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RIGHT TO MARRY A PERSON AND HONOUR KILLING - AN APPRAISAL

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ABSTRACT

Honour is the possession of a human being who has existed, In the name of the traditions, culture, or community norms, no one gets the right to violate another's right to freedom to choose a life partner. It is always illegal to do so, to kill one person just for the sake of the honour of the family, additionally, it violates both the Constitution and the law. The constitution guarantees every citizen the right to life, with dignity as mentioned in Article 21 of the Constitution of India. Since honour is connected to life, the Indian Constitution recognises it as a fundamental or human right. Every individual has the right to protection from any harm to their life. Every person has the right to choose their spouse. It also includes the fundamental right to choose one partner as their opinion. Therefore, the right to life includes the right to marry as well as the option to choose one's own partner for their whole life. Social pressures do not have any right to violate anyone's freedom to live with honour and dignity. However, killing members of one's own family for the sake of family honour is a criminal act, and the law includes statutes and regulations to deal with these criminal actions. While killing someone amounts to murder in order to kill a close family member, it will not be possible to restore or recover the so-called "lost family honour." The right to marry and the concept of honour killing in India are both addressed in the present study in view of Family law. On the same topic, some important Supreme Court decisions are also discussed.

Keywords: Honour, possession, norms, unlawful, illegal, dignity, statues.

INTRODUCTION-

In India, people have more ego issues than rationality. Marriage in India appears to be an agreement between two partners for their entire life. The majority of the country's marriages are decided by the choices of elders with whom so ever they will marry or when. Children are not even allowed to see each other before marriage. While India is a secular country, when a boy or girl wants to marry into some other religion or convert their religion for marriage, it turns into a national debate topic. If the children wish to marry another person of another religion or go beyond the family limits it leads to the honour killing of a person which is not legal in India.

There are several religious conflicts in every Indian household, but instead of appreciating love and understanding in relations, religion and castes were valued, first of all, the family of the one check the qualifications, then horoscopes and astrology, if qualified, then financial backgrounds and if any one of the criteria is not fulfilled, they will not let them marry. So practically, it is a contract between both families. In the middle of all the traditions, the right to marry a choice is lost in the burden of responsibility, ego, and family respect. Society will lose to see the real concept of marriage amidst all the customs and norms followed by a family.

The constitution of India provides Article 21, which is the Right to marry by their own choice.



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This privilege can take a law to be fair, just, and reasonable. The freedom defined by the Constitution as a fundamental right is linked to each person's ability to make choices of their own. The basis of constitutional liberty is just the right to have faith and to believe.

"The role of society to decide & choose our partners is non-existing."

Article 21 is a fundamental right which is expansively large, that gives the idea of the right to marry and choose a life partner which addresses the rights to life & liberty. Another aspect of the right to life is the right to marriage. The Human Rights Charter includes the right to marry as part of the freedom to form a family. No matter what a person's gender, they have the freedom to marry whomever they choose. Numerous courts across the nation have viewed the ability to marry as a fundamental component of Article 21.

In our country, forced marriage, and child marriage are prohibited. It is unlawful to take another person's life by one's choice, especially for no reason or just the reason of the family's respect. Every individual has the right to choose their partner. However, one could harm one another for the sake of personal honour, and killing the married pair against the will of the family does not at all recover the honour; instead, such activity leads to murder. It has been found that it involves various types of torturing, assault, rape, forced marriage, and child marriage. Dowry deaths, confinement within the house, and murder to recover the family's honour. The act of honour killing takes a person's life. It is the most severe kind of abuse to the victim or the victim's family. Fundamental right when a girl is killed because she chooses her life partner, she loses this right. This article involves all the rights related to the right to life and liberty such as the freedom to marry by own choice. Honour killing is a curse, not a blessing. Punishment cannot constitute this type of heinous crime. It is the loss of the victim's parent. The solution is not to kill a person for the sake of honour. It cannot replace

a person's death. The most horrible crime is honour killing. Although the criteria for this kind of crime are different from those of murders, the data observed shows that honour killing leads to killing one person by the preparatory of the family generally the male member does it by losing his temper. This type of activity leads to a national embarrassment done for the sake of family honour. It is a matter of concern where a lot of cases are unreported in India usually because of the fear of punishment or custom practice.

HISTORY IN INDIA:

The honour killing is not new in India it was from ancient times. It has dark origins that can be found almost in all religions. Centuries ago, famous epics like Ramayana and Mahabharata were written in India, and the origins of battles between the two sides can be seen centred around respect of the woman. Like the Ramayan, war was fought for the honour and dignity of Sita, and the Mahabharata war was fought between the Pandavs and Kauravs for the dignity of their wives. Its people gave up their valuable life to protect the honour of their ruler and their families. This is not an act of individual, but it creates the idea that, if such a big war was fought for some reputation of family. It also can play the same to protect their respect. In general, the old ritual of Sati can be related to keeping the dignity of a woman whose spouse died and the woman gives their whole life in the burning fire of her husband. And there could be many stories like this that remain secret behind the curtains of tradition, where people's lives were sacrificed for the cause of honour and dignity. There is no single instance in history that can be identified as the first case of honour killing.

Again with the emergence of the Muslim empire, some traditional were added as those who retained their own women under covers in the title of honour has now been proven by the men of the family members, as such the trend set to continue to this day in full view, in certain countries it subjects to highly biased legal



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provisions that can provide an exception to basic concepts of justice It was the British empire, who gave a new point of view on women's issues, but although people supported to put an end to several unjustified actions which women experienced at the time, nothing much useful can be said regarding their own effect of honour killing which is outlined in the ancient period as well as the modern period.

India has historically had a wide variety of wedding systems. Some were unique to the region, such as Swayamvara (which was used by Rama and Sita).In a swayamwara, the girl chooses the boy of her own choice by garlanding the men. The other examples of marriage in historic India were the Gandharva marriage, Dushyanta and Shakuntala. In the ancient period, society got trapped women by confining them permanently, firstly in their parent's house, then in their husband's house and finally in their children's house in old age. They got no right to wish to marry off their own choice. Early marriage of girls as Balika Vadhu in which girls are married before they were reached to their puberty.

With the increasing social reform that followed Economic growth and cultural growth after independence, most experts predicted the slow collapse of planned weddings and the increase of the so-called "love marriages. "That has not occurred in the Indian culture before while experiencing the drastic change. Parents usually arrange for marriage to meet with several suitable spouses with an acceptable right. These arranged marriages are the result of exhaustive research by both the girl's and boy's families. Child marriages are also on the decline and are now illegal in India (the legal age of marriage is 21 years for males and 18 years for women), so the phrase "arranged marriage" generally referred to weddings with adults who are passed the age of the adult stage. With the rising of the internet, the search of potential boy or girl became easier to find a right partner through their mobile phones via shaadi.com.

LITERATURE REVIEW:

The meaning of Honour is prestige which is used as a special request and reputation. In a person's life, honour is a very valuable thing. But when it comes to the right not to marry it leads to Honour killing. In honour killing, there are two jargons. First is honour which is reputation and another one is killing which is fear. Honour killing is equal to murder which is done by the family member who is the victim of the killing, causing the elder one of the family to convict the girl/boy who had brought shame to the family or violated the traditions, culture, or norms of the family. In India, the various cases of Honour killing lead to murder. The only difference in murdering and killing is the intention or guilty act (involving men's rea and actus reus). When the person is killed or having men's rea or the actus reus (guilty intention), first, same as the person who get killed in an accident or a soldier killed in the war or second when any member of the family kills the person for the sake of some family honour but no one understands that if one dies how can the family's honour restores, third in the criminal offence which is given in section 300 in the IPC,1860 The punishment for murder in section 302 in the IPC, 1860 however, that any person commits are same are punishable under this sections. The killing of the family member is only the victim of the near relative of the family.

Changing dynamics in Indian society: -

While in years ago, I listen to a lot of stories from my parents, they told me about how my grandma was married at the age of 17 years and had never seen her husband prior to marriage. During that time, I understood that at least my mummy married my papa without following these norms before marriage, Later my elder sister married her lover, the love marriages were set up that time, and after years ago her son grew into a young boy, and at the time live-in-relations appears to be highly appreciated by the society or community and now, the same-sex marriage were to be established in the near future. There was no



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right to marry in the ancient period but now there are a lot of changes in our traditions as well as culture. Some people don't follow the traditions, some people are bending the norms as they wish, and some people follow the rules strictly as arranged marriages only happen in some families. However, not all people are open to this shift, and the battle of culture over modernism is left certain scars in the form of honour killings.

Our country seems to be split into two divisions: India (the urban portion) and Bharat (the rural portion), so this division represents what is the views of how current society on honour killing. This also reflects the same old notion that only a woman is a possession of male family members. This has become more obvious and evident because of television and other forms of social media; or else, the progress of time would just toughen the crime of honour killings and made it more common in various countries around the world. Few nations, whether direct or indirect, accept honour to serve as a reason or defining element for murder, permitting the victims to go freely or suffer lower punishments. The basic fear, distrust, doubts, and denial of a male relative about a dirty act is generally quite enough to perform a horrible act of honour killing.

Reasons for the choice to marry a person and honour killing: in the terms of honour, the word is a very precious and unique property to all the society of people. The weight of the honour as the property is measured on scales of female behaviour as sexual, cultural, and other aspects. Moreover, the man and women both are performing the act of and to be the victim of honour killing but as compared to men, women are mostly found to face violent attacks.

IS THERE A MISTAKE TO BE A GIRL? A GIRL CAN SUFFER A LOT OF PROBLEMS IN HER DAILY LIFE SUCH AS FEELING DEPRESSION OR HATRED

When the girl is marrying the person of her choice. Society opposes it. Her right to choose, privacy, to live with freedom and right to marry has been tossed. Rights if the women get replaced by forced marriages, dowry death or child marriages. Society must know if they kill one person, they get no solution for the right not to marry or restores the family's reputation of boy/girl. Usually, in Indian society the people who can go beyond the traditions, culture and norms are facing very strange or insensitive behaviour from others, especially the girl who faced abuse, tortured, raped or forced marriages, and was locked in her own house, treats like a slave. However, the girl was deprived of her fundamental right which is the right to live, and liberty as mentioned in Article 21 of the Constitution of India.

The girl went to choose a partner of their own's choice of the same religion, caste, or creed.

Drawing analogy: The word killing cannot overshadow murder, which is a heinous crime in India, the use of the word killing is not vague, but I did like to draw attention to another view: the family of the victim where the victim's relative convert to victim's opponent, is much more violent because of the victim is constantly experienced some kind of stress, tension, fear, anxiety, and danger. When her own family member was part of the murder. When it came to family members in the case of murder. Noting can compensate for an innocent person's life the words honour and killing is not preventing us from believing that this is a murder act. Offenders are much riskier if they have not taken forgiveness of their own beloved family, and strangers are more likely to risk facing the cruelties of these criminals.

Demographics: In terms of reporting the data of honour killings, the northern parts of India first like Rajasthan, Punjab and Gujrat, and in the southern areas like in Tamil Nadu, western areas, and eastern like Gujarat are the most populated parts of India. The main reason for these crimes is people who marry without their own choice, especially when there is an intercaste marriage or inter-religious marriage especially, as between members of the same gotra, or culture. According to the NCRB data



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from 2014-16, 281cases of honour killings were reported in India. The researcher believes that this figure is significantly underreported due to misreporting of deaths under common killings. In the western states like Uttar Pradesh, there are 30% of cases reported and in some other parts of India like West Bengal, honour killings are completely stopped a year ago. The khap panchayat (Uttar Pradesh) takes the hands into their own hands and changes things into violent activities for it. Khap panchayat is encouraging honour killing and interfering in people's life. These types of organisations do not have any control over the laws and provisions of the Indian country.

Articles on the right to marry a person choice are a fundamental right by Hindustan times:

The Karnataka high court said that right to marry a perperson'soice is a fundamental right given to all the citizens of India. There was a case of Wajeed khan, and software engineer, who filed a case in the Karnataka high court that her lover in imprisoned in her house by her parents. They both works in the same company. The woman Ramya told the court that her fundamental right is infringed by her parents who were against her marrying the khan. She told the court that she has been leaving in the NGO for weeks after a complaint led by her.

The judgement comes by the high court that every person has the right to live with their choice in fact if they wish to do an inter-caste marriage or inter-religious marriage.

Articles on the Honour killing by Indian Express: three members of girl's family killed the young Dalit boy

A Dalit boy was killed by the Muslim girl's brother and cousin. In Friday night he was killed by the three boys and he was missing from that day only. After two days Police found his body and set for the post-mortem report.

The Police got the autopsy report which confirmed that the boy died because of strangulation, later the Police arrested the boys for the death of the young Dalit. But the Police stated that there is no mark in the body of that boy. In between the questioning, the three of the boys confirmed that they killed the girl because they caught the boy in their house with their sister and killed him. Police have arrested the three accused and also violate the SC/ST (Prevention of Atrocities) Act.

INDIAN LEGAL FRAMEWORK:

The Indian constitution deals with a fundamental document which is for the protection right of the citizens. The provisions from the constitution provide right against the right to marry a person—

- The 2006 Child Marriage Prohibition Act
- Article 21 of the Constitution of India
- Enacted by Guardians and Wards Act, 1890
- Enacted by The Majority Act, 1875
- Enacted by The Family Courts Act, 1894
- Provides The Protection of Women from Domestic Violence Act of 2005 and it was created to safeguard the women against domestic abuse.

And the provisions for Honour killing are:-

- Provided in Article 14 which is the Right to Equality.
- Provided in Article 15 (1) and (3), provides for the Discrimination towards people based on their birth, race, caste, religion, or gender is prohibited.
- Provided in Article 17 which is the Abolition of Untouchability.
- Provided in Article 19 (1) which is the Freedom of Speech & Expression.
- Provided in Article 21 which is the Right to Life & Liberty.

Honour killings are the primary targets and the men are second targets in the majority of the cases in India and it turned into a heinous type of gender-based violence. The freedom of a woman or man to express their decision is not given to them, resulting in such killings and a brutal of person's rights to choose their partners, the basic motive for murdering is



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religious or caste-based, This can be justified based on division. This act is totally in violation of the provisions of the Constitution. Even when not needed, the Directive Principles of State Policy (DPSP) are "applied to analyse the country's ability to govern successfully".

As a result, Article 39 (a) obliges "the state to provide the proper subsistence resources to all persons. But, in most cases, honour killing cancels the woman's life". Same as in the Article 39 (e) and (f) requires "the state to protect infants and young children from manipulation and provide material for the betterment of the children". As opposed to the old tradition practise of honour killing, many children, teenagers, and married couples are thrown in dangerous situations and threatened with their lives.

• Defined under the Indian penal code, 1960.

As previously stated, the person who does honour killing is considered murderers. But it is hard to find criminals because murderers are usually protected by society. The offender also may violate Section 300 of the Indian Penal Code, 1860, as a defence, claim that he acts in reply to a serious and sudden offence, without no plan or intention (Mens rea). The victim's act became so brutal so that he lost all self-control and reacted wildly, on what he was doing, and that was an act of dishonouring the family. In the eyes of the law, still, the crime has taken place in fact the kind of punishments are given.

Section 304: states the case of culpable homicide without amounting to murder. If any such act is done with the intention or without the intention or caused death, the punishment is life imprisonment or ten years of imprisonment.

Section 307: Murder attempt is defined as performing an act with the intention or knowledge and being aware of all the facts that this caused death, this could be the guilty of murder. If any such act causes harm to another

person, the penalty is imprisonment life or imprisonment for 10 years and a fine.

Section 366: explains the forced marriages that have taken place in India.

Section 120 A & 120 B: defines criminal conspiracy and the punishment of criminal conspiracy.

Section 106,107 & 306: It provides with the "right to private defence" when there is a risk of harm to an innocent person, abetment and abetment of suicide.

Section 34 & 35: When such act is criminal and being done by the knowledge or intention to do so.

• Defined under Hindu Marriage Act, 1955

In India, Marriage plays a very important role in everyone's life. Law has rightly mentioned all the laws and provisions of Marriage in the civil as well as criminal branches and gives protection to all the people of the society. Section 5 of the Hindu Marriage Act of 1955 defines the criteria for the establishment of a valid marriage. it also describes some kinds of laws related to prohibited marriage, child marriage, inter-caste marriage and live-in relationships.

Defined under Special Marriage Act, 1956

This forms a special kind of marriage that takes place in India including inter-caste and inter-religious marriage. The act governing rights to form a relationship in the other caste or another religion by changing their religion so that they can solemnize a marriage.

Defined under the Scheduled Castes and Scheduled Tribes which is provided in the Prevention of Atrocities Act, 1989

In ancient times, the lives of Dalits is not easy as they feel the assaulting, dishonouring, forcing of women, and sexual exploitation of the ST/SC people. Despite the numerous cases of honour killings whereby caste and religion are the reasons for the crime, this act was performed with the knowledge that it had a connection to murderers.



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Defined under the Protection of Women from Domestic Violence Act, 2005

The provisions made by the Protection of Women from Domestic Violence Act of 2005 are providing more protection of women's rights granted by the Constitution of India n.

These women all appeared to be victims of domestic abuse or some kind of disrespect for reasons.

• Defined under the constitutional law & provisions:

There are some laws in the Constitution of India which deals with the act of honour killing such as Articles 14, 15 (1) & (3) and 21. Honour killing violates the right to live, freedom of movement, right to equality, right to security and right to choose. Hence, if these constitutional provisions are properly stated then the social evil of honour killing can be combated.

JUDICIAL PRECEDENTS:

- In the landmark case of Shafin Jahan vs Ashokan K.M which is a very popular case known as the "Hadiya case" proved as a crucial role in the topic of women's right to their own's choice. The DY of Chandrachud decided the case of Hadiya's marriage to her woman in the support of Hadiya. The case is being handled by Supreme Court's three-judge bench, which again is constituted by Justices DY Chandrachud, Ajay, and Dhanjay. Hadiya, a Hindu woman who married a Muslim guy, converted to Islam and changed her name in the procedure. In court, Hadiya's family was successful in stopping her marriage. She was also a 25-year-old person, but her father has taken custody of her and handed her to him. The word "Love Jihad" is very famous at the time in this case. The Supreme court said it is valid to choose the religion and life partner of her choice is valid in the eyes of the law.
- In the same year, the Supreme court ruled in the case of **Shakti Vahini vs Union of India** came on the khap panchayat and deals with the issue of honour killings. The court gave

the judgement of 54 pages and said: "that it is the government's responsibility and duty to protect the life of the people". The court further said, "that there is no authority for anyone to come in between the two adults". the court also held that they can take action against the khap panchayat who are doing unlawfully under the eyes of the law. Justice Mishra said honour killing is laid to the ill-treatment of the person by the victim's family and amounts to killing without any real mistake just for some sort of family honour. He said the right to choose and not to choose is one's personal honour. Even the family of a girl/boy cannot take the fundamental right or human right to marry off them owns choice as mentioned in Article 21 of the Indian Constitution. This important decision established the framework for the law to serve both legal responsibilities and the individual's personal interests. This decision is an illustration draw an example in the Apex courts to use the liberal jurisprudence.

Master and Another, there were six members of the family killed by the three persons who are punished in the case of Honour killing by the Supreme court. The offenders were sentenced to life imprisonment, which was again ruled by Justices Harjit Singh Bedi and J M Panchal. The Supreme Court refused to punish the appellants Master Krishna, Ram Sewak, and Kishori to death because the offence occurred more than 20 years ago. But it punished the High Court for dismissing the accused and rejecting the testimonies of the child and other witnesses.

Similarly, in the case of **Lata Singh vs State of U.P & Anr.** Expressed their problems like abusing, torture, harassment, and violence against the young people who married against the norms of society. According to the court, the people who have done the act of honour killing are punished for their act or committed the murder of an innocent person. Thus, for each case reviewed by the Supreme Court, it tries to create more strict protections for the lives of India's youth. Law without justice is blind, as according to Justice Krishna Iyer, if there are



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existing laws but nobody stands out to address the issues of the poor.

ANALYSIS:

The right to marry a person for family honour is illegal in India, and various kinds of laws are made for this. In the modern world, the view of society is in the ancient times that when a girl is grow up and turns to puberty married a boy who belongs to the same religion, the same caste and despite all that they check the background of the boy and if the boy's family does not fulfil all the criteria of one another they reject them just for following some sort of traditions or cultures. In the era, where people do Same-sex marriage on one side and the other side, the people find a biodata, and go and see how the boy/girl is looking. Why are the people in India doing such type of nonsense? Why the people in India don't ask a girl or boy whenever or whomever they wish to marry as the other countries do? This type of mentality in people promotes crimes related to marriages in India and that's why the cases of divorce are high these days. After they solemnize a marriage, the family of the groom wishes for a dowry and if their wishes are not fulfilled by the bride's family. this leads to dowry death. In modern India, still we have such type of people who gives more importance to a girl than a boy because boy presents their family, their gotra or their traditions right? That's why the people of India give preference to the boy. Society doesn't think about the consequences of it this gender inequality and encourages crimes including dowry-related deaths, harassment, violence, gender discrimination, harmful traditional practices, rape, and exploitation in India and much more, the woman in India is facing a lot of problems in their day-to-day lives but why do the elder ones or the community give preference to men? In fact, in the twenty-first century, women are more literate than men, more employed, and more stable than men why do the people of the community or society have such type of narrow thinking, so men have all the disadvantages to be a girl? Is there any mistake to be a girl in Indian society? I thought, yes because society is giving no rights to girls/women, there are uncountable cases recorded in our day-to-day lives such as adultery, rape, dowry death, honour killings etc. A lot of provisions are made for it but the result is nothing, still, the cases are high so it is a mistake of the girl, right? The people of our society do not have that much sense that a woman is equal to a man in all fields.

- Is the Right to marry is freedom for all Positive or negative right?
- Who is the victim in the honour killing?

The right to marry is a positive right, but it is a special one which is a fundamental right.

This is not a right to state benefits, as is the right to an education. This is a "powerful right," and the right to impose legal duties onto intimate relations. The right to marry is freedom for all whether it is a woman or it is a man. Everyone has a choice to choose their life partners with whom they can spend their whole life. The government of India made several laws and provisions, so the people will follow but the people of the community or society break the rule or turns a small mistake into a heinous crime. The Indian Penal Code, of 1860 gave the punishment for the same. Although, the Indian Judiciary has again stated that the right to marry and the right to partner of one's choice are part of Article 21 (Right to life and liberty) of the Indian Constitution. The above case is the example in the case of Lata Singh vs State of U.P & Anr, wherein the Supreme court held that those who is not a minor or have a sense of right or wrong is the right to marry of their own wish. Later, in Shakti Vahini vs Union of India, again the two adults have the right to choose their life partner is their right of Freedom of choice under Articles 21 and 19 of the Indian Constitution. Moreover, the right to freedom of choice is a positive right as it is a matter of individual happiness which is the personal liberty of the person.



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When the society or traditions is not giving rights to any person. it tends to be a negative thing and turns into several criminal behaviours. One of them is Honour Killing where the victim has belonged to the same family. It is important to note that it is not just women but also men are the victims of honour killings. It includes both male and female victims. Whether it is men or women, killing is the issue. The individual who violated the right is held responsible for the murder. It is difficult because of adultery or even unlawful relations between a man and a woman, For example, if a girl is raped, the rapist is killed instead of the victim. If a woman gets involved in prostitution, then she is the guilty person and therefore the victim, not the men who visit her. when both parties are guilty, as in adultery, both deserve to die, the husband first, and then the wife. The male is killed by the family of the woman/girl whose respect has violated, and the woman is killed by members of her own family. In most honour killing cases, the girl does not accept her involvement. Sometimes when the woman's family member hides proof of honour killing. The woman's parents hold the man responsible. They kill the man by charging that the woman was raped, even though knowing of the act and that he is her lover.

CONCLUSION:

Honour killing is required to ensure the family's dignity and honour to let them marry a person's choice by not infringing anyone's right. Therefore, there is no honour in killing someone, especially someone is who is the closest one or the family member; Since religions or customs will always be subjective and open to misinterpretation, the realms of 'religion' and culture should not be used as explanations for the killings of women or any individual. Every person has the right to live a decent and normal life. As a result, the only method to prevent such immoral behaviour is through strong laws. No religion or culture can support the heinous crime of honour killing. The right to believe does not really mean the right to kill. There have been numerous crimes and criminals declared. The

right to believe does not mean the right to kill. Even though the judiciary has pronounced numerous of crimes and criminals to be punished, a few criminals have escaped due to legal loopholes. One such problem is the lack of a specific regulation or provision in Indian law that deals with honour killing. We can continue to go far toward protecting some young lives if the existing set of laws and laws and legislations are properly followed. A patchwork of regulations is insufficient to remove the threat of honour killings. Now let handle the variety of laws with due caution. While laws can only help to punish criminals, the criminal itself can only be eliminated if people's thoughts or mindsets are changed.