life and liberty is threatened or imminent and shall include compelling the persons indirectly or directly compelling to move out, leave or abandon their home from the particular place and make mandatory obligations such as withdrawal of the resources of livelihood, cut off social relations, rejection of services and amenities which are generally otherwise available to the people of the particular society\textsuperscript{120}.

Additionally, it might be unlawful for any gathering of people to associate, collect or assemble with the aim to destroy, premeditated on, or to censure any relationship or marriage for example, marriage between couple


\textsuperscript{120}Ibid.
who have already get the age of majority in the particular society on the grounds that such relationship or conduct has disrespected the religion, caste or community of whole the society or the family or of the particular member or any of the persons forming part of the assembly of the particular society.

It might be presumed that any one or the group found to be part of the illegal caste gathering did as such with the aim to act in violation of life or liberty. Such a gathering might be dealt with as an unlawful assembly and all the persons coming under such assembly shall be punished with imprisonment for a period of not less than three years and it may extent up to five years and a fine of thirty thousand rupees. The proposed legislation provides that any person or persons meeting or gathering of such an assembly or who takes an active part in the execution of the assembly should likewise be subjected to civil punishment as they won't be qualified to contest any election to any local authority and will be dealt with as an ineligible candidate.121

Further in 2013 Late Justice J.S. Verma (retd ) chairman of committee on amendment to criminal law has recommended in his reports the law relating to khap panchayat and honour killings according to his report122 a Khap is a form of grouping, which may comprise of more than one village. Sometimes these villages comprised of people belonging to the same gotra (clan) or caste or multi-gotra or multi-castes. The Khap Panchayat as a social institution has a long history. These institutions functioned as a public forum for resolution of difference by providing a platform for direct negotiations between the disputants from such village or villages which fell under Khap. The decisions meted out by the Khap Panchayat would bind the parties, and in a rare case, the dissatisfied party may apply for review to Sarv Khap, which functioned as a higher assembly of representatives from all neighbouring Khaps123.

121Ibid.
123Report of the Committee on Amendments to Criminal Law, by Justice J. S. Verma (retd ) chairman of committee, Justice Smt. Leila Seth (Retd ) (Member), Gopal Subramanium (member), Chapter-8, Para-3, Full text of the report by the Committee constituted to suggest amendments in laws for sexual crimes which was submitted to the Ministry of Home Affairs, published- Gov. of India, January 23, 2013.
This logic of maintaining caste order by preventing inter-caste marriages and further debarring intracaste marriages which are sagotra, severely limits the freedom to freely choose ones partner; these practices have no legal sanction under Hindu Marriage Act. This further unduly emphasizes a woman’s ‘honour’ thereby encouraging not just control of sexuality but also her marital choice, by stigmatising inter-caste marriages.\(^{124}\) This has much wider social and economic repercussions and restraining women’s free mobility affecting her education/ employment and fundamental rights. He stated that the relative ease and speed with which justice was dispensed and the sense of solidarity and support that villages and communities provided to families gave khap a firm social standing. Of course, given the strong hold patriarchy had on all aspects of society, women played no part in khap deliberations. The position of the lower caste and schedule caste were no different”. In his words, a Khap panchayat is seen as upholding the concept of bhaichara on a gotra, caste or territorial basis\(^{125}\).

It is believed that Khap Panchayats generally consist of powerful elements of a dominant caste, senior citizens who “wished to be considered as upholders of village norms, custodian of rural culture and guardians of public morality.”\(^{126}\) The means adopted by Khap Panchayat to secure compliance of members of their community with their notions of morality and right conduct, in the name of culture and tradition, has assumed unreasonable proportions. Khaps regularly oppose marriages between people related by blood or belonging to the same gotra (sagotra), or people who are members of a Khap (on territorial basis). However, Khap permits marriage within the same caste and prohibits intercaste marriage.\(^{127}\) It does not allow any violation of the above diktat to go unnoticed and imposes upon the violator social boycott or excommunication as punishment. These punishments have also taken form of


\(^{125}\) Supranote at 123 (Report of……)

\(^{126}\) Ibid.

\(^{127}\) Ibid.
gross human right violation where these purported violators have been subjected to brutality and sometimes have been brutally murdered\textsuperscript{128}.

Hence, in his report they directed the police and regulatory authorities to take hard steps to anticipate such horrible acts. If any such wrong occurs, have to start criminal proceedings against those responsible for such offences, the State Government is directed to promptly suspend the District Magistrate or the Collector and SSP or SPs of the area and other authorities concerned and issue so cause notice and charge sheet against them and proceed departmental action against them if they don't (1) anticipate such acts or if didn't happened but they have prior information about to happen, or (2) if the act happened and they don't arrest the offenders and others involved included and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly answerable in this relation\textsuperscript{129}." The actions of Khap Panchayats are extremely relevant for the consideration of this Committee in the context of crimes against women, on the basis of gender, since one of the most prevalent practices employed by Khap Panchayats to enforce their decisions is that of “Honour Killing\textsuperscript{130}.

Generally “honour crimes” and “honour killing” terms are used to explain the happening of harassment, threat and violence caused to young boys and girls having married or intending to marry against the desires of the family members or the community. Although, homicide in the name of honour of a person upon the belief that the person has bring ‘dishonoured’ to the family has been common in this part of the world\textsuperscript{131}. The Law Commission, in its 242nd Report, observed that as for like the community or caste panchayats act a positive role in dealing the widespread problems relating to the society or peacefully settling the disputes between the local families and residents, detering the people from a criminal course, the responsibility and the effort of

\begin{footnotesize}
\begin{enumerate}
\item[Ibid.] \textsuperscript{128}
\item[Ibid.] \textsuperscript{129}
\item[Ibid., Chapter-8, Para-9] \textsuperscript{130}
\item[Ibid., Chapter-8, Para-11] \textsuperscript{131}
\end{enumerate}
\end{footnotesize}
these village Panchayatdars and elders can be highly praised; but, if they go beyond their parameter, as it is regularly occurring, compelling their decisions in affairs relating to wedlock and obstructing in the legal choices of youngsters and involving in acts of jeopardizing their life and liberty, the law cannot stand as a silent observer in our democratic and progressive matrimonial course to nurtured constitutional standards.”

In India, “honour killing” is being practiced against young boys and girls marrying either against the choices or desires of their family or marrying outside their religion or caste which are considered as “objectionable matrimones”. Khap Panchayats have been implementing this practice to enforce their diktat “by assuming to themselves the role of community or social guardian”. Where a murder is committed in the name of pride, culture and honour, it has been considered as less serious than murder and members of the society are found to have ignored the killing.

As women have largely been targets of “honour killing” it is extremely important for the Committee to take note of this social menace and atrocities against woman. Therefore, with the intention of checking any unwarranted interference by the members of such panchayats, who would resort to criminal threats by the members of unlawful assembly to secure obedience with illegal assembly, the Law Commission of India was assigned the task to examine the need to have a separate legislation to curb “honour killings” in cases of matrimonial choices. We expect the State to ensure that these institutions will not interfere with the choices made by men and women in respect of marriage, as emphasized by the Supreme Court.

The caste system is a annoyance practice in the country and definitely it is destroyed the atmosphere of brotherhood. Actually, it is dividing the society and the country when it is need of the day to be united and face the challenges

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132 Ibid, Chapter-8, Para-12
133 Ibid, Chapter-8, Para-13
134 Ibid, Chapter-8, Para-14
135 Ibid, Chapter-8, Para-18
before the country. Therefore, in the national interest, inter-caste marriage is one of the appreciable step destroying the menace of caste system. Though, such alarming news are coming from some parts of the country that young couples who go through inter-caste marriage, are threatened or harassed with violence, or injury or attack is actually committed on them. In our view, such acts of harassment or threats or injury or attack or violence are wholly prohibited by law and those who commit or involved in such acts, must be strictly punished.

5.7. Role of Judiciary for the Protection of the Women against Violence on the Name of Honour in India

It is established that Indian judiciary and executive body is separated and it is independent body. It is the beauty and strength of Indian judiciary which has influenced and generate faith in the lives of common people. Where the Legislative body doesn't have matter or any reason that why it is unable to make a law to encounter a social menace. However, the Judiciary plays its role and acts as a guardian, alert watchman, champion, and strong supporter of human rights. The appearance and activities of these kangaroo courts have also not fugitive by the eye of the judicial system and the Apex Court, realizing the influences and scope of the malpractices harassments and killings exercised by medieval so-called Talibani courts or caste panchayats, has by its intervention, some extent, made efforts, to put grip on their functioning. Khap Panchayats are self-appointed or at worst elders mob-operated institutions that functions completely against the established principles of human rights or it can be said that their act is violating the criminal law. Above all It is a crudely

137 Constitution of India, Article 50
138 Daryao and others v. State of Uttar Pradesh and others 1961 AIR 1457, 1962 SCR (1) 574
139 Supranote at 6 (Report Submitted…..)
or irregularly organized court, its operations shows bias controlled nature where they didn’t follow fair trial to hear them and imposed their mandates on the deprived couples or either of them. Thus, it is the fact that court of kangaroos and its trial in actuality is a fraud legal proceedings of court\textsuperscript{140}. These courts deny \textit{due process} principles in the name of realism so that the term “kangaroo court” is used for them to reside the expression of judicial proceedings\textsuperscript{141}.

Such expressions consist of various rights of proceedings like right to get summon for witnesses, right not to be incriminate oneself, right to be part of cross examination, right to have control one’s own defense, right not to be tried on hided evidence, right to exclude evidence that is irrelevant, inherently inadmissible or improperly obtained as hearsay evidence, the right to exclude judges or juries on the grounds of conflict or partiality of interest, and most significantly for the complete justice i.e. the right to appeal\textsuperscript{142}. Ridiculously stating till now there is no right to appeal, the pronouncement of the khaps panchayats is definitely unchallenged because the adjudicating power to pronounce and execute the verdict is vested by the heads of such kangaroo courts which are unproved and wild in nature. There continuous act without following law has made them bold and confident so they carry on with their inhuman and illegal adjudication as so called “justice”. The inhuman act of the khaps panchayats on the name of tradition and honour have not gone ignored by the eyes of high courts as well as supreme court\textsuperscript{143}.

The Constitutional courts in India perform as the custodian and guarantor of the fundamental as well as human rights of its citizen. The Supreme Court, High Courts, and subordinate courts of India have played a

\textsuperscript{140} \textit{Ibid.}
\textsuperscript{141} \textit{Ibid.}
\textsuperscript{142} The Judicial committee is basically a kangaroo court or kangaroo trial, by Cheetos, \textit{Available at:} https://www.jehovahs-witness.com/topic/167835/judicial-committee-basically-kangaroo-court-kangaroo-trial, (last visited on July 8, 2016)
significant role in protecting the fundamental, Constitutional and Statutory rights of public or its citizen as the power given by the Constitution of India. Further calculating that from last decade the atrocities of threats, harassment, injuries and violence against young boys and girls who go through intercaste marriage, are increasing day by day it became necessary for the judiciary to combat the problem and provide the protection to the youths who want to get marry with their own choice because where the other organs of the state have been failed to give any solution of the problem it is the judiciary on which people have more confidence\textsuperscript{144}.

Markandey Katju and Gyan Sudha Misra JJ. On behalf of Supreme Court of India observed that Since many such information of atrocities are received regarding violence, harassment and threats against young boys and girls who performed inter caste marriages with their choice. Our country is on way of a dangerous halfway stage in our history, and it is not possible that this court remain quiet in the matter of huge public anxiety\textsuperscript{145}.

\textit{Smt. Laxmi Kahhwaha v. The State of Rajasthan},\textsuperscript{146} It was the case initiated through Public Interest Litigation which was filed in the High Court of Rajasthan. Through The PIL it was requested the court to consider regarding illegitimate dictates of caste Panchayats on the vulnerable group of the society, especially on young girls. The court stated that these Panchayats had no authority anyway to pass any threaten order, cut off social relation, or impose any fine on anybody and more of all they have no any jurisdiction to violate the basic rights of an individual.

The Apex Court has again restated on the act of honour killing as brutal offence done in the name of honour cannot be allowed to go without punishment. In the case of \textit{Arvinder Singh Bagga v. State of U.P}\textsuperscript{147} the Court observed that the court have carefully perused the report and said that the court

\textsuperscript{144}Ambika Pant, Role Of Courts In Protection Of Human Rights, \textit{Available at:} http://ujala.uk.gov.in/files/issue\%202/2Ch-5.pdf, (last visited on July 18, 2016)
\textsuperscript{145}Arumugam Servai v. State Of Tamil Nadu, Slp(Crl) No. 8428 Of 2009
\textsuperscript{146}Smt. Laxmi Kahhwaha v. The State of Rajasthan, Slp(Crl) No. 8428 Of 2009
\textsuperscript{147}AIR 1999 Raj 254.
\textsuperscript{147}AIR 1995 SC 11
appreciate the whole judicial work done by the District Judge. The Court further stated that it was a complete inquiry by examining a number of witnesses to go into at the truth. In the considered opinion of the court the report was a fair one and it was deserves to be accepted. Finally the report was consequently accepted for further criminal proceeding.\(^{148}\)

In *Lata Singh v. State of UP and Another*,\(^{149}\) the apex court observed:

This case expose a shocking state of affairs. There is no dispute that the petitioner is an adult and was at all relevant times an adult. Therefore, she is free to marry anybody with her choice or live with anybody she likes. There is no restriction to an inter-caste marriage under the Hindu Marriage Act or any other law. Thus, we cannot see what offence was committed by the petitioner, her husband or her husband’s relatives.

The court held that no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court as well as of the administrative governance at the instance of the petitioner’s brothers who were only irritated because the petitioner married outside her caste.\(^{150}\) The court distressed to note that instead of taking action against the petitioner’s brothers for their illegal and autocratic acts the police has instead proceeded against the petitioner’s husband and his family members. Since several such illustrations are coming to our knowledge of harassment, violence and threats against young men and women who marry outside their caste, we feel it compulsory to make some general remarks on the matter. Our country is passing through a crucial transitional period in our history, and this Court cannot remain silent in subject of great public concern, such as this one.


\(^{149}\) AIR 2006 SC 2522.

\(^{150}\) *Supranote at 136 (The Hindu…..)*
The caste dividing system is a malpractice on the nation and the sooner it is destroyed the future. In fact, it is dividing the nation when we have to be united to take the challenges before the nation unitedly. Therefore, inter-caste marriages are in fact in the national interest as they will outcome in destroying the caste system. Nevertheless, more of the disturbing news are coming from a number of parts of the country that young boys and girls who undergo inter-caste marriage, are harassed and threatened with violence, or violence is actually committed on them and resulted to murder which are wholly illegal and those who commit them must be strictly punished.\(^{151}\)

India is a democratic, free and republic country, and once a person becomes adult he or she can marry with their choice. If the parents of the boy or girl disapprove of such inter-religious or inter-caste marriage the maximum they can do is that they can disconnect social relations with the son or the daughter, but they cannot commit or give threats or instigate acts of violence and cannot harass the person who performs such inter-religion or inter-caste marriage. Therefore, the court has direct that the police authorities or administration all over the country will see to it that if any major boy or girl who gone through marriages out side of caste or out side of religion with a major girl or boy with their choice, the couples should neither be threaten by any body nor subjected to harass or acts of violence, and anyone who gives such illegal and inhuman atrocities either himself or by their relatives, will be taken to the custody by the police or authorities with instituting criminal proceedings against such persons and further it will be start strict action as provided by the law.\(^{152}\)

The court further stated that sometimes we got information of killings of such persons who go through marriages of out side the religion or out side the caste of their own choice. There is nothing marvellous in such murder, and in fact its all nothing but shameful and barbaric acts of killing done by cruel,


\(^{152}\) *Ibid.*
violent and brutal minded people. These people deserve hard punishment and this is the only way through which we can stop such acts of barbarism. The police authorities have to watch concerned areas should make sure that neither the victim nor the spouse nor any relatives of the spouse are threatened or harassed nor any acts of atrocities are committed against them. If anyone is found guilty, he must be taken to the custody by the police or authorities with instituting criminal proceedings against him and further it will be start strict action as provided by the law\textsuperscript{153}.

The Apex court in the case of \textit{Arumugam Servai & Others. v. State of Tamil Nadu},\textsuperscript{154} after observation stated that the court have got information about “Katta Panchayats” (its Khap Panchayats known as in Tamil Nadu) in last few years which often order, support or commit honour killings or other inhuman acts in an organized way on young girls and boys of different religion and castes, who desire to have been married or to get married of their own choice, or obstruct within their personal lives. Other atrocities against women within her personal lives is not permitted. The court further stated that it is our view that these atrocities and organization (\textit{kangaroo courts or katta panchayats}) are completely illegitimate and has to be forcefully root out. There is nothing honourable in honour killing or other violence against women and actually, it is nothing but shameful, barbaric, and cruel murder committed by feudal, cruel and brutal minded persons deserve hard punishment. Only in this way we can stop such acts of feudal, cruel and brutal approach. Furthermore, if these acts committed it will be count as the offender has taken the law into their own hands which is strictly prohibited\textsuperscript{155}.

Further the bench stated that, the caste system is a annoyance practice on the nation and more rapidly it is destroying the atmosphere. Actually, it is isolating the society when it is the time to be united and to face more of the

\textsuperscript{154} (2011) 2 SCC 405.
\textsuperscript{155} Arumugam Servai v. State Of T.Nadu On 19 April, 2011, Available at: https://Indiankanoon.Org /Doc/1337458/, (Last Visited On July 17, 2016)
challenges for the nation building. Therefore, inter-caste marriages are indeed can be the greatest solution to destroy the caste system in the national interest. It can be used as the weapon against caste hierarchy where two persons married out side their caste. Practicing more and support this type of marriage also can remove one of the menace in our society i.e. “Dowry”. Though, shocking reports are coming from some parts of the country that young couples or either of them who go through such marriage, are threatened or harassed with cruelty, or cruelty is actually committed on them. In our view, such acts of harassment or threats or violence are completely prohibited and those who commit such acts must be strictly penalize\textsuperscript{156}.

Furthermore the court directed that if the parents either of the girl or boy reject their inter religion or inter caste marriage, they have maximum one thing to do is that they can disconnect social relations with the daughter or the son, but they cannot give any type of instigate or threat or commit acts of atrocity and harass the person who goes through such inter religion marriage or inter caste marriage with their own choice if both are adults\textsuperscript{157}.

In this case the bench of Supreme Court has direct that the police authorities or administration will see the whole country, if any adult girl or boy goes through inter- religion or inter- caste marriage with a man or woman with their own choice if both are adults, the couples are neither subjected to threats harassed by any one nor or acts of atrocity, and anyone who gives such threats or harasses or commits acts of atrocity either himself or by their relatives, against such acts of threats, harassments or atrocities which are completely prohibited, those who commit such acts must be taken action against him and strictly penalize by law\textsuperscript{158}.

In the same case Honourable bench issued special direction given to the police officials and administrative to take strong instrument to prevent such atrocities i.e. honour killing. The court ordered to institute criminal proceedings

\textsuperscript{156}Ibid.
\textsuperscript{157} Ibid.
\textsuperscript{158} Ibid.
against those responsible for such killings, if any such activities happened under their jurisdiction. Further directed the state Government to immediately suspend the Collector or District Magistrate and SP or SSPs of the district as well as other concerned officers and with charge sheet them and proceed action against them departmentally if they are unable to prevent such happenings (honour killing). If it has not already happened but they have prior information or if it has happened and they do not immediately detained the offenders and others engaged in it, must be initiate criminal proceedings against them it will be supposed to be indirectly or directly accountable for that crime\textsuperscript{159}.

The Supreme Court also stated that in number of state Khap Panchayat (non-judicial authorities) which often pass order or instigate to honour killings or atrocities against the young girls and boys of different religion and castes, who desire to have been married or to get married of their own choice, or obstruct within their personal lives is totally illegal and feudal practice. Through this land mark judgement the Hon’ble Supreme Court has directed different authorities to eradicate the caste system from the country and protect the victims of honour related violence\textsuperscript{160}. The Court further declared such kangaroo approached courts to be illegal, further directed the police authorities as well as the state governments to deal with them rigorously.

Again in \textit{State of U.P. v. Krishna Master}\textsuperscript{161} the Apex Court sentenced life imprisonment to the three persons found guilty of the honour killing who were accused of murder under section 300 of IPC. They murdered six persons brutally of the same family. The Court further said that they have almost finished the whole member of the family in the name of honour or insubstantial ground to keep false pride of the family must be amount to consider under rarest of the rare case by the court\textsuperscript{162}. The idea of rarest of the rare case is

\textsuperscript{159} \textit{Ibid.}
\textsuperscript{160} \textit{Ibid.}
\textsuperscript{161} AIR 2010 SC 3071.
\textsuperscript{162} Khap Panchayats, Adjudicating Cultural Dishonour?, by manbir_bhinder, Published on December 14, 2013, \textit{Available at:} http://ncw.nic.in/pdfReports/ReportbyJamiaMilia.pdf, (last visited on July 18, 2016)
initiated by the Apex court deciding in the landmark case *Bachan singh v. State of Punjab*\(^{163}\).

In the case of *Faiz Ahmed Ahanger and Others. v. State of Jammu & Kashmir*,\(^{164}\) the Apex Court had evidently held that the right to marry out of any religion or caste of the individual as well as couple without the permission of the guardian with their own choice seek police protection in case they fear harass, threaten or any violence apart from the society or the families. The court further stated that in such cases of performing marriages out of the religion or out of the caste the Court has only to be noticed two things about that

(i) Majority– The girl is above age of 18 years, then in the matter of the court where the law considers her as a major accordingly Section 3 of the Indian Majority Act, 1875. An above 18 years person is believed major by the law to know what is in her or his benefit.

(ii) Desire– Then the court again directed about the desire of the girl that if a girl is major she can marry with her own desire with anyone. Neither any law can prohibit her desire nor any one can restrict it.

After observing the facts and circumstances the court said that no one shall be harassed, threaten, or commit any activity of atrocities or other illegal act on the victim or the members of her family and till next orders they shall not be detained in custody with the matter concerned. If these couples feel or suffer unsafe, they may consult to the police or authority and in such incident, the police shall provide security to the couples\(^{165}\). If anyone is found guilty, he must be taken to the custody by the police or authorities with instituting criminal proceedings against him and further it will be start strict action as provided by the law.

*Jyoti Alias Jannat and Another v. State of UP and Others*\(^{166}\) the Court held that According to section 3 of the Indian Majority Act 1875 a person is a

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\(^{163}\) AIR 1980 SC 898, 1980(2) SSC 684

\(^{164}\) 2009 (3) Raj. 692.

\(^{165}\) Supranote at 6 (Report Submitted…..)

\(^{166}\) 2003 (4) AWC 2844.
major who is 18 years of age provided under the Act. It is the presumption of
the law is that a major is aware of his or her wellbeing. Therefore a major has
right to move anywhere with anyone he or she choose and reside. India is a
democratic, independent and liberal country. Therefore if anyone who is major
his or her parents cannot obstruct the right to life and liberty and that individual
cannot be anticipated from moving anywhere and reside with anybody. He has
all liberty to go through marriage as per his/her choice, and no one, even the
parents can’t use any mean to torture the either of couples. Under Article 21
personal liberty is incorporated as sole of the provision, guaranteed under the
Indian Constitution.\(^{167}\)

\textit{Shiv Kumar Gupta Alias Raju v. State of UP and Ors.}\(^ {168}\) In this case
Rani Gupta move to the court alleging her father was compelling her to marry
with a man she not liked. Then after she got into marriage with a person of her
choice, of her own free will. The Court agreed that Rani was a major and she
had to be given the chance to make her declaration to the court on her
preference. The court stayed the detention of her husband and held that Rani
Gupta must not be obstructed with her personal life and liberty provided under
the Constitution of India.\(^ {169}\)

In the case \textit{Pradeep Kumar Singh v. State of Haryana}\(^ {170}\), the High Court
laid down the directions on the case of runaway couple and case is to decide on
complaints by the parents of the girl against the boy. Although, a large number
of cases of runaway couples have been decided by the Court but it was
necessary to deal this incidence with the directions (in other words):

\begin{enumerate}
\item when any clue is received by any means to the SP or SSP of that
District in regards the marriage of a young couple with a danger and

\end{enumerate}

\(^{167}\) \textit{Jyoti Alias Jannat And Anothers. vs State Of U.P. And Anothers}, 2003 (4) AWC 2844, Available at:
https://indiankanoon.org/doc/387611/, (last visited on July 18, 2016)

\(^{168}\) 1999 L.L.R.J.

\(^{169}\) \textit{Shiv Kumar Gupta @ Raju v. State of U.P. & Ors.}, 10 March 1999, Hon'ble Judges: Virenda Saran,
Procedure,1973 ,Section 83, Case Number: W.P. No. 908 (M/B) of 1999, Available at:
http://www.supremecourtjudgements.in/judgment?jid=35478, (last visited on July 20, 2016)

\(^{170}\) 2008(3) RCR (Criminal) 376.
a fear of encroachment of the privilege of life, liberty and freedom
by relatives of one of the couple, the concerned SP or SSP will
consider at privileged and will investigate the issue and will take
action as suggested, (Punjab Police Rules-Chapter 21).

ii. On receipt of such intimation of marriage, the necessary orders must
be delivered to that Station of the Police to make vital step as per law
to enquire into the issue of such matter to deal the guardians of both
couple. The issue with respect to age, consent of the young girl and
objection of her relatives will be resolved. In the consequence of any
complain of abduction or kidnapping having been received from any
of the relatives of the girl. It is directed that the male (spouse) won't
be detained till then the female (spouse) did not give the statement
against him. Immediate detention of the male be avoided on the
complaint by the guardians or relatives of that female but must be
taken in to consideration as directed in Joginder Kumar's case\textsuperscript{171} by
supreme court.

iii. The female should not be captured by police to be handed over to her
guardians against her will if the female is above 18 years (major).
illicit force against the male must be avoided too.

iv. Private persons are not allowed to assault or harm the young couple
to threaten or harass them, The initiative action must be taken by the
police if such incidence happened against the couple.

v. If such incidence happened by the relatives of the couples, State
authorities accordance with law must provide securities to the
couples.

vi. For “Runaway couple” It will not be allowed to violate the Law.
They must be prepresent before the SP or SSP of the concerned
District.

\textsuperscript{171} Joginder Kumar v. State of UP and others AIR 1994 SC 1349
vii. If there is suspicion regarding security to the couple which is informed to the SP or SSP, there is an anxiety or risk of violation of right of free movement or personal life and liberty, High court will be the last place to approach for remedy.

viii. To assured such marriages valid there is an authority constituted to provide certificate with effect of law as laid down by the Apex Court in Seema’s case\textsuperscript{172} in the concerned districts. The couple of alleged ‘run away marriage’ should make their marriage registered and get the according to the guidelines of the Supreme Court and a copy of the certificate should also be forwarded to the police authority along with the representations.

Nothing more said here above to avoid the immediate take into custody of a person who deceitfully lures a female with false guarantees and endeavours her sexually according to the statement of the female\textsuperscript{173}.

in the case of Smt Seema v. Ashwani Kumar\textsuperscript{174}, the National Commission for Women had submitted an affidavit to the Apex court regarding marriages and its consequences that it is need to make the marriages compulsorily register so there should be a legislation on compulsory registration of marriages which could be helpful to solve several matters related to women importance. The Commission is of the opinion that non-registration of marriages affects the most women. There are following issues (in other words) in support to commence the proposed law would be as:

(i) To check bigamy or polygamy which is illegal

(ii) To make the terror on the parents to sell their daughters to anybody or stranger, in the shadow of marriage

(iii) To ensure minimum age of marriage to prohibit child marriages

\textsuperscript{172} Transfer Petition (civil) 291 of 2005 /Supreme Court


\textsuperscript{174}Transfer Petition (Civil) 291 of 2005 /Supreme Court
(iv) To ensure the ceremony of marriage have done with the consent of the parties

(v) To empowered the married women to claim their right to reside in the matrimonial house and to claim their inheritance rights, maintenance and other benefits and privileges after divorce or separation

(vi) To make the terror on men after marriage not to commit any form of violence against the women, and

(vii) To empowered widows to claim their inheritance rights, maintenance and other privileges and benefits which they are entitled to after the death of their husband\(^\text{175}\).

All the States should have frame rules for uniformity regarding registration of marriages to solve the disputes of marriages in the same way. As properly asserted by the NCW, in many cases lacking of registration made suffer the women. Registration of the marriage has evidentiary value in itself additionally it gives proof of the marriage solemnised and would give a rebuttable presumption of the marriage having performed. However, the registration itself can't be a proof of legitimate marriage by itself, and would not be the determinative factor about legitimacy of a marriage, So far, it has an incredible evidentiary value where the disputes regarding custody of children, right to conceive or born child from the marriage of the two people whose marriage is registered and to prove the age of the majority of both the party at the time of marriage\(^\text{176}\).

In this way, it would be in light of a legitimate concern for the common people in the society if registration of marriages made compulsory, the motive behind the framing Section 8 of the Hindu marriage Act 1955 will be expressed


\(^{176}\text{Ibid.}\)
and utilized the words\textsuperscript{177} "the proof of Hindu Marriages". As a characteristic result, the impact of non registration would be that the presumption will exist towards the denial of the marriage for both the party.

Therefore, the view regarding marriages of all people who are citizens of India belongs to different religions must be made obligatorily registrable in their concerned States, where the marriage is solemnised. Thus, the Supreme Court has directed the following steps (in other words) to be taken by the Central Government and the States to make law as\textsuperscript{178}

(i) All the respective States should notified the procedure for registration within 3 months from date of judgement and make amendments in the existing Rules, if any and objections from the persons shall be welcomed before bringing the said Rules into effect. Further, the States should make publicity for due attention and awareness for the public and take the objections for 1 month from the date of publicity. On the expiry of the said period, the States should issue suitable notice bringing the Rules into effect.

(ii) The authorized officer under the law be appropriately approved to register the marriages. Matrimonial status (divorcee, unmarried), the age, be written under. The reason of non registering marriages and providing false statement shall also be written according to the provided Rules. Unnecessary to include that the said Rules having empowered by this Court.

(iii) Whenever the Central Government made such act, having the same effect under this Court for its review.

(iv) The Learned legal practitioner of every States and Union Territories should also guaranteed and regard the directions should taken away instantly.

\begin{footnotes}
\textsuperscript{177} The Hindu Act, 1955, Section 8- “for the purpose of facilitating the proof of Hindu Marriages”

\textsuperscript{178} Supranote at 175 (Smt Seema v. .....)
\end{footnotes}
The false registration of kidnapping charges on eloping couples is very well reflected in the NCRB data. Inspite of these estates being lesser trafficking prone areas there has been a substantial increase of Kidnapping and abduction in these three states\textsuperscript{179}.

It is also appealing to note that the of In the case of Vivek Kumar @ Sanju v. The State Gov. of Delhi,\textsuperscript{180} the Supreme Court observed that It is alarming, a minor female (not crossed 18 years) falling in love with someone else is not prohibited by law. Neither falling in love with somebody is an offence under Indian penal law nor in any other specific law. It is also not an offence to wishing to marry with her loving partner. It has only two options available to a minor female, who is falling in love with someone, one is that after obtaining the consent of her guardian she should marry with her loving partner another is she has to wait till attaining the age of majority having the age of 18 years and then she can exercise her right as a major to marry with her loving partner or her own choice if her parents disagreed or convinced with her step. Though, both possibilities will be applicable just when the home of her guardian where she is living in pleasant environment and she is permitted to live there without any query in that home and pass the time to get majority having the age of 18 years\textsuperscript{181}.

The Apex court additionally stated that personal life and liberty is assured by the Indian Constitution (under Article- 21), is similarly available to major person as well as minors. Parents of a minor daughter have no privilege to marry her compellingly, against her will. Neither they have privilege to harass her nor to murder her, only for the reason that she wants to marry inter-caste or inter-religion. If the minor daughter age of 17 years, to protect herself from the assault of her Parents or other family members runs away from her parents house and reach to her loving partner or moved to go with him to get

\textsuperscript{179} \textit{Ibid.}

\textsuperscript{180} Cr.I.M.C. No. 3073-74/2006 decided on 23.2.2007

\textsuperscript{181} Vivek Kumar @ Sanju And others v. The State Gov. of Delhi, Available at: https://indiankanoon.org/doc/390627/, (last visited on 13 September 2016)
married is not an offence either for the act of that minor girl or the act of her loving partner\textsuperscript{182}.

\textit{Fiaz Ahmed Ahanger And Others v. State Of Jammu and Kashmir}\textsuperscript{183} in this case the Honourable Court held that right to marry is essential part of the liberty, it must be consider under right to life as a fundamental right. The court has only to be satisfied about two things of inter religion or inter-caste marriage- (i) According to Section 3 of the Indian Majority Act, 1875, the law presumes a girl as an major when the girl is above 18 years of age, the law presumes a person major to recognize what is in her or his wellbeing, and (ii) The desire of the major girl, Then the court again directed about the desire of the girl that if a girl is major she can marry with her own desire with anyone. Neither any law can prohibit her desire nor any one can restrict it.

After facts observation the court stated that no anyone will threaten, harass or commit any acts of cruelty or other illegitimate acts on the victim and the victim’s family members and they shall not be take to the custody till next orders in connection where the facts of the case is already in question. If they feel fear or terror, they can apply now and then to the police and in such happening, the police must grant possible protection to all of them\textsuperscript{184}. If anyone is found guilty, he must be taken to the custody by the police or authorities with instituting criminal proceedings against him and further it will be start strict action as provided by the law.

\textit{Aminder Kaur v. State Of Punjab And Others}\textsuperscript{185} In this case it was the matter relating to the Child Marriages. To prohibit celebration of child marriages, The Child Marriage Restraint Act, 1929 was enacted. Though, it was amended consequently in 1949 and 1978 for the purpose of marriage in order to lift the age limit of the female and male persons. The Child Marriage

\textsuperscript{182} Ibid.
\textsuperscript{183} 2009 (3) Raj 692
\textsuperscript{184} Law Resource India, National Legal Research Desk on Violence Against Women and Children, \textit{Available at:} https://indialawyers.wordpress.com/category/honour-kilings/, (last visited on 13 September 2016)
\textsuperscript{185} CRM-M 29790 of 2009 (O&M)
Restrainment Act, 1929 still prohibits celebration of child marriages. Though, it did not affirm them to be invalid or void. While there was a public outrage in the Society to check and present more impediment solutions by making harsh provisions to demolish the wrong practice of celebration of child marriages¹⁸⁶, The Prohibition of Child Marriage Act, 2006 enacted in 2006. Section 2(a) of the act defines that if a male did not completed his age of twenty-one years and a female did not completed her age of eighteen years is “child”. Section 12 of the Act provides Marriage of a minor child to be void in certain circumstances, provisions should apply with full firmness in the case where the marriage has been solemnised who is child and a minor, is unsound in the eyes of law, must be declared as void.

The Court in this case observed as prima-facie that according to collected evidence by the police investigation, the girl found major, over the age of 18 years but yet at the same time while arguing for the sake judgment, it was declared that whatever the girl is the age of 16 years and 2 months is regardless to the obtaining the age of majority and has performed the marriage with her own particular decision or will, no offense is said to have been conferred. This Court had no circumstances to illustrate the provision of Section 12 of the Indian Majority Act. Thus, the ratio set down in this cases is not relevant.¹⁸⁷

In the cases of Lata Singh¹⁸⁸ and Pardeep Kumar Singh¹⁸⁹ the Apex Court already direct that the police authorities or administration all over the country will see to it that if any major boy or girl who gone through marriages out side of caste or out side of religion with a major girl or boy with their choice, the couples should neither be threaten by any body nor subjected to harass or acts of violence, and anyone who gives such illegal and inhuman atrocities either himself or by their relatives, will be taken to the custody by the

¹⁸⁶ Ibid.
¹⁸⁷ Ibid.
¹⁸⁹ Pradeep Kumar Singh v. State Of Haryana, 2008 (3) Rcr (Criminal) 376
police or authorities with instituting criminal proceedings against such persons and further it will be start strict action as provided by the law. It is strictly ordered by the court that the girl should be protected she could not be the part of any atrocity so police protection has to be provided in accordance of law.\textsuperscript{190}

\textit{Abdus Sabur Khan v. Union of India and Others}\textsuperscript{191} Honourable Justice Dipak Mishra while delivering the judgment on 10 December 2010 observed and stated that the court occasionally received the information of honour-killings of the persons who go through the marriages out of their religion or out of their caste of their own choice. It is nothing except murder in the name of honour only where there is false pride only. Which is consist of shameful and barbaric acts of killing of human done by cruel or brutal minded person who deserved hard sentence. Only in this way we can hamper the acts of honour killings.\textsuperscript{192}

We may hasten to add though they said decision was rendered in a different context but we have referred to the same because their Lordship have their concern with regard to honour-killing and in the case at hand the apprehension expressed by the daughter before the competent authority of the Central Government speaks piquantly about the danger to life she would face if she goes back to her father in Bangladesh because of honour which the father harbours in a different way. The parental unwanted intervention in the lives of major children sometimes writ large. In the name of honour, apart from torture murder also takes place. Honour-killing cannot be countenanced in civilized society and more so in a body polity governed by rule of law, for right to life is sacred and sacrosanct. One may treat that it is an affair of honour and he would

\textsuperscript{190}Aminder Kaur v. State Of Punjab And Others CRM-M 29790 of 2009 (O&M)
\textsuperscript{191}LPA No. 878/2010 (Delhi High Court)
\textsuperscript{192}No Deportation Of Major Married Daughter At Instance Of Foreign Father: High Court , Law-In-Perspective Dedicated To The Cause Of Providing Insights Into Law’s Whys And Hows. Focusing On Content From India But Then Covering The Legal Arena From All Over The World., 30 Dec 2010, Available at: http://legalperspectives.blogspot.in/2010/12/no-deportation-of-major-married.html, (last visited on September 20, 2016).
go to any extent for the cause of his honour but by such an idea he cannot have the feeling of a victor and the sufferer at his hand a vanquished one. India, is governed by the resplendent philosophy of the compassionate Constitution of India which puts life at the greatest pedestal and in such a system an arbitrary rule, the fashionable world of honour to commit offences or to trespass into others’ individual living is totally impermissible. The concept of social expulsion or suspension or even for that matter a perverse notion of self-respect cannot be countenanced. Ex consequential, we do not find any merit in this appeal and dismiss the same. Ordinarily, we would have imposed exemplary costs but we have refrained from doing so. We are disposed to think, a misguided father requires more of therapeutic treatment rather to face the burden of costs.\(^{193}\)

the Punjab and Haryana High Court in the very popular \textit{Manoj Babli murder case},\(^{194}\) stated that this is the 21st century, even in this era in our society such a shameful act of murder in the name of honour is committed. We observed that it is in fact a stain on the fine fabric of the Indian civilization. However, abduction is an offence in the eye of law but killing brutally of the offender is barbaric.\(^ {195}\)

The court acknowledged the issues in deciding the case and said that there is no any eye witness in this case, it is unfortunate. The proceedings of the prosecution is based on the circumstantial evidence in the whole case. The court reached at the opinion to assume assured facts of the circumstances presented by the prosecution. As we have furnished the decision in light of the circumstantial evidence, our conscience does not allow us to affirm capital punishment to the accused.\(^ {196}\)

The Punjab and Haryana High Court remarked on the completing the judgment that it is delay and lack of care of the investigating authority in finding proof and collecting evidences. It is a case of complete failureness of the investigating authorities then after law enforcement authorities where the police officers were protecting the young couple from the danger of brutal killings. It is very shocking through the inquiry the court got that the intention of investigation was to dispose the investigation and protect the accused rather than the young couple and leave a challenge before the society, which is not justified. A investigation team is consist of police officers to collect all the relevant evidence to help the court proceedings not to misguide or not to engage themselves in the crime\(^{197}\).

Then the *Shakti Vahini* NGO had generated a writ petition\(^{198}\) in the Apex Court praying to debar the Khap Panchayats immediately, basically on the ground that they are the main factors for committing “honour killings” and they are performing as “extra judicial” or parallel to the judicial bodies. While hearing the petition, Supreme Court said that ordering women not to consume mobile phones or not to use it or to wear dress in a careful approach are such orders not socially retrograde, is an offence and warned that nobody can instigate a parallel court to harass young couples, whatever its dealing matrimony issues, it will be presumed as diktats or disobeying the law\(^{199}\)."

While hearing the PIL, The Supreme Court asked to the IG of additional police, DGP (law and order) and SP relating to khap adjudication, its dictates or its act as honour killing. All the police authorities declared that khaps are the group of elders so the people regards them and they follow their mandates in some issues but no any instance we got to connect with respect to honour killings. The police officers further said that it was their relatives who involved in killings of young couples who opposes gotra, caste or religion hindrances. The Court was surprised of why it was declaring “*good character certificate*”

\(^{197}\) *Ibid.*
\(^{198}\) Civil Appeal number 231/2010
\(^{199}\) *Supranote* at 6 (Report Submitted…..)
to the khap panchayats with affidavit by the police Heads of UP, Punjab and Haryana. Shakti Vahini filed the PIL in 2010, till now it was pending due to absence of the khaps before the court. In the middle time on January 14, 2013 the court ordered the khaps for representation and their answer to the petition. After then on 21st August 2017 Mr. Raju Ramachandran (Amicus Curiae) with Senior Advocate Mr. Gaurav Agrawal, submitted proposals to this Court on 20.11.2012. and expressed that there are sure advancements and many orders passed by the Apex court as well as all by various High Courts in the issue, which require an upgradation of the proposals which are submitted in the Petition. The Supreme court permitted the Petition with Upgraded recommendations submitted to this Court on 21 Aug. 2017.

_Dilip Premnarayan Tiwari v. State of Maharashtra_, in this case three convicts had murdered two people and brutally harmed two others and abandoning them for dead. The third victim later take back himself to harm more while seeing that the violence was in the manner of "honour killing". In the judgement the Court diluted the capital punishment granted to two of the offenders to sentence for life till completing 25 years of actual custody. The third was condemned to complete 20 years of actual custody. That these offenders were youth people who did not have criminal records it was the reason behind diluting their capital punishment.

_In Arumugam Servai v. State of Tamil Nadu and Ajit Kumar and others v. State of Tamil Nadu_, the Apex Court direct that the administration officials or police authorities throughout the country will observe that if any male or female who is the adult, performed their marriages out of the religion or out of the caste with a female or male with their choice who has also attained majority

200 _Ibid._
201 _Shakti Vahini (NGO) v. Union Of India_ (21 Aug. 2017), Writ Petition (Civil) No. 231/2010 2020 SCC 775
204 2011( 6) SCC 405
age. The couples should neither be threaten nor be harassed or never be sufferer of any violence and anybody who gives such dangers or commits acts of violence either by himself or by his relatives, must be taken by the police action against him with charging or instituting criminal proceedings according to the law. The Apex Court directed the police and administrative officials to take hard steps to avert such atrocities. whenever such mishappening occurred, must be charged and taken custody by police or start criminal proceedings against those who has committed such violence, Further directed the state Government to without delay suspend the Collector or DM and SP or SSPs of the district as well as other concerned officers with charge sheet and proceed departmental action against them if they are unable to prevent such violence (honour killing). If it has not already happened but they have prior information or if it has happened and they do not immediately detained the offenders and others engaged in it, must be initiate criminal proceedings against them it will be supposed to be indirectly or directly accountable for that crime.

In the case of Bhagwan Das v. State of NCT, Delhi, Supreme Court held that the ‗the rarest of the rare‘ is special case for awrding death sentence and honour killing must comes under this principle so as to creat terror among such offenders. In the judgement again the Supreme Court held mandatory death sentence for the offenders of ‘honour‘ killing and also directed for mandatory suspend the administrative officials and the police who did not prevent such crime. This pronouncement raised a voice against the caste institutions and also admired by the progressive group of Indian society.

In Re: Indian Woman Says Gang-Raped On 28 March, 2014 Supreme Court, based on the news item published in the Business and Financial News dated 23.01.2014 relating to the gang-rape of a 20 year old woman of Subalpur Village, P.S. Labpur, District Birbhum, State of West
Bengal on the intervening night of 20/21.01.2014 on the instructions of caste panchayat as punished to make cohabitation with a male of another community, by order dated 24.01.2014, took *suo motu* action and directed the District Judge, Birbhum District, West Bengal to inspect the place of occurrence and submit a report to this Court within a period of one week from that date. Mr. Sidharth Luthra, learned amicus having perused and scrutinized all the materials on record in his submissions had highlighted three aspects viz. (i) issues concerning the investigation; (ii) prevention of recurring of such crimes; and (iii) Victim compensation; and invited this Court to consider the same.  

Delhi High Court (on April 2, 2014), in the famous *Nitish Katara honour killing case* maintained the life Imprisonment decision sentenced by the Trial Court accusing to Vikas Yadav, Vishal Yadav and the contract killer Sukhdev Pehalwan. An appeal by Katara's mother and prosecution pursuing for capital punishment to the convicts yet decision was pending under the High Court. The Delhi High Court (on Friday 06th Feb 2015) sentenced Vikas Yadav and his cousin Vishal Yadav to 30 years of life imprisonment in jail for the murder of Nitish Katara and one another man relating to.  

*Netaben vs State Of Gujarat & others* on 11 July, 2016  

On noticing that the petitioners have married with each other, without the blessings of the girl's parents, because of their likeness, they are apprehending that they may become victim of honour killing. It appears that both the petitioners are neighbours and they belong to the same community. It is only the resistance on the part of the parents and the relatives of the girl, who

\[210\] *Nitish Katara murder case*, Judgement, Available at: https://en.wikipedia.org/wiki/Nitish_Katara_murder_case, (last visited on September 23, 2016)  
\[211\] Special Criminal Application (Direction - Police Protection) No. 4782 Of 2016, see also R/SCR.A/4782/2016.
are against such relation, which is formed by the petitioners out of their own choice\textsuperscript{212}.

Heard both the sides. Bearing in mind the fact that both the petitioners have married and they are apprehending threat from the community and the family of the girl due to such a step taken by them, a possibility of their being victim of honour killing also cannot be ruled out. In that view of the matter, here, it would be relevant to refer to the observations made by the Hon’ble Apex Court in the case of "Lata Singh v. State Of U.P.", 2007 (1) GLH 41, in which reads as that the caste system is one of the annoying a practice and blot in our civilized society. definitely, this system has divided the nation and smashed the better it is the time when we have to face many of the challenges be united to show the strength as the national integration.

\textit{Manmeet Singh v. State Of Haryana And Ors}\textsuperscript{213} on 20 May, 2016

Considering the nature of case and the poignancy of the situation, I went beyond merely ordering protection and sensing that it was a repeated theme in the State of Haryana, of parents or local khaps actively advocating against sgotra marriages as well as marriages outside the boundaries of respective castes, I gave some directions, constituted a special investigation team and called upon the police to report the progress and the steps taken in the light of directions given to prevent the recurrence of the festering problem of the honour killings. While I had disposed of the case on 23.02.2015, I had directed the matter to be called on 07.04.2015 to submit a report outlining the actions actually taken by the police for implementation of the guidelines given\textsuperscript{214}.

The Superintendent of Police, Sirsa had filed a report in Court and my brother Judge before whom the case was brought on 07.04.2015 had found that the affidavit did not address all the directions given to the police and directed a

\textsuperscript{212} Nitaben v. State Of Gujarat & 4 others on 11 July, 2016, R/SCR.A/4782/2016, Order, (Paragraph-3), Available at: https://indiankanoon.org/doc/106871804/, (last visited on September 23, 2016)

\textsuperscript{213} C.M. No.2638 of 2016 and IOIN-CWP No.26734 of 2014.

\textsuperscript{214} Manmeet Singh v. State Of Haryana And Ors on 20 May, 2016, C.M. No.2638 of 2016 and -1- IOIN-CWP No.26734 of 2014, Available at: https://indiankanoon.org/doc/88246954//, (last visited on September 23, 2016)
specific affidavit to be given with regard to implementation of all the directions. The police had pointed out to circulation of Standard Operation Procedure (SOP) for investigation of cases relating to honour killing as alleged to have been issued by the Director General of Police, Haryana. This, according to the State would take care of every situation which this Court had contemplated and therefore, there was no need to file the affidavit. At the next date on 05.05.2016, the Sub Inspector Mr. Vikas brought to the attention of Court that the challan had been presented against five persons and requested the fact to be taken note of and also take into consideration the SOP issued by the Director General of Police. At the next hearing before yet another brother Judge, the State informed that the trial had already commenced and no further directions would be necessary. The case was directed to be placed before me by the orders of the Acting Chief Justice and at that stage, the petitioner at whose instance certain directions had been given had filed serious objections to the Memorandum of Procedure circulated and how deliberately the police had been shielding certain persons against whom the petitioner had given tangible proof of involvement in the murder of his wife but they had not been included in the charge sheet and they had been left out of reckoning from being arraigned as accused215.

About the directions contained already in the judgment to prevent honour killings to include, inter alia, the investigation to be put in charge of a Special Investigation Team and the entrustment to the officer not below the rank of Deputy Superintendent of Police under direction supervision of the Senior Superintendent of Police, I have no material to see whether this direction was complied with. The reference to the Senior Superintendent of Police in my order was only to take note of the grave situation that prevailed in the State of Haryana in such like matters relating to honour killings and I directed the Senior Superintendent of Police to have a direct supervision of the evidence 6 of 12 IOIN-CWP No.26734 of 2014 brought before the trial Court

215 Ibid.
and assist the court in every possible way to bring every one responsible for the macabre killing to book\textsuperscript{216}.

Honourable court further said that I depart from the case with the hope that the next honour killing is not reported and if there is ever one, the State machinery had 11 of 12 IOIN-CWP No.26734 of 2014 acted with adequate alacrity to bring the persons guilty of this abhorrent practice by swift conclusion of investigation and securing conviction in Court of law without losing time, take care of the couple and give protection and give adequate compensation when death or injury results to either of the couple. Any public spirited person may approach this Court if the State is found lacking in the initiative to put an end to the festering problems of honour killings and elicit from the State appropriate response for the suggestions given in this case through this order and earlier on. In the delicate separation of powers amongst the key functionaries of State and judiciary in the constitutional scheme, I make no attempt to rock the apple cart. This judicial exercise is an exhortation to just not the State executive and the legislature but also to the civil society as well, to get the act together to secure to themselves what they deserve; stem the rot of social evils by using law as an instrument of social engineering and trigger social reform through potent weapon of law\textsuperscript{217}.

\textit{Smt. Sheeba Bano And Another vs State Of U.P. And 3 Ors}\textsuperscript{218}. In the said case the Court also relied on the judgment of the Supreme Court in \textit{Bhagwan Das v. State}\textsuperscript{219} (NCT of Delhi), (2011) 6 SCC 396, it is opt to extract relevancy of the said judgment, as: To keep away from the atrocities of kangaroo courts, Generally the young boys and girls who fall in love and run away from their house and have to ask for shelter in protection homes or the police lines. The court had held in the verdict of \textit{Lata Singh case} that in the act of "honour" killing there is nothing "honourable", and it is nothing but cruel

\begin{flushright}
\textsuperscript{216} \textit{Ibid.} \\
\textsuperscript{217} \textit{Ibid.} \\
\textsuperscript{218} WRIT – C. No. - 29589 of 2016 \\
\textsuperscript{219} (2011) 6 SCC 396
\end{flushright}
and brutal murder by narrow-minded with feudal prejudiced persons. According to the court honour killings are very alarming act against the civilized society, deserving death punishment which must come under the category of the rarest of rare cases to identify it. It is need of the time to eradicate these feudal or cruel activities which degrades our unity and are blots on our country. It is very essential as anticipation for such disgraceful or inhuman practice. If some people who are intended or in preparation to commit the act of such killings, they should know that the law is behind him to vanish\textsuperscript{220}.

\textit{Virupakshappa Gouda And Another v. The State Of Karnataka And Another}\textsuperscript{221}

In this case the deceased and his wife (the daughter of the accused-appellant No.1) were staying in peace away from the acrimonious community, but due to some kind of “misconceived class honour”, the vengeance reigned and awe for law went on a holiday. They thought that their perception mattered and as alleged, they put an end to the life spark of the young man. The choice of the daughter was allowed no space. Her identity was crushed and her thinking was crucified by parental dominance which has roots in an unfathomable sense of community honour. Though the lovers became fugitive, the anger founded on anachronistic values prompted the accused persons to annihilate the life of a young man. Consequently, the appeal, being sans merit, stands dismissed. As we have dismissed the appeal, the appellants shall surrender to custody forthwith and it will be the duty of the trial Judge to see that they are taken into custody\textsuperscript{222}.

\textsuperscript{220} Smt. Sheeba Bano And Another v. State Of U.P. And 3 Ors. on 30 June, 2016, Bench: Surya Prakash Kesarwani, \textit{Available at:} https://indiankanoon.org/doc/101346550/, (last visited on September 23, 2016.)

\textsuperscript{221} Criminal Appeal No. 601 OF 2017, (Arising out of S.L.P. (Crl.) No. 8781 of 2016)

\textsuperscript{222} Virupakshappa Gouda And Another v. The State Of Karnataka And Another on 28 March, 2017, Author: D Misra, Bench: Dipak Misra, A.M. Khanwilkar, \textit{Available at:} https://indiankanoon.org/doc/146045597/, (last visited on May 03, 2017).
The Court held that the perversity of approach by the learned Additional Sessions Judge, who has enlarged the appellants on bail, is totally unacceptable. It is reflective of sanctuary of errors. In such a situation, we are obligated to say that the High Court has performed its legal duty by lancinating the order passed by the learned trial Judge\(^{223}\).

_Asha Devi Wife of Sunil Kumar Singh v. The State of Bihar\(^{224}\)_{

The petitioner seeks bail in connection with Sheohar P.S. Case No. 113 of 2016 registered for the offences punishable under Sections 302, 201 and 120-B/34 of the Indian Penal Code\(^{225}\).

The daughter of the petitioner was kidnapped and after her recovery, she was living with the petitioner and other family members and, later on, her dead body was recovered, which was identified by the husband of the petitioner and, accordingly, a case was registered and during investigation, it transpired that the petitioner along with other family members killed her daughter and it is a case of honour killing. Submission is of false implication and that no mother will kill her daughter. There is no legal and tangible material against the petitioner. The confessional statement of Anil Kumar Singh, who is devar of the petitioner, has got no evidentiary value in the eye of law. The confessional statement of the husband of the petitioner is also of no value and, as such, the petitioner deserves sympathetic consideration as she is suffering in custody since 19.11.2016. The learned APP opposes the prayer of bail by submitting that the statement of Avinash Kumar, son of the petitioner, was recorded under Section 164 Cr.P.C. wherein, he has stated that his sister Sweety (deceased) was taken away in Bolero by his father, mother and uncle and, thereafter, her dead body was recovered. The statement recorded under Section 164 Cr.P.C. of

\(^{223}\) _Ibid._

\(^{224}\) Criminal Miscellaneous No.4615 of 2017

the son of the petitioner is well founded and, as such, the petitioner does not
deserve bail\textsuperscript{226}.

In the facts and circumstances stated above, considering the allegation
attributed against the petitioner, at present, I am not inclined to enlarge the
petitioner on bail and accordingly, her such prayer stands rejected in
connection with Sheohar P.S. Case No. 113 of 2016 pending in the Court of
learned Chief Judicial Magistrate, Sheohar. However, the trial court is directed
to expedite the trial and conclude the same within six months after taking the
same on priority basis, failing which, the petitioner if at no fault, may be at
liberty to renew her prayer for bail\textsuperscript{227}.

\textit{Virender And Anr v. State Of Haryana And Anr}\textsuperscript{228} on 6 March, 2017,

By this petition, two petitioners seek to be admitted to pre-arrest bail,
having been summoned by the learned trial Court upon a complaint instituted
before it alleging therein the commission of offences punishable under Sections
195/218/364/120-B/148/149 IPC, by the six respondents-accused
therein, of whom the present petitioners are two persons, i.e. Virender and
Suresh\textsuperscript{229}.

The background of the complaint is that the complainant is stated to be
the brother of one Rupa alias Rup Singh, who was having an affair with his co-
they were stated to have been found in a compromising position, upon which
Rachna was allegedly beaten and insulted by her family members and as per
the allegation made in the 1 of 6 complaint, she was strangulated by four
persons, including her brother, and the present two petitioners. However, upon
investigation it was found to be a case of suicide by the investigating agency
and in fact FIR No. 355 was registered on 13.09.2012 against Rup Singh @
Rupa, Kanwar and Harveer. On 14.09.2012, the complainant (in the complaint

\textsuperscript{226} Ibid.
\textsuperscript{227} Ibid.
\textsuperscript{228} CRM-M-4854-2017
case from which the present petition arises), received information to the effect that an unknown person was lying at Kishan Singh Hospital, Hodal, whom the complainant, upon reaching the hospital, identified to be the dead body of his brother Rupa alias Rup Singh. The complainant further alleged that having investigated the matter of own, he came to know that his brother Rupa was the seen in the company of three persons, i.e. the present two petitioners and one Jyoti son of Ajay, on 13.09.2012, at about 05:00 p.m. at the by-pass of Hodal. One Sukhbir is stated to have seen them all together. He further found that his brother had been actually admitted to hospital as a victim of a road side accident. However, as per the complainant, there was no sign of any accident at the site. He is further stated to have come to know that his brother remained unconscious till his death, and though one Assistant Sub-Inspector is alleged to have been requested to investigate the case at Police Station Hodal, he told them that the deceased had committed suicide after consuming poison as revealed by the doctor who treated him in the hospital at Hodal. Allegedly the complainant was also refused a copy of the MLR recorded at the time when the deceased was brought in an injured condition to the hospital. On an application having been filed by him under the RTI Act, the complainant was given a reply to the effect that the deceased remained unconscious and did not make any statement during the time that he was alive in the hospital. Thereafter, as per the FSL report also, it was stated that Rup Singh alias Rupa had not consumed any poison as no poison was found in his viscera (as stated in the impugned order of the learned trial Court)\(^{230}\).

In the aforesaid background, the trial court recorded that the contention in the complaint was, in fact, that the accused had first murdered Rachna on 12.09.2012 and had thereafter lodged an FIR with false allegations against Rup Singh and others, and thereafter, had murdered Rup Singh on 13.09.2012, making it look like an accident. Consequently, the trial Court, vide the impugned order, opined that it seemed to be a case of an 'honour killing' and

therefore, there were sufficient grounds to proceed against four accused, including the present petitioners, for the alleged commission of offences punishable under Sections 148, 302, 364, 120-B read with Section 34 IPC, and as regards the 5th and 6th accused, for the alleged commission of offences punishable under Sections 201 and 218 IPC. Hence, all the accused, including the present two petitioners, were ordered to be “called through warrant of arrest through Superintendent of Police, Palwal for 30.1.2017.”

Hence, this petition came to be filed on 13.02.2017, seeking anticipatory bail in the face of the aforesaid order of the trial Court. The matter has been adjourned thrice since then, asking learned counsel for the parties for placing on record the MLR and the DDR, which were thereafter produced before this Court and on 22.02.2017. On a contention made on that date that the complainant had been threatened by 3 of 6 the petitioners, and that he had made a complaint to the police control room with regard to the threat, learned State counsel had been directed to place on record any document with regard to the complaint made by the complainant. On 6th March, 2017, an affidavit of the Deputy Superintendent of Police, Palwal, has been filed by learned State counsel, to the effect that no complaint with regard to any quarrel with the complainant was received by the police in the months of January and February 2017. In fact, a statement of the complainant, Pappu alias Rattan Singh, has also been annexed with the affidavit, that no altercation had taken place with him and that he had not made any telephonic call or given any written complaint in that regard.

On the merits of the petition seeking anticipatory bail, learned counsel for the petitioner has relied upon an order of the hon’ble Supreme Court, in Maninder Kaur and others v. Teja Singh (CRA No. 699 of 2000, dated 25.08.2000), wherein it was observed as follows-

\[^{231}\text{Ibid.}\]
\[^{232}\text{Ibid.}\]
\[^{233}\text{CRA No. 699 of 2000, dated 25.08.2000}\]
"Normally, when a case is instituted on a complaint, summons to the accused to appear in the Court and on such being appearance, instead of being arrested, he would apply for bail. Unless there are compelling reasons, the Court would allow the accused to remain on bail, at least till the charge is framed. Even after charge is framed, the situation would be reconsidered if necessary, whether bail should be cancelled or not."

Learned counsel for the complainant on the other hand has relied upon a judgment of the hon'ble Apex Court in *Singashan Singh v. State of Bihar and others* (2015) 1 RCR (Criminal) 786, wherein in the context of a protest petition-cum-complaint instituted in the trial Court, alleging therein the commission of an offence punishable under Section 302 IPC, after reproducing Section 438 Cr.P.C. as also paragraph 13 of the 4 of 6 judgment in *Gurbaksh Singh Sibbia and others v. State of Punjab*, AIR 1980 SC 1632, it was held as follows:-

"The High Court, however, without appreciating the nature of offence and gravity of the accusations against the respondents herein has enlarged the respondents on anticipatory bail. In the circumstances herein, the High Court ought not to have granted the anticipatory bail at the stage of cognizance of offence, especially when the veracity of the same had not been investigated into by the investigating agency. Further, the High Court should have considered the conduct of the respondents in failing to appear before the learned Magistrate despite the directions by Sessions Court to that effect. Such conduct of the respondents creates reasonable apprehension in the mind of Court in respect of the bona fides of respondents and indicates their non-cooperating in the process of law. The aforesaid circumstances being writ large from the facts on record, the High Court could have directed the investigating agency to investigate into the protest-cum-complaint filed by the complainant and also, the private respondents to seek for a regular bail before the competent Court.

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234 Spranote at 229 (Virender And......)
235 (2015) 1 RCR (Criminal) 786
236 AIR 1980 SC 1632
Since that has not been done in this case, we take exception to the order passed by the High Court.237"

Having considered the arguments raised on both sides and the background of the case, the situation that emerges is that an alleged "honour killing" of two persons took place, though as regards the girl, Rachna, the police had registered an FIR under Sections 306, 376, 506, 452, 34 IPC (against deceased Rup Singh and two others). As regards Rup Singh's death, it is made out to be a road side accident; however, according to the complainants' case, it was also a murder that was attempted to be shown as a road side accident. Though, obviously at this stage, no custodial interrogation of the petitioners would be required, a criminal complaint having been instituted before the trial Court and not an FIR with the police, however, in the entire set of circumstances aforesaid, I am not inclined to grant them the concession of anticipatory bail and as such, I see no reason to entertain this petition. Consequently, it is dismissed. However, nothing said hereinabove will be taken to be any observation of, or indication by, this Court as regards the merits of the allegations made against the petitioners and their co-accused, which would obviously be subject matter of evidence to be led before the learned trial Court.238

Vikas Yadav v. State of U.P.239

Constitution of India Articles 19(1) (a), 21, 25 and 15(3): Freedom of thought, conscience, identity and choice, including of person she marries, available to women: Freedom, independence, constitutional identity, individual choice and thought of a woman, be a wife or sister or daughter or mother, cannot be allowed to be curtailed, and definitely not by application of physical force or threat or mental cruelty in the name of the man’s self-assumed honour. One may feel “My honour is my life” but that does not mean sustaining one’s honour at the cost of another. That apart, neither the family members nor the

237 Spranote at 229 (Virender And.....)
238 Ibid.
239 (2016) 9 SCC 541.
members of the collective has any right to assault the boy chosen by the girl. Her individual choice is her self-respect and creating dent in it is destroying her honour and to impose so-called brotherly or fatherly honour or class honour by eliminating her choice is a crime of extreme brutality, more so, when it is done under a guise. It is a vice, and a condemnable and deplorable perception of “honour”, comparable to medieval obsessive assertions. In the present scenario of India this act is condemnable it is cruel as well as barbaric act. In above cases it is already The honourable court has stated that honour killing is nothing but murder in the name of false pride only. Thus, life imprisonment by trial court converted to minimum non-remittable fixed term of 25 yrs by High Court, held, appropriate in facts of present case.

*Vikram vs State Of Haryana*\(^{240}\) on 5 April, 2017

It was submitted that both the petitioner as well as the deceased were students at the ITI Butana. They were known to each other. Reference is made to messages exchanged between the petitioner and the deceased on their mobile phones. These messages form a part of the challan/final report under Section 173 Cr.P.C. Learned counsel for the petitioner has vehemently argued 1 of 3 CRM No.M-6083 of 2017 [2] that the present is in fact a case of honour killing by the family of the deceased when they came to know about the friendship/relations between the petitioner and the deceased. It is submitted that in the Medico Legal Report (Annexure P1) issued by the Oscar Trauma Super Speciality Hospital, Rohtak it is mentioned that injuries were present on the victim's body. She was put on ventilator support after she was brought to the hospital on 19.07.2016 at about 1.30 p.m. She suffered a respiratory and cardiac arrest at 5.50 p.m. on the same day as per the said medical report (Annexure P2). However, in the post-mortem examination it is mentioned that no injury was found on the person of the deceased. In the final report under Section 173 Cr.P.C. (Annexure P4), it is mentioned that ASI Subhash Chand alongwith others proceeded to the Oscar Hospital, Rohtak and obtained a Ruqa

\(^{240}\) Criminal Misc. No.M- 6083 of 2017(O&M)
and MLR bearing CR No. 7441 dated 19.07.2016 in respect of the deceased. As per the Ruqa, the victim was brought dead. There are material discrepancies in the prosecution version. It is contended that it is highly debatable whether the offences punishable under Sections 294/323/306/376/506/511 IPC are attracted in this case. The petitioner has been in custody since July 2016. He is a student. Therefore, this petition be allowed\textsuperscript{241}.

Learned counsel for the State submits that the cause of death of the victim is poisoning. There are clear-cut allegations against the petitioner. Thus this petition be dismissed. However, the medico legal report, post-mortem report as well as the messages on the mobile phones exchanged between the petitioner and the deceased are not denied. It is also not denied that the petitioner along with the victim were students at ITI Butana. The petitioner is not involved in any other case. The charge in this case was framed on 03.01.2017. Twenty three (23) prosecution witnesses are to be examined in this case. It is apparent that trial in this case is not likely to conclude in the near future. There are no allegations on behalf of the State that the petitioner is likely to abscond or that he is likely to dissuade the witnesses from deposing true facts in the Court, if released on bail\textsuperscript{242}.

Keeping in view the facts and circumstances as above but without commenting upon or expressing any opinion on the merits of the case, this petition filed by Vikram is allowed. The petitioner shall be released on bail pending trial subject to his furnishing requisite bail bonds and surety bonds to the satisfaction of the learned Trial Court. It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition\textsuperscript{243}.

\textsuperscript{242} Ibid.
\textsuperscript{243} Ibid.
The judicial attitude in deciding the cases of honour killing is very fluctuating and due to absence of any special law/provisions on honour killing the court in similar cases is pronouncing differently. It depends on the whims of the judiciary to put a particular case of honour killing either in rarest of rare cases or decide otherwise. This is the irony of justice in a country governed by rule of law. The judges are after all the part of the society and can’t be totally immune from the dominant trend of social thoughts. Cardozo has rightly observed that, the tides and currents which engulf the rest of men do not turn aside and pass the judges by.

5.8. Conclusion

Khap Panchayats and quasi adjudicating have deep impact over the villagers and very often upon the polite class similar to that the machinery of the State number of times unable to react on time to their unreasonable orders which is pure ridicule of rule of law. They often order gang-rape of a young lady in love with a man of other caste or they banned the use of cellular by youth girls, influence of the orders of khap panchayats is insightful on the places of their existence. The politicians to protect their vote bank often ignore the callous orders which shock the very ethics of cultured human being. Every Khap rules over villages which makes the Khap Panchayat so dominant resulting in making them leaders of massive vote banks which are competent of handling at the time of elections the power game of voters. These kangaroo courts has control over the peoples is a sign towards inability of the States or unwilling domineering role in these subjects.

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246 Aishwarya Tiwari and Chintan Nirala, Khap Panchayats- Retrograding Avatar Of The Moral Police, Indian Journal Of Legal Philosophy, ISSN : 2347-4963, Volume 2, Issue 4, December 2014,
Even though, a number of reasons are predictable to the uncontrollable rule of these Panchayats on the groups. However, decisively it is the lack of the State intervention which has led such panchayats to come forward in front with their own justice. Surprisingly, the rural persons support the inhuman decisions of the Panchayats, and due to such support, it is said that the panchayats have claimed that their decisions dived under the ‘personal Sector’ of that village. while investigating the crime in the name of honour is also seen reluctance on the part of the police or investigation agencies. We have to see if the state is considered to be completely behind the ‘personal Sector’, especially when such a withdraw has destroyed many innocent youths. Can the state depart its responsibility and the horrors of crime can be seen as a dumb and deaf witness?. When a young girl is murdered or ruined her body, it is an alarming question. Violence on the name of religion, traditions, customs, honour and culture, mostly for marriage represents one of the most disturbing forms of violence in India against women\textsuperscript{247}. The Constitutions of India imposed a duty on the State to recognize the right to life and personal liberty\textsuperscript{248}. The Constitutional provisions can be used to legitimize intervention, if there is political will on the part of government and accountability in introducing changes to normative standards that perpetuate or encourage violence against women on the name of forced marriage or marriage solemnized on choice. Cases in which the courts have been requested to strike down customary and religious law for infringement of the Constitution reveal the manner in which the courts try to balance conflicting rights, so as to achieve the core norms of protecting women’s human rights\textsuperscript{249}.

From the point of view of Judiciary it is clear that Khap Panchayats are illegal and Honour Killings are either murder or homicide which are henious


\textsuperscript{247} Supranote at 6 (Report Submitted…..)

\textsuperscript{248} Constitution of India, part III, Art.21- Protection of life and personal liberty.

\textsuperscript{249} Daniel Latif and Another v. Union of India, AIR 2001 SC 3262.
Chapter 5  

Legal Frame Work for the Protection of Women and Judicial 
Response to Honour Killings in India

Crimes come under the IPC 1860. It also violates Articles 14, 15 (1) & (3) 19, 21, 39(f), and fundamental duty to renounce practices derogatory to the dignity of women\(^{250}\) of the Constitution of India. It is against the various International Commitments which the Government of India has made in accordance to the CEDAW of which India is a signatory and has also ratified the convention. It is also against the spirit of UDHR and ICCPR. Though, the remarkable changes have taken place in the twenty first century, but discrimination and violence against women and girls remain steadfastly rooted in cultures in India. Indian society is based on patriarchal culture where women were considered as property. However present scenario has changed through the implementation of constitutional rights but still traditional mind-set has not changed that’s the result they are intended as property of men in their family irrespective of their religious group, caste, ethnic or class. Consequently, the owner of the property has the right to decide its fortune. The model of ownership has turned women into a commodity which can be exchanged, bought and sold\(^{251}\). Unfortunately, most religions of the world developed in patriarchal cultures, which were male centered, male dominated, gave men (as they presume) a sort of sole authority to interpret the texts and assume proprietary rights over the lives of women. To these men who are killing their wives, sisters and daughters, their honour is something very precious and priceless in comparison to the lives of the women to the extent of replacing their lives (killing) with the honour of themselves which is certainly not reflective of any religious and cultural teachings in the countries where honour killing is writ large. The outcome of this killing is

\(^{250}\) The Constitution of India, Article 51 A (e) , imposes a Constitutional duty on every citizen of India- to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

going to be disastrous for the coming generation in the era of globalization and where the governance is to be sustained on equality\textsuperscript{252}. 

\textsuperscript{252}Honor killing. \textit{Available at: https://en.wikipedia.org/wiki/Honor_killing.}, (last visited on May 8, 2017)