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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **HONOUR KILLING AS A HATE CRIME**

AUTHORED BY - DIVYA.R & SAGUNTHALA.R

## **HUMAN DIGNITY AND HONOUR:**

“Honour killing is peak of hatred; it is the gap between love and hatred”

The conceptual dimensions of human dignity were established in 1948 as the foundational concept of the UDHR. The preamble of UDHR says, ‘whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’. Human dignity mentioned as follows: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.<sup>1</sup> The Universal Declaration of Human Rights provides the preliminary work out for protecting and development of right to life with human dignity in the various constitutional laws of various countries in the world. Every person has inalienable right to live a dignified life without discrimination. They are entitled to claim equal respect from the state as well as from other persons. It is one of the primary duties of each state to protect the fundamental rights for the protection of human dignity and implement welfare schemes in order to improve the dignified life of the citizens.

Indian Constitution ensures many rights to the citizens as well as immigrants. It is not only a legal document, but also a social document. The preamble of Indian Constitution ensures social, economic and political justice. Article 21 of the Constitution of India deals with right to life and liberty which includes that no person shall be deprived life and liberty except according to the procedures established by law. Article 21 is concerned with the right to life and liberty in literal sense, but due to liberal interpretation of the same Article, the court has expanded its scope.

The right to life is not only correlated with human dignity but it also directs our attention to the very essential subject of Honour killing. The family members, for the sake of social status or

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<sup>1</sup> Art.1 of the Universal Declaration of Human Rights 1948,



‘family Honour’, kill the members of family, but the Constitutional guarantee of right to life, which is ensured through this paramount provision, is important. Now if we take into consideration the very basis of Honour killing, why and how it happens, then the question comes about the constitutional guarantee which has been ensured through the different pronouncement of the courts.

Even in the 21<sup>st</sup> century, women have been made the victims of various forms of cultural and customary exploitation. Young girls or women are facing a number of problems in every sphere of life. They are still suffering with the evil customary practices like Honour killing, female foeticide etc., and are deprived of their life. This is nothing against the nature and the constitutional provisions such as the right to live with dignity. Indian Womanhood is tied up by many a rusted chains of religious practices and traditions.

It is seen that, even after seventy-five years of the Independence of India, women have not got proper freedom and they are unable to enjoy the fruit of right to dignified life. They are always living under the influence of customary and religious norms, which are considered as the supreme power of Honour to the family or community.

Though the country has made a lot of progress, the role of women in the society has still not changed, and they have become the victims of the patriarchal system. In our country, number of legislations are working on only paper but practically the Government has failed to implement the rules and regulations in this regard. There is no specific stringent law to protect the dignified life of women from the customary evil and barbaric practices such as Sexual abuses, Infanticide, Foeticide, Rape, Sexual-harassment, Murder, Honour killing etc.

The term ‘human dignity’ protected civil, political, religious and social rights of the individuals. “Human dignity means a state of worthy of Honour, respect, equal status and it is inherent has connected mentally with human life irrespective of caste, creed, sex, colour, status, of the person”. Human dignity is associated with the family, caste, community and society. Every society has its own norms with pride of dignity, maintain their dignity, respect and status as per customary practices. Any human should be treated equally with dignity, irrespective of gender, caste, community, etc.

Constitution used the term ‘dignity’ in its preamble; the preamble reads as ‘assuring the dignity



of the individual and the unity and integrity of the nation'. Dignity is attached to the identity of a human being as a person, when a human being does not enjoy the rights then dignity does not exist at all. Every member of the society has a feeling that he or she is a respectable member and no one can humiliate, harass, exploit and insult him or her on the basis of caste, creed, sex and status etc.<sup>2</sup>

### **CONCEPT OF RIGHT TO LIFE WITH HUMAN DIGNITY**

The right to life is the important and most valuable fundamental right of the citizen and immigrants of India. Everyone has the right to life, liberty and security of person. Our Indian Constitution, in Part III ensures fundamental rights which are designed to protect and preserve the basic rights of individuals from the violation of right to life with human dignity.<sup>3</sup> The concept of right to life and liberty as enriched in Article 21 of the Constitution of India, guarantees a number of fundamental rights to the citizens of India. The main intention of the Constitution makers is to promote individual welfare as well as social welfare. Right to life is the most precious fundamental rights amongst all human rights. Undoubtedly its scope and applicability, with the advent of their modern strides in jurisprudence and revolutionary pronouncement by various courts, has assumed wider connotations and amplifications. Under this noble concept every citizen has guaranteed the right to life and liberty. Article 21 imposes an obligation on the state to safeguard the right to life of every person and preservation of human life and that is of paramount importance.

### **RIGHT TO DIGNIFIED LIFE – ORIGIN AND DEVELOPMENT**

Right to life strives towards human well-being from the British Magna Carta in the year 1215 and provides that “No free man shall be taken or imprisoned or deceased or outlawed or banished or any ways destroyed, nor will the king pass upon him or commit him to prison unless by the judgment of his peers or the law of the land”.

In the year 1948, Universal Declaration of Human Rights provided Article 3 saying, “Everyone has the right to life, liberty and security of person” as well as Article 9 stating, “No one shall be subjected to arbitrary arrest, detention or exile”.

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<sup>2</sup> Dr. N.K. Chakrabarti and Dr. Shachi Chakrabarti, “Gender Justice”, Vol. II, First Edition 2006, Pub, R. Cambray and Co. Private Ltd, Kolkata, p. 339.

<sup>3</sup> Indian Journal of International Law, Vol. 51, No. 03, July/ Sept. 2011, p. 408

In 1950, European Convention on Human Rights also provides Article 2 saying, “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”.

Our Constitution makers perceived the human being beyond a mere physical entity and incorporated Article 21 in Indian Constitution as-

“No person shall be deprived of his life and personal liberty except according to procedure established by law”.

In A.K. Gopalan case<sup>4</sup>, the interpretation of Article 21 of the Constitution was a procedure established by law that can deprive a person of his right to life. Justice Mukherjea observed that, personal liberty is the anti-thesis of physical restraint or coercion. According to the definition of Dicey ‘personal liberty means a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit legal justification’.

In 1963, apex court observed in Kharak Singh vs. State of U.P.<sup>5</sup> the personal liberty was not only limited to bodily restraint or confinement to prisons, but also was used as a compendious term, including within itself all the verities of rights which go to make up the personal liberty of a man other than those dealt within Article 19.

In the year 1978, the Supreme Court, observed in Maneka Gandhi vs. Union of India<sup>6</sup>, brought about a transformation in judicial attitude towards right to life and personal liberty guaranteed under the Constitution of India. Apex court not only overruled Gopalan’s case but widened the scope of the personal liberty. Justice Bhagwati observed ‘The expression personal liberty in Article 21 is the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have the status of distinct fundamental rights and given additional protection under Article 19’. The term ‘Life’ and ‘Personal Liberty’ were given an expansive meaning to move beyond mere animal existence.

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<sup>4</sup> AIR 1950 SC 27

<sup>5</sup> AIR 1978 SC 1295

<sup>6</sup> AIR 1978 SC 597

In 1981, the Supreme Court of India gave expansion of the right to life and it was carried forward in subsequent cases. In *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi*<sup>7</sup>, the court held, ‘the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter etc’. Apex court in *Olga Tellis vs. Bombay Municipal Corporation*<sup>8</sup> wherein held that the inhibition against deprivation of life extends to those limits and faculties by which life is enjoyed.

The Apex Court emphasized on the point that the right to life under Article 21 must be guaranteed to Indian citizen and non-citizens something beyond just the life of an animal to include the needs of a human being. In the case of *P. Rathinam vs. Union of India*,<sup>9</sup> the term ‘Life’ has been defined as ‘the right to live with human dignity and the same does not connote continued drudgery, it takes within its fold some of the graces of civilization which makes life worth living and that the widened concept of life would mean the tradition, culture and heritage of the concerned’.

One of the most crucial development and expansion of the right to life under Article 21 of the Indian Constitution is the provision for inclusion of the social life of the person. Thus, the fundamental right to life guaranteed to all persons under the Constitution includes the right to live with human dignity.

Justice Krishna Iyer observed that in *Jolly George Varghese vs. The Bank of Cochin*<sup>10</sup> “The value of human dignity and the worth of human person enshrined in Article 21, read with Article 14 and 19 obligates the state not to incarcerate except under law which is fair, just and reasonable in its procedural essence, it is well settled that, right to life enshrined in Article 21 of the Constitution of India takes within its sweep right to life which is worth living, it includes all the essentials required for living things.”

Right to dignity is one of the most recognised Human rights because without the right to live with human dignity other rights cannot be made enforceable. Recognizing this fact, the preamble to the charter of the United Nation and Universal Declaration of Human Rights, 1948,

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<sup>7</sup> AIR 1981 SC 746

<sup>8</sup> AIR 1986 SC 180

<sup>9</sup> (1994) 3 SCC 394

<sup>10</sup> AIR 1980 SC 470



Article 1 reads “All human beings are born free and equal in dignity and rights” and article 2 includes, “Everyone is entitled to all the rights and freedom without distinction of any kind, such as race, colour, sex, language, religion, property, birth or other status” emphasized on maintaining the dignity of human beings.

### **DIGNITY OF WOMEN IN INDIA**

After the Independence, efforts have been made to promote the welfare of women. The Constitution Provides several provisions about protection of life and dignity of women. The Constitution guarantees that women in India should not be treated in par with men, all are equal before law irrespective of religion, race, caste, community, gender or place of birth.<sup>11</sup>

The Preamble of Constitution of India promises to secure to all its citizens justice- social, economic and political. The notion of women dignity is connected with the gender equality and gender justice. Article 51(A) (e) clearly states, ‘to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounces practices derogatory to the dignity of women’. Hence the apex court has held that women should be treated with dignified manner and any act conducted and gesture of doing a work should not be derogatory to the dignity of women. It is the obligatory duty of the state to protect the women’s dignity.

Status of women in a society should ideally start from the social framework. Social structure, cultural norms and value system are important and they determinate women’s roles and their position in society. The first Prime Minister of India rightly said, ‘The status of women indicates the character of a country’ emphasis of women’s dignity can be observed in the multi-cultural, multi-religious and social activities, which is most distinguished in the world. Since ancient period to till now, Indian women were equated to the status of Goddesses, as in different parts of the country people worship Shakti, the feminine energy / form, as Goddesses in the form of Lakshmi, Saraswati, Parvati, Durga, Kali, Jai Santoshi Maa etc., and women were treated respectfully.

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<sup>11</sup> Article 14 and 15 of the Indian Constitution.

## **HUMAN DIGNITY AND HONOUR KILLING**

Honour killing is not a new word to Indian society. It is a murder generally committed against women or girl for actual or perceived immoral behaviour that is deemed to have breached the Honour code of community. It is a customary practice generally committed by the family members for dishonouring the code of community. Honour killing means acts of violence, usually murder, committed by male family members against their members, most of the time who are held to have brought dishonour upon the family. A woman too can be targeted by (individuals within) her family for a variety of reasons, including refusing to enter in to an arranged marriage, being the victim of a sexual assault, seeking a divorce even from an abusive husband or (allegedly) committing adultery. The mere perception that a woman has behaved in a way that “dishonour” her family is sufficient to trigger an attack on her life.

Every human life is precious. The right to life denotes the significance of human existence and for this reason, it is widely called the fundamental right.<sup>12</sup> Our Indian Constitution provides fundamental rights in Part-III which are designed to protect the natural and legal rights of individuals. The concept of right to life and liberty as enshrined under Article 21 of the Constitution.

Right to life includes human dignity,<sup>13</sup> Right to life is a fundamental right which is guaranteed by our Constitution. In case of Honour killing, in order to preserve the Honour of the family, the family member commits murder of their family members; it means depriving the life of person.

Honour killing violate the guarantee of right to life in national and international level. Any act which causes harm or deprives the life of someone would be amount to violation of fundamental human right. Human life is protected by national and international instruments. Right to life is universally accepted that inherent dignity and inalienable right that no one has any right to withdraw the life of human being under the heading of any customary practice. The Universal Declaration of Human Rights in 1948 clearly states, ‘everyone has a right to life, liberty and security of the persons’.<sup>14</sup>

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<sup>12</sup> Indian Journal of International Law Vol. 51, No. 03, July/ Sept. 2011, p. 408.

<sup>13</sup> Ibid, at p. 411.

<sup>14</sup> Article 2 of the Universal Declaration of Human Rights, 1948.

The Article 21 of European Convention for Protection of Human Rights and Fundamental Freedoms 1950 states, 'every one's right to life shall be protected by law' and every person has right to liberty and security of person save in accordance with the procedure established by law.<sup>15</sup> It seems that even family members are not having right to deprived life under the name of a custom i.e., Honour killing or sati practice. International Covenant on Civil and Political Rights in 1966 also states, 'every human being has an inherent right to life. This right shall be protected by the law and no one shall be arbitrarily deprived of such right'.<sup>16</sup> Researcher has found that, right to life with human dignity signifies those basic rights which cannot be deprived by state or any person in the name of preserving Honour of the family, because they are fundamental rights provided to the all-human beings.

Life of human being is the most precious thing that no one can withdraw or take away for protecting the Honour of the family. Justice Field, observed that life means 'something more is meant than mere existence. The inhibition against its deprivation extends to all those limbs and faculties by which the life is enjoyed'.<sup>157</sup> In Honour killing practice, when the boy or the girl does act against the desire of their family members, it is considered a dishonour to their family, and to the members who deprive the freedom. They exploit the girl or boy and sometimes takes away the life of both.

In Francis Carolie vs. Union Territory of Delhi<sup>158</sup> case, Justice Bhagwati also stated, 'life means right to live with human dignity.' Recently, Supreme Court strongly condemned the practice of Honour killing and intrusion of informal panchayat taking law into their own hands and indulging in offensive activities which causes danger to the life of the person.<sup>17</sup> Honour killing practice is purely violating the fundamental rights of a person. It is an offence under the penal Code.<sup>160</sup> Innocent young youths are being murdered in the name of Honour.

Article 21 of the Constitution of India include within its ambit Right to marry and choose the life partner of one's own choice. There are several incidents of Honour killing that takes place in our society for protecting the dignity or Honour of their own clan, community and family on ground of inter-caste marriage. Honour killing practice is clearly violating the basic inalienable

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<sup>15</sup> Article 21 of the European Covenant for Protection of Human Rights and Fundamental Freedoms, 1950.

<sup>16</sup> Article 6 of the International Convention on Civil and Political Rights 1966. <sup>157</sup> Munn vs. Illions, 1877 94 U. S. 113 <sup>158</sup> AIR 1981 SC 746, at p. 753.

<sup>17</sup> Arumugam Servai vs. State of Tamil Nadu (2011) 6 SCC 405. <sup>160</sup> Sections 299 and 302 of the Indian Penal Code 1860.



fundamental rights of the person. Right to life guaranteed at the national and international level gets violated by this customary practice.

Right to life includes the right to marry as observed by the Supreme Court in the famous case of Lata Singh vs. State of Uttar Pradesh<sup>18</sup>. The Court has stated, 'India is a free and democratic country and once a person becomes major, he or she can marry whoever he /she likes'. Not only national legislations which prohibit from interfering in the life of another person, but also several international legislations provide to prohibits and preserve the right to marry out of choice. Right to life is applicable universally to all human beings irrespective of caste, community, religion and sex. National and international legislations provisions protect the lives of human beings, these provisions act as protective umbrellas against any violation of fundamental rights.<sup>19</sup>

The Union of India as a member to the Universal Declaration of Human Rights has an obligation to protect the lives, rights and liberty of individuals and protect them from such heinous crimes. The Universal declaration of Human Rights under Article 16 guarantees the following: (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and find a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

## **INTERNATIONAL INSTRUMENTS RELATING TO HONOUR KILLINGS**

Other than the Universal Declaration of Human Rights in 1948, there are several other treaties and conventions that curb the practice of Honour Killing. In 1979, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) was adopted by the United Nation General Assembly in order to protect women rights. India is a signatory and has also ratified the convention.<sup>20</sup> "The provisions of CEDAW can be used to argue that the

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<sup>18</sup> (2006) SCC 475.

<sup>19</sup> Anu Prasannan, Honour Killing or Honouring the Killers: Distorted facets of Law, International Journal of Multidisciplinary Research and Development, 2015; 2(3) p. 328.

<sup>20</sup> Dr. S. K. Kapoor "Human Rights under International Law and Indian Law" Pub. Central Law Agency, Allahabad, Fifth Edition 2011, p. 12.

tradition and practice of punishing individuals for ill-informed ideas of dishonouring the family, is essentially a institutionalized discrimination against individuals and creates a legally binding obligation for state parties to take all measures to end all forms of the practice of Honour killing and ensure that all discrimination against women in matters relating to marriage and family relations are eliminated, providing them with the equal right to enter into marriage and to freely choose a spouse with their free and full consent as enumerated in Article 16 of the Indian Constitution. This means ensuring that informal decision-making bodies functioning on customary laws, such as khap panchayats, are refrained from enforcing their dictates, and intrusive with the right of individuals to choose their spouse.”<sup>21</sup>

Article 4 of the Declaration on the Elimination of Violence against Women in 1993 states, "States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination".<sup>22</sup>

Article 12 of the International Convention on Economic, Social and Cultural Rights (ICESCR 1976) states that State parties have to take all steps to ensure the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health” Honour Crimes violate this as physical, mental and sexual violence obstruct the achievement of good health. India, is a state party, therefore it is obliged to provide the highest attainable standard of health.

The Beijing Platform for Action on Human Rights of women, 1995, urges the member States to “take urgent action to combat and eliminate violence against women, which is a human rights violation resulting from harmful traditional or customary practices, cultural prejudices and extremism”.<sup>23</sup> Elimination of Crimes against Women Committed in the name of Honour in 2003 aims to eradicate Honour crimes which are rooted in the patriarchal society.<sup>24</sup>

India is a member of International Convention on Civil and Political Rights (ICCPR) which provides all citizens equal rights irrespective of sex, race, caste, religion, language, etc. It also

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<sup>21</sup> Puneet Kaur Grewal, Honour Killings and Law in India, 5 J.H.S.S. 28-31, 30 (2012), Available at <http://iosrjournals.org/iosr-jhss/papers/Vol5-issue6/F0562831.pdf?id=5903>. (Last accessed on 27/07/2016).

<sup>22</sup> Art. 4 of the Declaration on the Elimination of Violence against Women, 1993.

<sup>23</sup> Puneet Kaur Grewal, Honour Killings and Law in India, 5 J.H.S.S. 28-31, 30 (2012), Available at <http://iosrjournals.org/iosr-jhss/papers/Vol5-issue6/F0562831.pdf?id=5903>. (Last accessed on 27/07/2016)

<sup>24</sup> Working towards the elimination of crimes against women committed in the name of Honour (September, 2002), Available at [www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/985168f508ee799fc1256c52002ae5a9/\\$FILE/N0246790.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/985168f508ee799fc1256c52002ae5a9/$FILE/N0246790.pdf). (Last accessed on 27/07/2016)

provides that no one should be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence. Everyone has the right to the protection of the law against such interference or attacks.<sup>25</sup> It recognises that, every human being has the inherent right to life which should be protected by law. Even though these international provisions are well equipped to eradicate Honour crimes in the modern time, it is still rampant in many parts of the world.

An important milestone at the European union is the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) which enshrines everyone's right to life, the prohibition of torture and slavery, the right to freedom and security, and the prohibition of discrimination.<sup>26</sup>

The European Parliament Resolution on the current situation in combating violence against women and any future action June 2006 represents the most recent statement on this issue. The resolution recognizes Honour killing as one of the many types of acts of violence against women, calling for a policy of zero tolerance and setting out a number of measures and partnerships to be adopted.<sup>27</sup>

The European Union (EU) framework decision on combating racism and Xenophobia is EU's official responses to hate crime. 47 out of the 57 OSCE member States are signatories of the Council of European Convention on Human Rights (ECHR). Accordingly, judgement was passed by the European Court of Human Rights. On a number of occasions, the court has considered States obligations under the ECHR in relation to crimes based on the biased motives.

### **HONOUR KILLING AND HONOUR-BASED VIOLENCE**

Honour based violence including forced marriage and female genital mutilation have some common characteristics but there are some important distinctions too. They also overlapped with domestic abuse, and numerous types of crimes including Honour killing. The harmful traditional and cultural customary evil practice of Honour killing violates human rights, rules and regulations. The most pathetic aspect of disrespect for human rights includes various brutal

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<sup>25</sup> Art. 17 of the International Convention on Civil and Political Rights, 1966.

<sup>26</sup> Section 1, Articles 2,3,4,5 and 14 of ECPHR

<sup>27</sup> Resolution No. P6\_TA (2006) 0038



practices such as; rape, forced marriage, torture, imprisonment within the home and even murder. Human rights provide number of rights in order to preserve and protect the human life, liberty, equality and freedom without any discrimination. Honour killing constitutes a violation of the rights and fundamental freedoms of women. From womb to tomb, a woman is under the constant fear of violence. In this patriarchal society, women suffer violation, they are not safe within the house and outside the house. Honour killing crime deprives all human rights, which is offered by national and international laws.

According to Kavita Krishnan,<sup>28</sup> secretary of All India Progressive Women's Association (AIPWA), "Honour killings are an extreme form of violence perpetrated on couples, 'It is needed to examine the much larger prevalence of violence towards couples who married inter-caste or inter-religious defying societal norms. Not all these cases end in a terrible death. There is very little outrage over these cases because communities are more or less agreed on the need to rein in women's autonomy. Girls are often held captive or forcefully married off against their wishes. Across caste, society and religion, a woman's autonomy, when it comes to marriage, is considered negligible. This forms the backdrop for Honour killings in India".

Human rights are those rights which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedoms allow us to fully develop human qualities.<sup>29</sup> According to the Protection of Human Rights Act, the term Human rights<sup>30</sup> means "As the rights relating to life, liberty, equality and dignity of the individual guaranteed by constitution or embodied in the international Covenants and enforced by courts in India".

Honour crimes have different meaning and interpretations or applications in different cultures or groups. As such, it has multiple meanings related to pride, esteem, dignity, reputation and virtue. In terms of Honour-based violence, the notion of Honour is associated with behaviour of the women or girl relations to the family or the social value systems and norms in a community. It perceived shame that result from not complying with those expectations. It seeks to prevent behaviour that would breach those expectations and avoid the perceived "shame" or "dishonour" to the family. As a result, the family or community, restored the same through

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<sup>28</sup> 'Urban Honour Killings: Backlash against change' Times of India, News Paper dated 23rd August 2015, Edition Pune.

<sup>29</sup> Dr. S. K. Kapoor "Human Rights under International Law and Indian Law" Pub. Central Law Agency, Allahabad, Fifth Edition 2011, p. 12.

<sup>30</sup> Section 2 (d) of Protection of Human Rights Act, 1993.

Honour killing. So, the Honour killing is not mere human rights violation but also an Honour-based violence.

## **HONOUR KILLING AND GENDER-BASED VIOLENCE**

The gender-based violence (GBV) haunts a woman at all stages of her life. In a patriarchal society, the birth of daughter is considered as bad luck. A growing girl child is considered as a burden for the family.

Honour killing practice is a curse to Indian society and an affront to human beings.

Honour killing incidents are identified in number of countries, particularly in India in the State of Punjab, Rajasthan, Haryana, and Western area of Uttar Pradesh and in some parts of Bihar<sup>31</sup> as prevailing customary evil practices from times immemorial. Honour killing practice is a gender-based crime, because number of incidents identified women or girls as victims of Honour killing.<sup>32</sup>

An Honour suicide is also practiced as a substitute for an Honour killing. It has occurred when people order or pressure a woman to kill herself this may be done so that the people avoid penalties for murdering her.<sup>33</sup> This phenomenon appears to be a relatively recent development. Many times, the cases are reported as suicide and then nothing goes through in order to be tried in the courts.<sup>34</sup>

## **HONOUR KILLINGS AS MULTIPLE VIOLATIONS OF WOMEN'S RIGHTS**

Honour killing affects "the right to life" of an individual which is explicitly guaranteed under all the major human rights instruments and other conventions.<sup>35</sup> Moreover, International

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<sup>31</sup> Legal Era Vol.1 Issue IV Aug 2010 p. 7.

<sup>32</sup> Satnam Singh Deol, Honour Killing in India: A Study of the Punjab State, International Research Journal of Social Science, Vol. 3(6) June 2014, pp. 7-16.

<sup>33</sup> Criminal Law Journal, Oct, 2012, Vol. No. 118, Part-1354, p. 291.

<sup>34</sup> Freedom in the world: India 2010, Freedom House, Indian Bar Review, Vol. XL (01) 2013, p.55.

<sup>35</sup> Universal Declaration on Human Rights (UDHR) Article 3, International Covenant on Civil and Political Rights (ICCPR) Article 6, The Convention On the Rights of the Child (CRC) Article 6, The European Convention On Human Rights and Fundamental Freedoms (ECHR) Article 2, The Inter-American Convention on Human Rights (ACHR) Article 4, The Inter-American Convention On the Prevention, Punishment and Eradication of Violence against Women - Articles 3 and 4 of the Convention and The African Charter on Human and People's Rights (ACHPR) Article 4; Declaration on the Elimination of Violence against Women General Assembly, 1993, Article 3 provides for Right to Life.

Human Rights Law (IHRL) mandates states to protect human rights of individuals without any discrimination and to ensure fundamental freedoms to individuals to enjoy equal protection of law and equality before the law.<sup>36</sup> The principle of equality and non-discrimination are the essence of all the international and regional human rights treaties.<sup>37</sup> Most importantly, in the context of woman's human rights the CEDAW in Article 15(1) provides that state parties to the convention shall "accord to women equality with men before the law."<sup>38</sup>

Honour killings are direct violations of the non-discrimination and equality provisions as the crime is largely gendered and law in several countries treat man and women unequally by providing impunities to man who commit such crimes. This creates unequal application of law between man and woman. Furthermore, fundamentally the crime of Honour killing in itself is highly discriminatory as the act is largely and exclusively committed and motivated towards woman.

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

States have obligation to respect and protect the rights of human beings within its jurisdiction without discrimination Article 2 (1) of the International Covenant on Civil and Political Rights 1966, it also stated that, 'Every human being has inherent right to life'<sup>39</sup>. This right shall be protected by law. No one shall be arbitrarily deprived of his life. It is the primary duty of the States to take precaution about protection of life of human beings. Under the customary

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<sup>36</sup> ICCPR General Comment 18: Non-discrimination, para. 7.

<sup>37</sup> The United Nations Declaration on Human Rights prohibits discrimination under Article 2 and guarantees right to equality before the law under Article 7. The ICCPR provides for a similar and comprehensive protection against non-discrimination and equality before the law under Article 26 and Article 3 respectively. The Regional treaties: ACHR Article 1; ACHPR Article 2; CRC Article 2(1); and ECHR Article 14. Moreover, Protocol 12 to the European Convention on Human Rights provides for a free-standing non-discrimination provision.

<sup>38</sup> The ICCPR also under Article 14 provides "All persons shall be equal before the courts and tribunals ...." See also ACHR Article 24 and ACHPR Article 3.

<sup>39</sup> Article 6 of the International Covenant on Civil and Political Rights 1966. <sup>183</sup> Article 55(c) of the United Nations Charter.



practices like Honour killing, the State has failed to protect the life of the victims. Honour killing crimes are usually murder committed by the family members who disobey the social norms of the family.

The United Nations is also concerned with violence against women as an obstacle to the achievement of equality, development and peace. It is observed that, *The United Nation Charter* having obligatory duty to promote respect for the principle of equality and observance of human rights<sup>183</sup>. It seems that, in order to promote gender equality and opportunity for women, there had been three United Nations World Conferences on women.

First Conference was held in Mexico in 1975, second conference in Copenhagen in 1980 and third Conference in Nairobi in the year 1985.

Honour killings further violates many other human rights namely prohibition against torture and inhuman treatment,<sup>40</sup> the right to personal liberty and security of person,<sup>41</sup> right to privacy,<sup>186</sup> right to health,<sup>42</sup> rights relating to marriage,<sup>43</sup> rights related to social security and inheritance etc.<sup>44</sup> Amongst violation of multiple human rights it is most significant to analyse the violation of right to life and non-discrimination clauses in relation to Honour killings as they are always compromised in this crime. The analysis of these rights becomes additionally important because the positive obligations arising from these rights encompass and apply to a wider array of human rights particularly prohibition against torture which is another significant human right in context of Honour killings.<sup>45</sup>

The prohibition against torture becomes more important because it further emanates the right to non-refoulement which prohibits returning of person where their life is under a threat of

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<sup>40</sup> UDHR Article 5; ICCPR Article 7; Similar rights are provided in CRC Articles 19(1) and 37; ECHR Article 3; ACHR Article 5; ACHPR Article 5.

<sup>41</sup> Article 3 of UDHR; Article 9 of ICCPR; Refer also ECHR Article 5; ACHR Article 7; ACHPR Article 6. <sup>186</sup> Article 17 of ICCPR; See also ECHR Article 8

<sup>42</sup> Article 12 of ICESCR; CEDAW Article 12; European Social Charter (ESC) Article 11; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) Article 10; ACHPR Article 16.

<sup>43</sup> Article 16 of CEDAW.

<sup>44</sup> Article 11 and 16 of CEDAW

<sup>45</sup> Kombe, Jean-Francois Akandji, 'A guide to implementation of the European Convention of Human Rights', Positive Obligations under European Convention on Human Rights Human Rights Handbook No. 7, pp. 17-27.

violence (or, Honour killing).<sup>46</sup> This provision is also at stake in Honour crimes because women who are under potential threat of Honour killings often seek asylum in safer countries.<sup>47</sup>

## **HONOUR KILLINGS AND HUMAN RIGHTS TREATIES**

Human Rights treaties particularly UDHR, ICCPR Article 2(1), ECHR Article 1 and ACHR Article 1(1) mandate states to secure and ensure right to life of individuals within their jurisdictions.<sup>48</sup> These treaties obligate states in two particular ways:

1. by mandating states to protect human rights as a fundamental duty by not infringing any right incorporated in the treaty bodies, and,
2. by putting a positive obligation in terms of an affirmative duty on states to “ensure” that none of such rights are infringed at the expense of other than state actors.<sup>49</sup>

The affirmative duty on states to ensure and respect human rights is wider than the duty of mere protection or to refrain from human rights abuses and thus needs to be seen as flexible separation between ‘respect for’ and ‘protection of’ human rights.<sup>50</sup> Thus, states must act beyond protection and ensure by exercising due diligence that women’s right to life in their territory are secured.<sup>51</sup> The failure of states in this regard is a breach of states inadmissible as judicial review was not sought from High Court in UK." Valerie Plant, 'Honour killings and the Asylum Gender Gap,' 15 Journal of Transnational Law and

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<sup>46</sup> Goodwin-Gill, Guy S. and McAdam, Jane, *The Refugee in International Law*, (OUP, 3rd Ed, 2007) p. 117; See also *Jabari vs. Turkey*, Appl. No. 40035/98, Council of Europe: European Court of Human Rights, 11 July 2000, available at: <http://www.unhcr.org/refworld/docid/3ae6b6dac.html> last accessed 29 Aug 2015.

<sup>47</sup> *N.S.F. vs. The United Kingdom*, "A Pakistani Woman was fighting her deportation from UK to Pakistan where she was in threat to life from her abusive husband. However, the communication was held

<sup>48</sup> It is the duty of the State to protect human life against unwarranted actions by public authorities as well as by private persons (United Nations, 1955). The duty of the State to protect the right has been interpreted broadly to include the following duties (UNHRC, 1982): (a) to prohibit arbitrary killing by agents of the State and to strictly control and limit the circumstances in which a person may be deprived of life by state authorities; (b) to conduct some form of effective official investigation when individuals have been killed; (c) to secure the right to life by making effective provisions in criminal law to deter the commission of offences against the person; (d) to establish law-enforcement machinery for the prevention, suppression, investigation and penalisation of breaches of criminal law; (e) in certain well-defined circumstances, a positive duty to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of another individual; (f) to protect persons detained in custody; (g) to ensure life's of persons being extradited or deported or those seek asylum. See Benninger-Budel, Carin, *Due Diligence and its application to protect Women from Violence*, (Martinus Nijhoff Publishers, 2008) 11.

<sup>49</sup> Kombe, Jean-Francois Akandji, 'A guide to implementation of the European Convention of Human Rights', *Positive Obligations under European Convention on Human Rights Human Rights Handbook No.7*, p. 48.

<sup>50</sup> *Ibid.*,

<sup>51</sup> Kabaalioglu, H.A, 'The obligation to 'Respect' and Ensure' the Right to Life' in B. G. Ramchara (Eds) *The Right to Life in International Law* (Martinus Nijhoff Publishers, 1985) at 165.

Policy, p. 1. positive obligations.<sup>52</sup> The state responsibility in the private sphere largely originates from the principle of positive obligation. The HRC has clearly stated that “states are under a positive obligation to take measures and prevent any deprivation of right to life by a ‘criminal act’ within their territories.”<sup>53</sup> The committee further asserted that “inherent right to life” shall not be construed in the restrictive manner and thus states are mandated to take and demonstrate positive measures taken thereof in case of any violations of right to life.<sup>199</sup>

The HRC in its concluding observations has noted and criticised the lenient domestic laws of the states in several cases infringing right to life particularly “in relation to high number of suicides of young females, female genital mutilation (FGM), improperly regulated ‘availability of firearms’ which directly endanger the ‘protection and enjoyment’ of right to life...”<sup>54</sup>

The committee further in *Herrera Rubio vs. Colombia* case involving disappearance of person in circumstances which may involve violation of right to life stated that the state parties must “take specific and effective measures to prevent the ‘disappearance of individuals’ and establish effective facilities and procedures to investigate thoroughly, by an appropriate impartial body.”<sup>55</sup> This judgement of the HRC is of paramount importance to bring state accountability in relation to Honour killings because often these crimes go unreported and persons are registered as missing without any due acknowledgement of a homicide or a violation of right to life.<sup>56</sup>

The IACHR in *Velasquez Rodriguez* case has similarly held that the obligation arising from

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<sup>52</sup> Lisa Gormely, 'Violence against women by Non-State actors, a Responsibility for the State under Human Rights Law: Amnesty International's Work on Domestic Violence' in Benninger-Budel, Carin (Eds), *Due Diligence and its application to protect Women from Violence*, (Martinus Nijhoff Publishers, 2008) 178.

<sup>53</sup> Human Rights Committee, The right to life (art. 6), CCPR General Comment No.6, 66th Session, 04/30/1982; See also Kombe, Jean-Francois Akandji, 'A guide to implementation of the European Convention of Human Rights', Positive Obligations under European Convention on Human Rights Human Rights Handbook No.7; In *Osman vs. The United Kingdom*, 28 October 1998, 115 the House of Lords observed that, “states to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.”<sup>199</sup> Ibid., para 3 and 5.

<sup>54</sup> “Female Genital Mutilation”, Lesotho, ICCPR, A/54/40 vol.1, (1999) 51 at para 255, “High number of suicides of young females” Ecuador, ICPR, A/53/40 vol.1 (1998) 43 at paras. 280 and 284 last retrieved 29 Aug 2015.

<sup>55</sup> *Celis Laureano vs. Peru* Human Rights Committee Communication No. 520/1993 (16 year old girl disappeared and it was held that its states obligation to investigate disappeared persons and also a duty to provide effective remedy).

<sup>56</sup> *Shafilea Ahmed* was killed for Honour by her parents and was reported as missing. However, in this case United Kingdom court has taken appropriate stance and rejected all cultural arguments and sentenced convicts to Life imprisonment. Helen Carter, *Shafilea Ahmed's parents jailed for her murder*, Friday 3 August 2012. <http://www.guardian.co.uk/uk/2012/aug/03/shafilea-ahmed-parents-guilty-murder> last visited 29 Aug 2016.

Article 1(1) ACHR implies the duty: “to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”<sup>57</sup> This duty clearly includes effective enforcement of law and providing an apparatus to establish human rights by providing adequate remedies to the potential victims of Honour killings.

The ECHR in *Airey vs. Ireland* has similarly and more comprehensively addressed the issue of violation of right to life and held that states are under a positive obligation to protect right to life in a “real, practical and effective way.”<sup>58</sup> The court in the above judgement extended the state accountability by imposing an implied positive obligation upon state.<sup>59</sup>

The right to life has been widely interpreted by human rights bodies and other courts to include wider array of right which have achieved a status of *jus cogens* and is also a nonderogable right in international law.<sup>60</sup> This again suggests that as a form of positive obligation upon states the international law attaches a legal responsibility upon states to secure right to life of individual within their territories from the acts or omissions of private persons.<sup>61</sup> Thus, customary international law can provide an additional foundation to bring actions against states which fail to protect right to life and other human rights violations.<sup>62</sup>

The concept of non-discrimination and equality is very context dependent and hence has no universally accepted definition in IHRL.<sup>63</sup> This section does not critique the substantive aspect of these rights but focuses primarily on the approaches which could be adopted in relation to Honour killings as a form of discrimination.

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<sup>57</sup> Velásquez Rodríguez Case, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACHR), 29 July 1988, available at: <http://www.unhcr.org/refworld/docid/40279a9e4.html> last retrieved 25 August 2016.

<sup>58</sup> *Airey vs. Ireland* (European Court of Human Rights, 26 March 1985) Application No.: 6289/73, para 26.

<sup>59</sup> Dijk, Peter van, “Positive Obligation’ Implied in the European Convention on Human Rights: Are the States Still the ‘Masters’ of the Convention?” in Peter R. Baehr, Monique C. Castermans – Holleman, Jacqueline Smith (Eds) *The Role of the Nation-state in the 21st Century; Human Rights, International Organisations, and Foreign Policy*.

<sup>60</sup> Gromley, W.Paul, 'The Right to Life and the Rule of Non-Derogability: Permeptory Norms of Jus Cogens' in Ramchara, B. G. (Eds) *The Right to Life in International Law*, (Martinus Nijhoff Publishers 1985) 148.

<sup>61</sup> However, for explicit and implicit limitations of State Responsibility, See Cook, Rebecca J., 'State Responsibility for Violations of Women's Human Rights' (1994) 7 *Harv. Hum. Rts. J.* 125, p. 172.

<sup>62</sup> Customary international law has binding effects upon states in two ways: uniform and consistent state practice and 'opinion juris sive necessitatis' See Charles worth, Hilary and Chinkin, Christin, *The Boundaries of International Law, A Femenist Analysis* (Manchester: Manchester University Press, 2000), p. 63.

<sup>63</sup> Frostell, K., ‘Gender difference and the non-discrimination principle in the CCPR and the CEDAW’, in Nykanen (Eds), *New Trends in Discrimination Law – International Perspectives* (Turku Law School Publications, Abo/Turku, 1999) 29-57, 33-34.



The section addresses three main questions namely, (a) under what circumstances can Honour killings be considered as discrimination under human rights law particularly CEDAW, (b) whether states failure in addressing Honour killings can be dealt with as states discriminatory practice, and finally (c) is Honour killings a multiple discrimination of rights of women in immigrant communities.

The concept of discrimination as provided in the Article 26 ICCPR<sup>64</sup> and Article 1 of the CEDAW refer to the “effect and purpose” of the discrimination provision which can be categorised as direct and indirect discrimination and institutionalised and noninstitutionalised discrimination both of which are prohibited. Direct discrimination is an explicit discrimination based on the comparable circumstances of sex and gender.<sup>65</sup> On the other hand, indirect discrimination is gender neutral discrimination per se but which results in disadvantaging a person on the basis of sex or gender.

Furthermore, discrimination can be institutional and non-institutional which can be done intentionally and unintentionally. In case of institutional-discrimination, the practices and procedures of a legal entity, company or society as whole is discriminatory towards gender or a particular group.<sup>66</sup>

## **HONOUR KILLINGS AND THE CONVENTION ON ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

CEDAW is one of the most comprehensive international legal documents that broadly and most significantly address woman’s international human rights.<sup>67</sup> Although, CEDAW lacks a specific provision on Honour killings, it provides a comprehensive protection to women against

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<sup>64</sup> Article 26 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>65</sup> Frostell, K., ‘Gender difference and the non-discrimination principle in the CCPR and the CEDAW’, in Nykanen (Eds), *New Trends in Discrimination Law – International Perspectives* (Turku Law (Turku Law School Publications, Abo/Turku, 1999) 29-57, 36-37.

<sup>66</sup> Makkonen, Timo, ‘Multiple, Compound and Intersectional Discrimination: Bringing the Experience of the Most Marginalized to the fore’, Institute of Human Rights, (Åbo Akademi University, April 2002) available at <http://www.abo.fi/media/24259/report11.pdf> last retrieved 25th Aug. 2015.

<sup>67</sup> Minor, Julie A., ‘An Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination Against Women’, (Spring, 1994) 24 Georgia Journal of International and Comparative Law 137, at 139; See for critical assessment of CEDAW applicability, Etienne, Margareth, ‘Addressing Gender-Based Violence in an International Context’, (1995) 18 Harv. Women’s L.J. 139.

such crimes.<sup>68</sup> In the context of Honour killings, CEDAW becomes more significant as it encourages eradication of ‘all forms’ of discrimination against woman and at the same time mandates state parties to meet a series of affirmative obligations to protect woman’s human rights.<sup>215</sup>

The most important articles under CEDAW which are directly relevant to Honour killings are as follows:

1. General obligation as specified under Articles 1-4.
2. State parties’ specific obligations as signatories under Articles 5-6.
3. State specific obligations concerning national penal codes in the context of Honour killings under Article 1, 2, 2(c), 2(f), 2(g), 5(a), 5(f), 15(1), 15(2), and 16(1) to end legal policy of excusing Honour killings.

The states which sign and ratify CEDAW are bound to fulfil its legal obligations arising from CEDAW provisions, more so specifically those that require state parties to take certain preventive actions to protect woman’s human rights, unless the state party has made any reservations to a particular provision.<sup>69</sup>

Article 1 of CEDAW defines discrimination against woman as: “discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Honour killings of women clearly fits the definition of discrimination against women as provided in Article 1 as this crime is a form of “distinction, exclusion, or restriction on the basis of sex” and motivated towards women. Women experience discrimination by reason of being a female as they may be killed for a purported act of dishonour or an inconsistent behaviour in the eyes of their male family members.<sup>70</sup>

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<sup>68</sup> Zearfoss, Sarah C, 'Student Note, The Convention for the Elimination of All Forms of Discrimination against Women: Radical, Reasonable, or Reactionary' (1990-1991) 12 Mich. J. Int'l L. 903 <sup>215</sup> Article 2 of CEDAW

<sup>69</sup> Madek, Christina A., 'Killing Dishonor: Effective Eradication of Honor Killing' (Winter, 2005) 29 Suffolk Transnat'l L Rev. 53, 58. <sup>217</sup> CEDAW Article 1.

<sup>70</sup> Lama Abu-Odeh, “Critical Directions in Comparative Family Law: Honour killings and the Construction of Gender in Arab Societies”, 58 Am J. Comp. L, 911 (2010).

Article 1 also mandates the state parties to take responsibility for discriminatory laws in their territory, regardless of the actual intent to pass such laws. Therefore, according to CEDAW provision it is not necessary to see the 'intent' of the state party, but to see whether the state has created any discriminatory law which adversely affect woman's human rights. In this regard, all that is necessary is to show a discriminatory effect of law against woman which in itself is sufficient to breach CEDAW provisions.

Moreover, Article 2(c) similar to Article 1 protects woman from discriminatory laws framed by the state parties. Article 2(c) states that the judiciary must protect women from any forms of discrimination at the hands of law.<sup>71</sup>

The traditional justice system in various countries such as khap panchayats in India and Pakistan's Jirga<sup>72</sup> often pass judgments detrimental to women, which implies that governments in such countries have failed to provide protection to women against such discriminatory practices through a competent nationally regulated tribunal.<sup>73</sup>

Article 16 specifically deals with state parties obligations concerning the removal of discriminatory laws against woman and more importantly in the context of Honour killings as this provision is directly applicable to family relations.<sup>74</sup> Article 16 states that: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations."

As seen above, Honour killings are largely attached to violations of several rights of women such as right to marriage, family etc which are clearly recognised by CEDAW in Article 16(1). Therefore, Article 16(1) is very pertinent to discussion of Honour killings as such crimes stem from the gender-based roles of male and female within the family and the community.<sup>75</sup>

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<sup>71</sup> Article 2(c) CEDAW.

<sup>72</sup> The Jirga system is a common place dispute resolution mechanism in Pakistan's rural areas. It has been reviled by activists for its role in enforcing however killing, rape as retribution during tribal feuds, the exchange of girls to settle disputes and the broader exclusion of women's voices. "Pakistan's Jirgas: baking peace of the expense of women's rights?" Ayesha Khan, open democracy, 30, June, 2017.

<sup>73</sup> Article 2(c) CEDAW; The Government of Pakistan has accepted this provision in 1996 by following declaration: "The accession by Government of the Islamic Republic of Pakistan to the [CEDAW] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan." [http://www.bayefsky.com/html/pakistan t2 cedaw.php](http://www.bayefsky.com/html/pakistan%20cedaw.php) last visited 29 Aug 2015.

<sup>74</sup> Article 16 (1) CEDAW <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16> <sup>223</sup> See also Article 16 (1) (a), (b), (c) CEDAW.

<sup>75</sup> Abu- Odeh, Lama, 'Crimes of Honour and the construction of gender in Arab societies', in Yamani, M., (Eds), *Feminism and Islam: Legal and literary perspectives* (New York University Press, 1996) 141-194, 150.

The CEDAW Committee has clarified that the essence of CEDAW lies in Article 2 and 16 and thus they strongly discourage any kind of reservation in this regard. The Committee explained that Article 2 is the central aspect to the object and purpose of the CEDAW, as it clearly mandates states to take ‘any affirmative’ steps to eradicate discrimination against women. Therefore, the judicial systems failure to provide equal legal capacity to women as that of men under Article 1 and 16(1), with its inequitable application of discriminatory laws under Article 2 (c) violates CEDAW.

The affirmative obligation of the state is one of the most distinctive features of this convention. Article 2(g) mandates state parties to repeal those provisions in the national penal code which are directly or indirectly of discriminatory nature against woman.<sup>76</sup>

Therefore, once states ratify CEDAW then they are under an affirmative obligation to repeal discriminatory penal provisions either legislatively or through other means.<sup>77</sup>

For instance, Article 2 clause (f) mandates states “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”.<sup>78</sup> Therefore, CEDAW in addition to the de facto relief by mentioning that states must eliminate discrimination inherent in customs and traditions also provides for de jure legal treatment to women.<sup>79</sup> In this regard, Article 2(f) and 5(a) clearly stipulate that state parties to CEDAW are under an obligation to abolish those customary and religious practices that are discriminatory towards women.<sup>80</sup> These provisions enhance the states obligation which goes beyond enacting mere legislations.<sup>81</sup>

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<sup>76</sup> Article 2(g) CEDAW <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article2> last accessed on 29 Aug 2016.

<sup>77</sup> Bernard, Desired, 'The Work of the Committee on the Elimination of Discrimination against Women: Its focus on Nationality, Custom, Culture and the Rights of the Girl-Child' in Andrew Byrnes, Jane Frances Connors, Lum Bik (Eds), *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Legislations*, (Commonwealth Secretariat, 1997).

<sup>78</sup> Article 2(f) CEDAW.

<sup>79</sup> General Recommendation No. 195 that “discrimination” includes “gender-based violence .... that is directed against a woman because she is a woman or that affects women disproportionately.” Genderbased violence includes “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” The Committee advises that traditional, patriarchal and archaic views that subordinate women to men contribute to gender based violence. These socially constructed gender based stereotypes legitimize and “justify gender-based violence as a form of protection or control of women.” “Crimes of Honour”, including fatwaas, “Honour killings,” rape, beatings and torture, forced separation and divorce, extortion and displacement, that are specifically and disproportionately targeted towards woman, are similarly justified as means to control women.

<sup>80</sup> Article 2 (f) and 5 (a) CEDAW.

<sup>81</sup> Arnold, Kathryn Christine, *op.cit.*, 16 Am. U. Int'l L Rev., 1383.



Further, in order to tackle the vagueness of words such as “adequate measures” and “appropriate”, which are highly dependent on the social, cultural, political and national environment of the states, gives a wide margin of discretion to the states to adjust their obligations. The CEDAW Committee has provided a list of legal, preventive and protective measures which the states should undertake in order to fulfil their obligation some of them are namely, public awareness and education programmes to change patriarchal attitudes towards women, shelter homes, rehabilitation and victim support services etc.

In addition, the state parties are under an obligation under Article 18 which requires submitting periodical report one year after ratification and then for every four years.

The primary problem in CEDAW to eradicate Honour killings is the right of reservation, as this right allows state parties to opt-out of certain treaty obligations.<sup>82</sup> For instance, Jordan and Egypt have made reservation to portions of Article 9, 15 and 16.<sup>83</sup> Although CEDAW Committee strongly discourages reservations to Article 16, Jordan remains a state party to the treaty.<sup>84</sup> Also, Pakistan has accepted CEDAW, partially subjecting to the Constitution of Islamic Republic of Pakistan.<sup>85</sup>

Further Article 29 (1) provides for a mechanism for dispute resolution, allowing the state parties to come to arbitration or before the International Court of Justice (ICJ) for the purpose of dispute resolution or interpretation of the treaty provisions.

Besides that, the CEDAW's enforcement mechanisms are generally quite weak and inefficient.

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<sup>82</sup> See Australian Human Rights & Equal Opportunity Commission, The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (explaining lack of committees power); General Federation of Women's Clubs, CEDAW Ratification: Fear vs. Fact (highlighting lacunas in enforcement mechanisms and criticizing no penalties in enforcement mechanism) (citing note 33) Madek, Christina A., 'Killing Dishonor: Effective Eradication of Honor Killing' (Winter, 2005) 29 Suffolk Transnat'l L Rev. 53, 56.

<sup>83</sup> Egypt: Article 16, 29 and 2; Jordan Article 9, paragraph 2; Article 15, paragraph (a) (wife's residence is with her husband); Article 16, paragraph (1) (c), Article 16, paragraph (1) (d) and (g); Declarations, Reservations and Objections to CEDAW <http://www.un.org/womenwatch/daw/cedaw/reservationscountry.htm> last accessed on 25th Aug 2016.

<sup>84</sup> The United Nations Division for the Advancement of Women, CEDAW, Declarations, Reservations and Objections to CEDAW (The committee asserting the discouragement to Reservations) <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> last accessed on 25th September 2016.

<sup>85</sup> The Government of Pakistan has accepted this provision in 1996 by following declaration: "The accession by Government of the Islamic Republic of Pakistan to the [CEDAW] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan." [http://www.bayefsky.com/html/pakistan\\_t2\\_cedaw.php](http://www.bayefsky.com/html/pakistan_t2_cedaw.php) last visited 29 September 2016.

Currently, there are two mechanisms of enforcement in CEDAW: the conflict resolution under Article 29 and the reporting requirement under Article 18.<sup>238</sup> However, states generally do not use the conflict resolution mechanism and very few nations have reported to the Conventions and Committee's standards.

Although the Optional Protocol has sorted to resolve this problem, the Protocol only binds to those countries that ratify the Convention.<sup>86</sup> As a result, the countries violating CEDAW face lesser resistance to their actions, establishing that the treaty's enforcement mechanisms are inadequate.<sup>87</sup> Further, even if the countries submit the reports, there is little action the CEDAW Committee can take to remediate the identified problems.<sup>88</sup>

Moreover, the CEDAW does not specifically mention Honour killings under any of its provisions.<sup>89</sup> Although it is impossible for a treaty to cover every potential violation, consequently the lack of term in CEDAW leaves room for interpretation of its scope to the individual state parties. Therefore, countries mould the definition to shed their liability for Honour killings or disregard discrimination against women.<sup>90</sup>

In a nutshell, Honour killing, which is targeted by hate and forgotten by the law, creates an irreparable imbalance in the society, victimising the vulnerable in the name of safeguarding the Honour of a particular family, clan or community. It is a serious threat to the harmony and integrity of the country and should be handled discreetly. Emphasising the same, the next chapter provides insights on the Legislative initiatives of Honour killing.

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<sup>86</sup> Banks, Angela M., "CEDAW, Compliance, and Custom: Human Rights Enforcement in Sub-Saharan Africa" (2009). Faculty Publications, Paper 78.

<sup>87</sup> Madek, Christina A., 'Killing Dishonor: Effective Eradication of Honor Killing' (Winter, 2005) 29 Suffolk Transnat'l L Rev. 53, 56. Australian Human Rights & Equal Opportunity Commission, The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (explaining lack of committees power).

<sup>88</sup> Arnold, Kathryn Christine, 'Are the Perpetrators of Honor Killings Getting Away With Murder? Article 340 of the Jordanian Penal Code Analyzed Under the Convention on the Elimination of All Forms of Discrimination Against Women', (2001) 16 Am. U. Int'l L Rev., 1343, Part IVB.

<sup>89</sup> Tseming Yang, "International Treaty Enforcement as a Public Good: Institutional Deterrent Sanctions in International Environmental Agreements" "He discusses treaties limitations in covering all aspects) at p. 15 (citing note 33)

<sup>90</sup> The conventional view of human rights holds all forms of discrimination under the same situation as distinct issues. See also Akermark, 'Minority women: international protection and the problem of multiple discrimination', 85-119, in Nykanen (Eds), New Trends in Discrimination Law- international perspectives (Turku Law School Publications, Abo/Turku, 1999) pp. 105-108.