

KHAP PANCHAYAT: ANALYSIS IN LIGHT OF JURISPRUDENCE

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Abstract

The administration of justice has been very important in any civilization, although it the method varies from place to place. In some parts of India, majorly Haryana, Punjab and Rajasthan the Khap Panchayats have played very important role in administration of justice. However, the institution of Khap Panchayats has been criticized for many reasons. Amongst few, it is known as dominated by men, having a patriarchal ideology, which means pro-men and anti-women. Although there have been many incidents, which clearly depicts the patriarchal ideology of the Khap Panchayats, for instance honour killing. A type of punishment, wherein any person who has brought dishonor or insult to the family or the village is executed. However, this killing has much more associated with the killing of young unmarried couples. With the passage of time, the Khap Panchayats have acquired so much of dominance in the society that even big politicians are dominated by them. Initially with the aid of the politicians and the male dominance in the society, the reach of law and order was minimal in such backward areas. Hence, despite of various laws, the khap Panchayats were executing people. The jurisprudence plays a very vital role in shaping the law. Other than the Courts, the institution of khap panchayats must also work in accordance with the jurisprudence. Other than the theories by various jurists, the Indian courts have also developed jurisprudence, which may prove to be very vital in administration of khap panchayats.

Keywords - Honour Killing, Jurisprudence, Khap, Marriage, Panchayat.

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Introduction

The caste system has been the basic institution in Hindu society. Indian society has been victim of various evils, one of which is the caste system. It is said that caste system was designed with an objective of dividing society into four distinct groups depending on the kind of their work. The Hindus have been mainly divided into Brahmin, Kshatriya, Vaishyas, and Sudras, with their sub-castes.¹ The castes and their sub-castes are very much rigid in respect to their norms and rules. And the violation of same attracts punishment that is boycott from the community.

The western ideology has very differently affected the thinking of present generation. Due to which people are willing to have love marriage or marriage with people of their own choice, which results in inter-caste marriages. But, among few castes, inter-caste marriage is a grave offence, which not only results in boycott from the community but sometimes also amounts to death, by the members of their own family or “khap panchayats.”²

Among Indians, the rule of endogamy is followed, that is the rule restricting marriage among the members of the same tribe, village, caste, sub-caste, or other social group.³ However, due to increasing impact of the westernization, the castes are losing their rigidity. At the same time, many socialists believe that both the systems are working simultaneously.⁴

Origin of Khap Panchayats

The Khap Panchayats, have been playing role of a social system maintenance mechanism in agrarian societies. They are the byproducts of the tribal councils, which are formed by tribes in order to deal with the tribal issues. Once upon a time these khap panchayats were caste bodies, which were represented by various castes. However, the present condition is totally opposite. Nowadays, his khap institutions are acting merely as a *jat*

¹ VITHAL RAJAN, DALITS AND THE CASTE SYSTEM OF INDIA-SOME EXPLORATIONS AND CONJECTURES, A Transcend Research Paper for Discussion.

² Ms. Sunita and Mr. Yudhvir, *Khap Panchayats: Changing Perspectives*, Vol. 2, Issue 7, July, ASIAN JOURNAL OF MULTIDIMENSIONAL RESEARCH, 2013.

³ Jyothi Vishwanath & Srinivas C. Palakonda, *Patriarchal Ideology of Honour and Honour Crimes in India*, Vol. 6, Issue 1 & 2 [Combined Issue], INTERNATIONAL JOURNAL OF CRIMINAL JUSTICE SCIENCES (IJCJS).

⁴ Supra Note 2.

institution.⁵The term, “panchayat” means an assembly of five elders of the society, elected by the people of the village.” These panchayats comprise of powerful and dominative people, who are usually senior citizens, of a particular caste. The members of the panchayat are entrusted with the duty of upholding the norms, culture and the morality of the particular religion.

Presently, khap panchayat is known as a body, which exercises extra constitutional powers. Moreover, due to role of khap panchayats in matters relating to inter-caste marriages, they have been the headlines in news channels.⁶ They are rather criticized for their role in the inter-caste marriages, which includes the execution of death orders, as a punishment, alias “honour killings.” All the inter-caste marriages are considered as “offence” and hence the offenders are also punished by the khap panchayats. However, the most surprising, is that even the police officials, fail to help the people, who become the victim to the khaps.⁷

Some of the practices adopted by the khap panchayats are as follows:-

- In order to check the innocence of accused, the khaps force the accused to get a coin, which is placed in the vessel containing hot boiling oil. If the accused succeeds, then he is innocent.
- If the character of accused is in question, then turmeric paste and peepal leaves are tied upon the hands of the accused, then a hot iron stick is tied with the hands of accused and is directed to take seven steps. If no burn or injury occurs, then the accused is innocent.
- In order to check the guilt of a woman, she is forced to fry puris bare hand in the hot oil, if no injury occurs, then she is innocent.
- Several times, heinous methods are adopted such as chopping or cutting of the ear or nose or hair, face

⁵ M. C. Pradhan, *The Jats of Northern India: Their Traditional Political System—II*, THE ECONOMIC WEEKLY, 18th December, 1965.

⁶ Ravinder Kaur, *Khap Panchayats, Sex Ratio and Female Agency*, Vol. XLV No. 23, ECONOMIC & POLITICAL WEEKLY, 5th June, 2010.

⁷ Kavita Kachhwaha, *Khap Adjudication in India: Honouring the Culture with Crimes*, Vol. 6 Issue 1 & 2 [Combined Issue], INTERNATIONAL JOURNAL OF CRIMINAL JUSTICE SCIENCES.

polished with black color, is made to ride donkey in the whole village or is forced to run naked and bare footed.⁸

Strength of Khap Panchayats

Today, the khap panchayats have proved to be an essential body among the community of jats.⁹ The institution is of paramount importance among the community. As a result it is the strongest body for jats, dealing with their daily issues, maintaining the status quo of their customs, beliefs, rights etc. and rendering justice. There are various social and political reasons, because of which the khap have become stronger. The social reasons such as existence of similar panchayats in neighboring villages, feeling of brotherhood among members of the same clan preventing the conjugal relations within the village, whereas the political reasons like no citizen can oppose the verdict of khaps, weak Panchayati Raj Intuition's, conversion of khaps into vote banks and the failure of the political and local legal authorities, to raise the voice against khaps. The khaps are the part of social system in rural India. Being in the roost of the rural social system, all the khaps are male institutions, dominated by upper castes of the society.

The Concept of Honour Killing

The term “honour killing” has not been defined anywhere specifically. But upon understanding the concept, honour killing means, murders, which are committed either by the family members of the deceased or the people of the same caste or class, in perusal the execution of the death sentence by the khap panchayats. The reasoning being, the offenders have brought “shame” or “dishonour” upon the family, caste or class. Referring to the term “dishonour” or “shame,” has a wide meaning. It involves various acts such as:-

- Clothing or dressing, which is not acceptable to the society;
- Showing unwillingness to enter into a arranged marriage or willing to marry at own will with person of own choice;
- Engagement in sexual activities either is it with same sex or opposite sex.¹⁰

⁸ Ibid.

⁹ Supra Note 5.

¹⁰ Vipin Kumar Singhal, *Honour Killing in India: An Assessment*.

Simply, honour killing is the result of the change in ideas due to traditional beliefs and modern thinking. Usually, the one who is most affected with the modern ideology is the present generation. The generation gap between the parents and the child has also been the cause for clash in the thinking. However, most importantly, due to western thinking of independence, the present generation wants to take their own decision, immaterial whether they are competent or not.

Secondly, the change has also resulted in independence of women from the clusters of men. As a result it has directly caused threat to the patriarchal society, which refers women as “property” and “honour” for his husband, family, caste and the society. Now here the chastity of the women is linked with the old hindu scriptures, which prohibit same gotra or inter-caste marriages, has been said to be main reason for honour killings.¹¹

Law on Honour Killing

In India, though the act has taken much life's but there is no such criminal law, which penalizes the act of honour killing. However, under the India Penal Code, 1860 and Code of Criminal Procedure, 1973, the practitioners of the honour killing are regarded as “murderers”.¹² At the same time it also difficult to identify the offenders, because acts of killing are often guarded by the community. Simultaneously, the khaps are running so called “legal system”, by giving orders of execution of death sentences to no one other than to their own family members, which makes difficult for the law agencies to identify the culprits. The failure of the law to identify culprits and to gather the evidence has resulted that no FIR's are registered by the police officials. Somehow, if a FIR is lodged, and the cases are pursued, the conviction rate is equivalent to null.¹³

In 1956, Special Marriage Act was enacted with an object of facilitating special form of marriages to the citizens of India, irrespective of their caste, class, religion etc. It also aimed at facilitating inter-caste marriages with recognition and registration

¹¹ Anantanand Rambachan, A Hindu Perspective.

¹² Satnam Singh Deol, *Honour Killings in India: A Study of the Punjab State*, Vol. 3(6), INTERNATIONAL RESEARCH JOURNAL OF SOCIAL SCIENCES, 7-16, June (2014).

¹³ Anand Mishra, *Honour Killing: The Law It Is and The Law It Ought To Be*, Manupatra.

of the same under law.¹⁴ However, the act had laid restrictions, where under, parties shall not be within the degrees of prohibited relationship, provided where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationships.

In spite of the law governing the inter-caste marriages, caste still plays a vital role in various parts of the country. The social system of India is based upon the castes, though people in urban areas have come out of the clusters of rigid caste system. Resultant, many inter-caste marriages have been registered in the urban areas.

But the law has failed to reach in the rural areas. The presence of panchayats or informal courts, which are nothing but extra-constitutional bodies, decides matters of the community. They are empowered to pass judgment on issues of marital disagreements and land disputes, water disputes and so on. Perhaps, due to illiteracy, the villagers give prime importance to the verdicts given by the panchayats rather than judicial courts.¹⁵

Criminal Jurisprudence of Honour Killings

The law is not specific on the culprits of honour killing; as a result they are termed as “murders”. As result they can be brought under the ambit of Section 300 (4) of the Indian Penal Code, 1860. The law under Section 300 (4) is very specific, which states that any person committing the act, with the knowledge about its nature and that under all circumstance, will cause death or such bodily injury as is likely to cause death, has committed the offence of murder. Referring the act of honour killing to essential laid under Section 300, IPC, the act done is intentional, imminently dangerous and has high probability that the death will be the result, that executers of the honour killing can be punished under Section 300, IPC.

However, realizing the issue, the government is planning to amend Section 300 and 354 of IPC and under s. 105 of the Indian Evidence Act, 1872 and Special Marriages Act, 1954, with intent to eliminate the provisions relating to mandatory 30 day notice period for marriages, for solemnization under the act, by

¹⁴ Ibid.

¹⁵ Supra Note 6.

introducing Indian Penal Code and Other Laws (Amendment) Bill in 2010 in the parliament. By the virtue of the amendment in the aforesaid provisions, the onus shall be shifted upon the accused, that is members of the khap panchayats and family members to prove their innocence, which at present, is upon the on the state to prove the guilt of the accused.¹⁶

The main focus of the government is to introduce 5th clause under Section 300, IPC which runs as "If it is done by any person or persons acting in concert with, or at the behest of, a member of the family or a member of a body or group of the caste or clan or community or caste panchayat (by whatever name called) in the belief that the victim has brought dishonour or perceived to have brought dishonour upon the family or caste or clan or community or caste panchayats."¹⁷The term "dishonour" and "perceived to have brought dishonour" has been explained as "acts of any person adopting a dress code, which is unacceptable to family or caste or clan or community or panchayat". The new clause shall also include the murders, which will be committed as a punishment for marrying a person of another clan or of other caste. Moreover, it shall also include all the omissions of punishment, for acts like sexual relations, which are unacceptable to the family or community or caste or to the panchayats. All the above mentioned acts shall be punishable under the new law with imprisonment for a term, which may extend upto 2 years or fine or with both. However, the draft suggests, that all the members of the panchayat or clan or caste or family, committing or abetting or indulging in the commission of honour killing, shall be deemed to have committed murder and hence to be punished with death sentence.¹⁸

In the criminal law, the suicide committed by lovers, due to threats from their families, amounts to "murder". The courts have adopted the strict attitude towards the offenders of honour killing, by punishing them with death sentence, because the act of honour killing comes under the domain of "rarest of rare cases." At the same time, punishments like life imprisonment to other accomplices on the basis of quantum of guilt under Section 302 IPC have also been awarded by the courts.¹⁹

¹⁶ Supra Note 12.

¹⁷ Supra Note 7.

¹⁸ Available at <http://www.dnaindia.com/india/report-government-plans-to-tighten-noose-on-khap-panchayats-1400914>. Last visited on 01.10.2014.

¹⁹ Supra Note 12.

The government also intends to amend the Special Marriage Act by abolishing the provisions, which has made a prior notice of 30 days mandatory. The proposed amendment is aimed to protect the lives of the couples, who go for inter-caste marriage, against the wishes of their family members. During the notice period of 30 days, family members who are opposed to such marriages adopt all sort of measure, to stop the marriage. They even go to the extent of murdering the boy or girl. The present procedure of getting a marriage registered is very long and hectic. The complete process takes 45 days; in the meanwhile, the couple gets vulnerable to various threats. So the steps need to be taken to simplify and expedite registration process.²⁰

The laws are equally twined, with the jurisprudential aspect. There are many jurists, who have propounded theory, which can be connected with the crime of honour killing, which as follows:-

1. The acclaimed criminal law Jurist Jeremy Bentham is also known as “father of English Jurisprudence”. Bentham’s legal philosophy is known as “Utilitarian Individualism.” He criticized the process of law making and pointed on the inefficiency in the administration of justice and criticized the restraint upon the freedom of the individual. He has propounded that; the purpose of any law should be its “utility”. According to Bentham, the object of the law is “greatest happiness of the greatest number.” He has said that the object of the law is to bring pleasure and avoid pain.²¹

Here, Bentham says that a human should act in such a way that his acts should benefit the maximum people. And the object of the law is the benefit of maximum. At present, the khap panchayats are not at all benefiting the people, whether it be to the nation or to the people of particular region, to which the jurisdiction of khap extends. Hence, khaps shall be stopped from execution in furtherance of the Bentham’s utility theory.

2. Immanuel Kant, in his theory of legal philosophy and natural law, stated that man is independent and have his own free will in the society. One cannot be stopped or restrained from exercising his will or enjoying his will. But he also propounds that such exercise of will shall not harm the will of others. Kant has said that it is the duty of state to impose the

²⁰ Ibid.

²¹ V.D. MAHAJAN, JURISPRUDENCE & LEGAL THEORY, 5th Ed. Reprint, p. 445, Eastern Book Company, Lucknow, (2011).

restriction upon the freedom of its subjects to such an extent that their exercise of will may not harm the will of others. The people shall exercise their will, subject to restrictions under the law.²²

Here, according to theory of Kant, khaps are exercising their will with the object of protecting the honour of the society. But their exercise of this will is killing the rights of others, the youngsters who cannot exercise their will of marrying the person of their choice. The argument of the khaps is that they have the duty to protect the honour of their people, and if any person from their village gets into inter-caste marriage, then such a person should be punished. But the thing to be noticed here is that there is already a law, which is Hindu Marriage Act, which governs inter-caste marriages. At the same time, the khaps are an extra constitutional body, which is in violation to Constitution of India, 1950. Perhaps, in pursuance of the Kant's theory, in the presence of the Constitution, which is invalidating the khaps as an institution and laws governing the inter-caste marriages, the institution of khap and their executions are not legal.

3. Rudolf von Ihering, an applauded sociological jurist, has propounded his theory known as "jurisprudence of interest." Ihering has propounded that in a society people have different purposes, which also results in conflict. He added that purpose gives birth to will, which he termed as law of purpose. The purpose of the law is to protect the interest of all. He said that only those interests should be promoted and protected, which are in common good for the society. All the conflicting interests or interests which are harmful for the society shall be parted with.²³

With his theory, khap panchayats is an institution, which the panchayats and its members think is for the benefit of their people. But in reality, khap panchayats is a institution, which is opposed by the judiciary, people as well as the subjects of khap panchayats. Here the purpose of khaps is to maintain honour of their people, for which they give several orders of execution. Such executions are criticized at large by every institution and society other than khaps. Hence, according to Ihering, in order to promote the interest of the public at large and for the benefit of the society the interests of the khaps

²² DR. S.N. DHYANI, FUNDAMENTALS OF JURISPRUDENCE, 3rd Ed. Reprint, p. 92, Central Law Agency, Allahabad. (2011).

²³ Ibid. pp. 313-315.

shall be sacrificed and this extra constitutional institution needs to be stopped.

Arguments against New Law

Though there is no particular law for identifying the act of honour killing and punishing the same, but if the existing law on murder will be implemented properly, then the offenders can be punished. In order to punish the offenders under Section 300, IPC, firstly, the police officials needs to become stronger. They have to provide sufficient evidence, proofs against the act or orders for death by the khap panchayats. Moreover, the offenders can also be punished for criminal conspiracy under Section 120-B, and for common intention to kill under Section 34 and 36 of the Indian Penal Code, 1860.

The existing laws, though not satisfactory but if implemented properly, then there is no need for identifying new law, because no law or punishment can deter the offenders of honour killing. The need of the hour is to implement the law properly, empower and train the state law officials, and to eliminate the evil by spreading the awareness in the society.

Supreme Court Views on Honour Killings

In *State of U.P. v. Krishna Master and Anr.*²⁴, the apex court sentenced the offenders with life sentence for the act of honour killing. In the instant case six members of a family were killed by three persons, who were later awarded life sentence for honour killing case. The apex court refrained from awarding death penalty to Master Krishna, Ram Sewak and Kishori because the incident was two decades old and slammed the High Court for acquitting them by rejecting the testimonies of a child and another witnesses.

In another case of *Lata Singh vs. State of U.P. and Anr.*²⁵, a bench of two judges, expressed their concern for instance of harassment, torture, threats and violence against a young men and women, who did inter-caste marriage. The bench ruled that acts of threats, harassment, violence etc. are totally illegal and the offenders must be punished for committing such acts or omissions. It said, “There is nothing honourable in such killings, in fact they are nothing but barbaric and shameful acts of murder

²⁴ State of U.P. vs. Krishna Master and Anr., AIR 2010 SC 3071.

²⁵ Lata Singh vs. State of U.P. and Anr., AIR 2006 SC 2522.

committed by brutal and feudal minded persons who deserve harsh punishment”.

In *Armugam Servai vs. State of Tamil Nadu*²⁶, the bench held that, on attaining majority every individual becomes independent and gets the right to marry a person of their choice. If the person marries a person of another caste or with a person, which is not acceptable to the parents, then the most that can be done is that parents can cutoff the relations, but cannot harass or threaten them.

Further, the bench also directed the administrative department of the government to have an eye “that if a person, who is major, undergoes inter-caste marriage with another, the couple must not be harassed by any one or subjected to threats or acts of violence. However, if anyone threatens or harasses or commits violence, a criminal proceeding shall be instituted against such person.”

Further in order to curb the menace of honour killing, the government may take steps as follows:-

- The governments, both at the Central as well as State level, should introduce efficient mechanism to implement the guidelines laid under *Lata Singh vs. State of UP* and *Arumugam Servai vs. State of Tamil Nadu*.
- Any person convicted under the law for act of honour killing, should be debarred from contesting elections for at least 5 years.
- Fast track courts should be constituted for speeding up the trial of cases relating to honour killing.
- An amendment in Special Marriage Act should be introduced to reduce the period of registration of marriage from one month to a week.
- An amendment in the Indian Evidence Act should be made to shift the burden of proof upon accused.
- An amendment in the Indian Penal Code should be made to append a new provision relating to definition of honour killing, with prescribing punishment for the offence.

Conclusion

The caste system is in the roots of India, which has led to many evils in society. It has caused harm to the nation and to the people as well. One of such evil is the khap panchayats, an

²⁶ *Armugam Servai vs. State of Tamil Nadu*, AIR 2011 SC 1859.

institution, evolved by the community, to deal with issues related to their norms, customs, societal relations etc. The khap panchayats are prevalent in state like Haryana and western Uttar Pradesh. The villages follow the rule of endogamy, meaning, the people of the society feel that all are related to each other with blood relations. As a result they do not permit inter-caste marriages. However, if any person marries in other castes, the couple is killed to death in perusal to the order of the khap panchayats, by their own family members, which is known as “honour killing”. The reason being, the panchayats believe that by entering into inter-caste marriages, dishonor is brought to the society and hence they must be killed.

There is no particular law, on the issue to control or to penalize the act of honour killing. However, the offenders of honour killing are punished under Section 300 of Indian Penal Code, 1860. At the same time, in order to deal with issue related to inter-caste marriages the government has enacted Special Marriage Act, 1956. The act has been enacted with the object to safeguard and legitimize inter-caste marriage, unless the marriage does not come under the prohibited degrees. Due to insufficient laws, the government is aiming to amend Section 300 of Indian Penal Code, 1860 by adding 5th clause. The clause penalizes the acts of honour killing. Similarly, an amendment is also proposed under the Special Marriage Act, because the provision related 30 day notice and the time span of 45 days for the registration of marriage, is a loophole, which makes couples vulnerable to various threats by the family and khaps panchayats.

The theories, propounded by different jurists can be related directly with the khap panchayats. It can be concluded by saying that khap panchayat is an evil, which needs to be stopped immediately. In regard to the sovereign and the laws, there is need to enact such laws, over which, the sovereign can have the direct command and can prohibit the acts of khaps. At the same time, the laws shall be such that it may not sacrifice the interest of the majority. It should also do maximum good and minimum loss.

