ABSTRACT

On 17th April 2018, various national dailies carried a peculiar news article about Ishapur Kheri village of Sonepat district, Haryana. By an order of the Khap Panchayat, this village barred girls from using mobile phones and wearing jeans as it makes them elope with boys. To our dismay, this order was hailed by most of the villagers. Referring to an incident where three college girls had eloped with boys, one of the supporters of the order argued, “When they (girls) use mobile phones, they get in touch with boys and make plans to run away with them. By wearing modern clothes like jeans, they attract unnecessary attention.” Numerous such incidents have been reported in the recent past where absurd orders have been passed by various Khaps.

This paper is set against the backdrop of such unreasonable diktats and tries to examine what makes the people actually accept and follow these orders without any protest. It deals with the ground-level situation of the Khap dominated areas along with the assessment of their constitutional validity. It also provides with suggestions to control the menace that these Panchayats cause.

Keywords: Khaps; Khap Panchayat; Moral Policing; Inter-caste marriage.
HOW IT ALL BEGAN? – HISTORICAL PERSPECTIVE

The origin of Khap Panchayats can be traced back to the Vedic period. It is believed to be dated back to when migrating clans or their segments settled in the area by conquering existing villages. A cluster of such villages formed a Khap. There was no uniformity as to what constituted a Khap. It could be organized either on the basis of caste or gotra or geographical vicinity. Decisions taken by them were binding on all members, and on the rare occasions when a party desired a review, it could approach the Sarv-Khap (all-Khap), a higher assembly of representatives from all neighbouring localities.

Khap Panchayat evolved as a socio-political institution to maintain law and order in village life. It acted as a dispute resolution body. It also made sure that no one acted in defiance of the prevailing social norms. If required, punishments were imposed on those who disrespected the sanctity of these social norms and customs. Ordinary people started accepting these Khaps because of their ability to resolve disputes. People used to conform to their decisions. From upholding the societal customs and norms, they assumed the role of ‘protectors’ of these customs and thus established a firm foothold in the village life.

A look at the varied functions that Khaps performed is instrumental in analyzing their present social position. During the Mughal Era, Khaps played a very important role in acting as an intermediary between the rulers and the Jat landlords. While Khaps were used by Jat landlords to strike bargains with the Mughal rulers to maintain or strengthen their role as intermediaries in the land revenue system, they were also used to maintain control over the artisan classes, tenants, and castes in menial occupations. They also performed various administrative functions such as collecting taxes. Thus, Khap Panchayats became important in the lives of Jat landlords to maintain control over the society.

This period of Mughal rule was followed by the colonial period. Even in this period, Khap Panchayats continued to serve the interest of the influential class. This continued even after

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5Ajay Kumar, Khap Panchayats: A Socio-Historical Overview, 47 EPW 59, 59 (2012).
6Ajay Kumar, Khap Panchayats: A Socio-Historical Overview, 47 EPW 59, 61 (2012).
independence. After independence, the Khaps also actively participated in different movements for the rights of Jat peasants. This further placed them on a higher pedestal in the eyes of the Jat community. Thus, owing to their historical significance, this social acceptance can be witnessed in the present times as well.

RETROGRADE FORM OF CONSTITUTIONALLY MANDATED PANCHAYATS

“Just as the whole universe is contained in the self so is India contained in the villages”⁷- Mahatma Gandhi. These words of Mahatma Gandhi, who strongly believed in strengthening the villages and building the village economy, accurately capture the intention behind installing Panchayat institutions in Indian villages. Panchayat forms the backbone of Indian villages since 68.84% of the population still inhabits rural areas.⁸ If utilized properly, the statutory Panchayat can be instrumental in bringing about development in rural areas. Development in these areas is not just a mechanical process. It requires the people in power to have a vision for development yet be sensitive to the needs of the local people. In a way, Panchayats can help in organizing the villages by giving those doses of development in certain moderated quantities and ensure that the benefits of development percolate down to the grass-roots. They were intended to undertake varied functions which can be broadly categorized into representative, regulatory or administrative and service or development functions along with dispute resolution at the local level. Keeping in mind the immense potential of development that these institutions hold, they were given Constitutional status by the 73rd Amendment Act of 1992.⁹

Khap Panchayats may look like the Panchayats explained above. The resemblance in nomenclature is a plausible cause of that. However, nomenclature is the only thing that is common in the two institutions. Other than that, they are vastly different in terms of their function, structure, and constitution and above all, in terms of their legitimacy. Khap Panchayats, which are essentially caste Panchayats are formed with a view to protect the traditions and practices of a particular caste from any sort of innovation which might ‘contaminate’ its ethos and values. This is the underlying

principle which governs all the activities that these Panchayats undertake, for instance- honor killing, female feticide, and constraining marriages and so on. Therefore, where the aim of a Panchayat is to take the rural population forward by breaking free the shackles of caste and the regressive practices associated with it, the aim of a Khap Panchayat is to protect these very regressive practices. Therefore, Khap Panchayats is a retrograde and regressive version of the constitutionally mandate panchayats.

ANALYSIS OF THE PREVAILING SITUATION

Khap Panchayats are prevalent in those areas which have been historically dominated by the Jat community. These are present day Haryana, western Uttar Pradesh, eastern Rajasthan and some parts of Punjab. In these places, Khap Panchayats wield unrestricted and unchecked power without any legal basis to it. The resistant and dogmatic mentality of people at large in villages, the shocking inaction of the police, the reluctance of the state government to catch the bull by the horns further contribute in strengthening the social position of these Khaps. Khap Panchayats form an integral part of the rural social architecture and have existed in the past. These Khaps capitalize on the four cornerstones of rural life, that are, “aikya (unity), izzat (honor), biradari (community) and bhaichara (brotherhood).” Since these Panchayats claim to protect the values that every member of that particular community holds in high regard, their effectiveness is much more far-reaching. Khap Panchayats mainly deal with social problems. Originally, these Panchayats were meant to deal with issues threatening the peace of villages, disputes over property and inheritance and sexual/marital transgressions.

As they exist today, Khap Panchayats have certain features. Firstly, they are an all-male institution which explains why mostly it is women who bear the brunt of their punishments. Secondly, they enjoy massive appeal and social power. This is because generally, the most dominant and powerful members of a particular caste participate in the decision making. They are senior citizens who are happy to take up the responsibility of protecting their tradition and

honor and upholding public morality. These are the people who are influential and wealthy and are thus revered by the ordinary people who cannot afford to annoy them. Thus, the orders and diktats of these panchayats are followed like the ‘gospel truth’. Thirdly, these Panchayats use not only unconstitutional but also barbaric means of punishing the ‘offenders’. Their ways reflect the deeply rooted patriarchal mindset which is as far away from the concepts of social justice and equality as is possible.

Khap Panchayats usually work to keep the honor of the caste intact. In this process, these Panchayats give such decisions which pose the question whether we truly live in a free country. The barbaric punishments that they impose for lowering the ‘honor’ of their caste indicate that they are nothing but feudal institutions which have no place in a democratic setup. Some of the acts that Khaps consider ‘crimes’ are:

- **Inter-caste marriages**: India is divided into numerous castes. Most of these castes do not permit mobility outside their domain. Therefore, marrying outside one’s own caste is what is seen as a problem by the Khaps. According to them, such a marriage results in infusing of ‘outside’ blood in the lineage which contaminates it. These panchayats continue to uphold the views that one cannot marry outside their own caste even though no such limitation has been placed by the Hindu Marriage Act, 1956. An example of this is the Shankar-Kausalya case of 2016. At 18, Kausalya who belonged to the upper caste Thevar community decided to marry a Dalit man in college, transgressing the inviolate bounds of caste that regulate the lives and life choices of millions of Indians. On the instance of the community, Kausalya’s family lashed out. They first resorted to threatening the couple, then abducting Kausalya and finally attacking her husband in broad daylight that led to his death.

- **Intra-Gotra Marriages**: Khaps play a major role in guarding the centuries-old belief that people within the same gotra are descendants of the same Rishi and are hence related. Therefore, they forbid marriages within the same gotra because men and women within the same gotra can be nothing but siblings and any kind of sexual relation that ensues between them is nothing but incest. Thus, they keep a close vigil on young boys and girls to prevent any ‘paap’ from taking

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place. If anyone defies these rule of conduct, they are subject to a host of punishments that can put any democracy to shame. The ‘offenders’ are either ostracized or killed in the name of honor at the hands of their own kith and kin. One such incident that created national furor is the killing of Manoj and Babli in 2007. Manoj and Babli were residents of Karora village in Kaithal district. The couple belonged to the same gotra but fell in love and got married. On the orders of a Khap Panchayat, Babli’s relatives brutally murdered the young couple in June 2007. This punishment was handed out to them just because they married within the same-gotra. A few days later, two decomposed bodies were found from Barwala branch canal in Hissar. As the investigation progressed, more shocking details emerged. Before killing the couple, the Khap had ordered them to live as brother and sister. When they refused, they were forcefully fed pesticides. When nothing broke the spirit of the couple, they were brutally murdered and their bodies, wrapped in gunny bags, were dumped in a canal.

Inter-Caste or Intra-Gotra marriages are not the only activities that ‘provoke’ the Khaps to commit honor-based crimes. Other such acts are- (i) loss of woman’s virginity outside wedlock (ii) infidelity (iii) pre-marital pregnancy (iv) having unapproved relationships (v) refusing an arranged marriage (vi) asking for divorce (vii) leaving family or marital home without permission (viii) falling victim to rape. The list is not exhaustive- it varies from situation to situation and Khap to Khap. More recently, a petition was filed by two Dalit sisters in March 2018. As per the petitioners, their brother had eloped with a married woman from the Jat community. After being chased by the police, they were forced to return to the village and then, soon after the brother was falsely implicated in a narcotics case and arrested. Not only this, the Khap Panchayat ordered the sisters of the accused to be raped and paraded naked after blackening their faces in retaliation to their brother eloping.

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In the era of women empowerment, social justice, liberty, and dignity of individual, incidents like these raise only one question—where are we heading? Khap Panchayats, rightly dubbed as Kangaroo Courts by the Supreme Court is a blot on the constitutional and democratic ethos of India. Every time a diktat is passed by these Panchayats, we regress back in time. The dark history of Khap Panchayats has claimed many lives and has passed many heinous verdicts that are not only shocking but also inhuman. Thus, these Khap Panchayats need to be regulated not only from social and humanitarian standpoint but also from a legal standpoint. They have assumed the characters of lawmakers and have started acting as a parallel law enforcement agency. When that is not enough, they act as quasi-judicial bodies and pass diktats on what is right and what is wrong based on age-old customs and beliefs.

Fuel is added to the fire owing to the laxity of police personnel to take action in this regard. In the light of the direction in *Lata Singh case* it is the duty of all persons in the administration/police authorities throughout the country that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage, their marital life should not be disturbed or harassed and if anyone gives such threat or commits acts of violence or instigates, it is the responsibility of the officers concerned to take stern action against such persons as provided by law.

**VIOLATION OF RULE OF LAW**

The concept of Rule of Law has its origin in England and is the building block of modern democratic societies. It is also said to be derived from the French principle of ‘La Principle de Legality’. Primarily, the purpose of law is to balance the conflicting interests of various sections of the society and to maintain peace and order. It implies that a nation is supposed to be governed by the principles of law rather than the arbitrary decisions of the person who is at the helm of the affairs. In the broader and philosophical sense, rule of law implies that no individual is above law.

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and law is the ultimate supreme. In the narrower and more practical sense, it implies that even the
elected government is supposed to function within the ambit that has been provided to it by the
letter of the clearly established law. However, when we talk of Khap panchayats, none of the
abovementioned criteria seems to be followed. This body of village elders, which is not even
democratically elected, works as conscience keepers of the people and act in blatant violation of
law. These panchayats consider themselves to be above the law and the elected government.

There are two approaches to the concept of rule of law. The first approach is called the Formal
Approach according to which law is supposed to be formally declared, uniform and clearly
established. It should be made known to the people before being enforced. The second approach
is called the Substantive Approach according to which law is supposed to be the custodian and
upholder of the fundamental rights of the people that it seeks to govern. Keeping all this in mind,
the diktats of the Khap Panchayats are not only in contravention with the concept of rule of law
but actually work to undermine it. They do not stand the test of rule of law from any of the
approaches. Their orders and diktats which are supposed to be followed by the people just like
‘law’ are neither clearly declared nor uniform, nor do they work to uphold the fundamental rights
of the people.

AV Dicey, in his book, The Law of The Constitution (1885) has given three broad implications of
the rule of law. Some of them which are relevant to the case at hand are as follows:

1. Supremacy of Law: No man can be punished except for a breach of the law. This means that,
   if a person does any act which is not in contravention of any law for the time being in force, he/she
cannot be punished for it no matter how wrong or immoral that is in the eyes of the society. The
existence of Khap Panchayats threatens this very aspect of rule of law. These Panchayats are of an
extra-constitutional nature and very often punish people for committing those acts which are
‘crimes’ according to their own self and not according to the settled law. For example, they inflict
punishments in the form of ostracization, fines or even killing of a couple who have married
outside their own castes. However, inter-caste marriages have not been barred by any law for the
time being in force in India.

25The Rule of Law, STANFORD ENCYCLOPEDIAOF PHILOSOPHY (June 22, 2016),
26Alok Kumar Yadav, Rule of Law, 4 IJLLJS 205, 205 (2017).
2. Equality before Law\textsuperscript{27}: This means that all classes of citizens (rich or poor, high or low, official or non-official) should be subject to the ordinary law of the land administered by the ordinary courts of the land. This aspect of rule of law is also not fulfilled by Khap Panchayats. Firstly, they come down more heavily on the women as has been seen in the above-explained diktats of ordering rape on women even when they are not even remotely related to the offence that has been committed. Secondly, they function as extra-judicial bodies, that is, they are outside the purview of the judicial system that exists in our country. But still, they continue to work as mob-operated courts on the basis of caste and go on taking away lives ferociously and keep on setting new records of barbarity.\textsuperscript{28}

In the Indian scenario, the concept of rule of law is a basic structure of the constitution. In \textit{Chief Settlement Commr. v. Om Prakash}\textsuperscript{29}, it was held by the Supreme Court that, “In our constitutional system, the central and most characteristic feature is the concept of rule of law.”\textsuperscript{30} Most famously in the case of \textit{Kesavananda Bharati v. State of Kerala}\textsuperscript{31}, the Supreme Court held that the “Rule of Law is an essential part of the basic structure of the constitution and as such cannot be amended even by any Act of Parliament, thereby showing how the law is superior to all other authority of men.”\textsuperscript{32}

Various legal theorists believe that for a country to qualify the test of rule of law, following characteristics must be fulfilled:

- The law must be made only by the representatives of people in an open and transparent way.\textsuperscript{33}

However, this is not true for the law imposed by Khap Panchayats. These are not democratically elected bodies. They are mainly constituted by village elders who have age-old notions of morality and righteousness.

\textsuperscript{27}Alok Kumar Yadav, \textit{Rule of Law}, 4 IJLLJS 205, 205 (2017).
\textsuperscript{29}Chief Settlement Commr. v. Om Prakash,1968 SCR (3) 655.
\textsuperscript{30}\textit{Id.}
\textsuperscript{32}\textit{Id.}
The law is applied equally and fairly so that no one is above the law. By passing orders on the life and death of people, they go beyond the adjudication authority of even the legitimate law courts. They follow no principles of fair hearing or natural justice and pass rudimentary judgments which are cruel and against the very essence of rule of law.

No one can be prosecuted, civilly or criminally, for any offense not known to the law when committed. Whereas, these panchayats punish people for doing acts which are absolutely legal and recognized by law such as inter-caste marriages, sagotra marriages and so on.

The concept of rule of law forms an integral part of the Preamble. There are various other values in the Preamble that these Khaps violate. For instance, it is against the concept of social justice. Social justice denotes that all the citizens should be treated equally without any distinction. In simplest words, social justice is based on the underlying idea that all people should have equal access to wealth, health, well-being, justice and opportunity. However, the wrath of the orders of Khaps is harsher on the women, poor and people belonging to the lower castes. Rich, influential and upper-caste people of the village are mostly themselves a part of these panchayats. Women are given almost negligible representation in these Panchayats. Thus, it is not surprising that most of their dictums are discriminatory.

Another value of the Preamble that these Panchayats violate is liberty of thought, expression, belief, faith, and worship. In the simplest sense, liberty is the freedom to live your life in the way that you want, without interference or constraints from other people or the authorities. One major aspect of liberty is the right to choose. That is why French philosopher, Simone Weils has remarked, “Liberty, taking the word in its concrete sense consists in the ability to choose.” This facet is compromised when a person is barred from choosing his/her own life partner. In the case of Khap Panchayats, people cannot control even this basic aspect of their life because it has to be in accordance with the rules of conduct laid down by the Khaps. In the words of Dipak Misra CJ, “When the ability to choose is crushed in the name of class honour and the person’s physical frame

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37PETER LOPSTON, READINGS ON HUMAN NATURE, 185 (1998).
is treated with absolute indignity, a chilling effect dominates over the bones and brains of the society at large.”

This shows how the dictums and the consequent acts of the Khap Panchayats are totally violative of person’s liberty and freedom. More recently, in Shafin Jahan v. Asokan K.M., Dipak Misra, C.J. speaking for himself and A.M. Khanwilkar, J observed that “it can be said that when the liberty of a person is illegally smothered and strangulated and his/her choice is throttled by the State or a private person, the signature of life melts and living becomes a bare subsistence.”

VIOLATION OF ARTICLE 21 OF THE INDIAN CONSTITUTION

The Right to Life and Personal Liberty is a fundamental right guaranteed under Article 21 of the Constitution. The Right to Life includes the right to live with human dignity and everything that goes along with it. However, the orders and diktats of Khap Panchayat very frequently interfere with the dignified life of the people in villages. There have been various instances when Khap Panchayat ordered community rape of women who transgress the social boundaries set by them.

Not only this, they also issue diktats for the naked parade of such women with their faces blackened. Such orders are a grave violation of the guarantee of a dignified life. As held in Munn v. Illionis, the term ‘life’ means something more than mere animal existence. Such punishments imposed on women for acts which are not even crimes according to the law amount to gravest degree of inhuman treatment. In today’s time, even animals are given certain inalienable rights. In this scenario, such inhuman treatment meted out to women is not only violation of fundamental rights but also human rights. Moreover, “the commission of rape has been held to be a violation of the right to life of the victim under Article 21.”

The Supreme Court has also recognized the right to livelihood as a part of right to life under Article 21. The Khap Panchayats often resort to punishment of denying “hukkapani” to the ones they

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41Francis Coralie Mullin v. UT of Delhi, (1981) 1 SCC 608.
42Munn v. Illionis, 24 L Ed 77.
feel have crossed the line of moral and social conduct prescribed by them. This takes away the right to livelihood of such people.

Khap Panchayats also go to the extent of declaring those married couples as siblings who have married in different caste or same gotra, even if such marriages are arranged marriages. The pressure exerted by Khap Panchayat is so much so that parents are forced to kill their own children. This shows the kind of tension that is created by the Khaps in the homes of the people. Thus, the Khap Panchayats also interfere with “peaceful living in one’s home” which is an aspect of the right to life under Article 21.45

In his dissenting opinion in Kharak Singh v. State of U.P., Subba Rao J said that the right to personal liberty is “a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought by calculated measures.”46 This judgment formed the basis of the K. S. Puttaswamy v. Union of India.47 In the latter case, the Supreme Court held that right to privacy is a fundamental right under Article 21. This right is clearly violated by Khap Panchayats as there is an unchecked and unquestioned encroachment in the private lives of the people by them. A large number of female foeticide cases is one consequence of such encroachment. Furthermore, virginity is also one major issue in the Khap dominated villages. Not surprisingly, virginity of a woman is considered to be a sign of her purity and honor of family as well as the whole community. In such a situation, virginity test is not something unusual in these places. However, in Surjit Singh Thind v. Kanwaljit Kaur48, it was held that virginity test of a woman is an infringement of her right to privacy and personal liberty. Thus, Khap Panchayats clearly work to violate Article 21 of the Constitution.

INFRINGEMENT OF RIGHT TO MARRY WITH ONE’S OWN CHOICE

One of the main areas in which Khap Panchayats operate is matrimonial alliances. They govern the life choices of the people in their Khap, especially the choice of who they should marry. Thus,

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47 Id.
they infringe a person’s right to marry with his/her own choice. Though this right is not explicitly contained in the Constitution, the Supreme Court has time and again held it to be an integral component of Part III.

One of the earliest decisions of the Supreme Court in which it came down heavily on Khap Panchayats is *Lata Singh v. State of UP*.

50 In this case, the Supreme Court held that “inter-caste marriages are in fact in national-interest since they will eventually destroy the caste system which is a curse to the nation.”

51 The Court took note of the atrocities that couples who marry outside their caste have to go through and held that, “This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage.”

52 In another case, *Arumugam Servai v. State of Tamil Nadu* 53, the Supreme Court has termed honor killings as an institutionalized way of inflicting atrocities on young boys and girls who marry outside their castes. Emphasising on a person’s right to marry according to their own choice, the Court observed that Khap Panchayats are wholly illegal and must be ruthlessly stamped out.

54 Recently, in *Asha Ranjan v. State of Bihar*, 55 quoting from *Vikas Yadav v. State of UP* 56 the Court held that “A group of persons in the name of “class honor”, cannot curtail or throttle the choice of a woman. It is because the choice of a woman in choosing her partner in life is a legitimate constitutional right. It is founded on the individual choice that is recognized in the Constitution under Article 19, and such a right is not expected to succumb to the concept of “class honor” or “group thinking”. It is because the sense of class honor has no legitimacy even if it is practiced by the collective under some kind of a notion.”


51 *Id.*


54 *Id.*


In the much-acclaimed judgement of the Supreme Court in *Shafin Jahan v. Asokan K.M.*,\(^{58}\) deciding on the issue of marriage between a Hindu girl and a Muslim boy, where both had attained the age of majority, the Supreme Court held that “The right to marry a person of one's choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of their happiness.”\(^{59}\)

**INTERNATIONAL PERSPECTIVE**

Honor-related crimes are not peculiar to India only. They can be seen in many countries such as Jordan, Lebanon, Morocco, Pakistan, United Arab Republic, Turkey, Yemen and other Persian Gulf countries and they also take place in western countries such as France, Germany, and U.K. mostly within migrant communities.\(^{60}\) Needless to say, in most cases, women become the easy targets of honor crimes. In Asian and African countries, one of the main causes is the changing social and economic role of women in the society which goes against the deeply rooted male-dominated setup.\(^{61}\) In western countries, a leading cause is women’s quest for greater freedom at par with their male counterparts.\(^{62}\)

This practice of ‘moral vigilantism’ of the Khaps is not only against the ‘rule of law’ but is also against various international conventions. Their barbaric dictums and standards on which punishment is awarded to individuals go against the spirit of equality, liberty and human dignity that is engrained in the Universal Declaration of Human Rights (UDHR). More specifically, Khaps violate Article 5 of the Declaration which reads that, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”\(^{63}\) as well as Article 12 according to which, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the

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\(^{58}\) *Shafin Jahan v. Asokan K.M.*, 2017 SCC OnLine SC 125

\(^{59}\) *Id.*

\(^{60}\) Report of the Special Rapporteur to UN, 2002.

\(^{61}\) 242\(^{nd}\) Law Commission Report, at 1-2.

\(^{62}\) *Id.*

protection of the law against such interference or attacks.”  

64 Article 16 of the Declaration which includes “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution” is also flagrantly violated by the Khaps.

Khaps violate Article 15(1) of the International Covenant on Civil and Political Rights (ICCPR). According to this article, “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.” This aspect is frequently violated when Khaps pass orders and impose punishments on people based on redundant traditions and not the basis of the letter of law.

India is a signatory to both UDHR and ICCPR. If the government fails to combat the menace of Khap Panchayats by bringing in a law to regulate them, it is not only a blot on the democratic and constitutional values of our nation but is also non-fulfillment of our international obligations.

Various European nations have come together to clearly set out the guidelines for combating honor-related crimes in the form of Council of Europe Convention on preventing and combating violence against women and domestic violence according which “honor” shall not be regarded as justification for any criminal acts. Indian Government should take the necessary legislative steps on these lines to ensure that on the international front, India is not seen as a regressive nation where law is decided by the village and caste elders and not by the legislators and courts.

THE WAY AHEAD

The most important thing that needs to be done in order to curb the menace of Khap Panchayats is active intervention from the legislature. There needs to be a legal framework in place in the form of a comprehensive law that deals with all the aspects of these Panchayats. In this regard, reference may be made to the draft bill proposed by the Law Commission in its 242nd Report titled Prevention

64 Id.
65 Id.
67 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, art. 42(1).
of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework. The Bill is called The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill and provides that “No person or any group of persons shall gather, assemble or congregate at any time with the view or intention to deliberate on, or condemn any marriage, not prohibited by law, on the basis that such marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned.”

The Bill keeps Khap Panchayats separate from the unlawful assemblies provided for in Section 141, IPC. In this way, a special class of unlawful assembly with a different punishment is, therefore, suggested as a measure of greater efficacy. Taking a cue from this Bill, the Government must come up with an extensive law that deals with not only honor-related crimes but also with the other areas in which these Khap Panchayats seek intervention. For instance, giving out rape orders of so-called ‘rebellious’ women, ordering female foeticide and discouraging women from seeking their share in the ancestral property by ostracizing or torturing them. The proposed law must address all such fields where these Panchayats flout any penal provisions. Thus, the potential of a law to take the society forward must be fully utilized to tackle this situation.

Keeping in mind that these Panchayats are a social institution, the effect of the proposed legislation in curbing them might be delayed. Therefore, the proposed legislation must be supplemented by certain social awareness measures such as:

- The elected Panchayats must organize community programmes in their areas to explain to people that sagotra marriages are not opposed to law, religion ‘sadachar’ or medical science.
- The spiritual or religious leaders or respected elderly persons like retired officials and political personalities, members of the legal profession, teachers, etc., can be requested to address the village gatherings and explain to them the real position and the need to shed superstition and abominable practices. The position of authority that these people enjoy can be used to bring changes in the thinking of common people.

69Id, at 22.
71Id.
Side by side, discourses on electronic media by respected persons and scholars should be organized. Media too can play a very useful role in shaping the mindset of the people concerned. So also, the District and Taluqa Legal Services bodies can undertake this task through appropriate means.72

As has been pointed out in the preceding sections of this paper, laxity on the part of the police in most cases and their complete inaction in some cases is a major roadblock in tackling these Panchayats. Therefore, any list of suggestions to curb Khaps is incomplete if it does not talk about improving the activity of police in this arena. In the light of these facts, some suggestions are given by the Supreme Court are worth noting:

- The State Government, with the help of local bodies, must work to identify those areas in which instances of honor crimes or assembly of Khap Panchayats have been reported in the recent past.73
- The State Government must issue orders to the Superintendent of Police of the identified areas to be extra-cautious if any case of inter-caste or intra-gotra marriage comes to their notice.74
- On receiving any information about a proposed Khap gathering, the Deputy Superintendent of Police shall immediately interact with the members of the Khap Panchayat and explain to them that convening of such meeting/gathering is not permissible in law and to eschew from going ahead with such a meeting.75
- If the Deputy Superintendent of Police, after interaction with the members of the Khap Panchayat, has reason to believe that the gathering cannot be prevented and/or is likely to cause harm to the couple or members of their family, he shall forthwith submit a proposal to the District Magistrate/Sub-Divisional Magistrate of the District/Competent Authority of the concerned area for issuing orders to take preventive steps under the Cr.P.C., including by invoking prohibitor orders under Section 144 Cr.P.C. and also by causing arrest of the participants in the assembly under Section 151 Cr.P.C.76

72Id.
74Id.
76Id.
• Most importantly, the Court has suggested that the Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law enforcement agencies and by involving all the stakeholders to identify the measures for prevention of such violence and to implement the constitutional goal of social justice and the rule of law.\textsuperscript{77}

Another thing that needs to be borne mind is that historically, Khap Panchayats were greatly regarded for their role in resolving disputes among people and communities. But as of today, the government has provided various alternative dispute resolution mechanisms in numerous areas. Glowing examples of these are the Lok Adalats and Permanent Lok Adalats constituted under Legal Services Authorities Act, 1987. These are statutory bodies and have judicial officers deciding matters. This is in stark contrast to the undemocratic and erratic way in which Khaps resolve disputes. So, the Central as well as the State Governments should work actively to create awareness about such other alternatives.

Thus, there is an impending need to curb the menace of Khap Panchayats by addressing the issue both, legally and socially, so that the constitutional goals are realised more effectively.

\textsuperscript{77}Id.