

Khap Panchayat & Personal Laws in India

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Abstract: Khap Panchayats are taking law in their hands and pronouncing on the invalidity and impropriety of Sagorta and inter caste marriages and handing over punishment to the couple and pressurizing the family members to execute their verdict by any means amount to flagrant violation of rule of law and invasion of personal liberty of the person affected. While in Indian law Sagotra marriages are not prohibited by law, but not in the view of olden times. After independence to dispel any doubts the Hindu Marriage Disabilities Removal Act 1946 was enacted. This act expressly declared the validity of marriages between Hindus to belonging to the same gotra or different sub division of same caste whereas in present time Hindu Marriage Act does not prohibit sagotra on inter caste marriage. Evil practice of Khap Panchayats as based on our culture and tradition must be ended. The killings of people for marrying their choice of partner is not a way to deliver any short of justice. The aim of the research is to find out the cases of the evolution of Khap Panchayats. Although our judiciary undoubtedly can play an important role for the banishment of such practice but has its own limitations. The researchers aim to highlight the facts specially in northern India that no one stands a chance to be above constitution and this cannot defeat the purpose of laws of land.

[Ashish Kumar Singhal, Ikramuddin Malik, Abroo Khan Malik. **Khap Panchayat & Personal Laws in India** *Researcher* 2013;5(2):39-43]. (ISSN: 1553-9865). <http://www.sciencepub.net/researcher>.8

Key Words: Khap Panchayat, Marriage, Caste, Culture, Cases, Democracy.

1. Introduction:

It has been periodically reported that incidents of murder and other illegal grave offences committed against the persons to marrying or proposing to marry Sagotras or outside their caste/religion. In spite of that reported cases number of cases are unreported due to fear of reprisals or cascading effects. These offences are increasing by functioning of Khap Panchayats. These type of offences which occurred by the intervention of caste/communities assemblies and deprives the person from his life and personal liberties granted under the constitution of India. Such assemblies gathered on caste lines assume to themselves the power and authority to declare on and deal with 'objectionable' matrimonies and exhibit least regardful life and liberty and are not deterred by the processes of administration of justice. The personal law lacks direct application to the illegal acts of such caste assemblies and need to be amended. If such illegal assemblies continue their functions, innocent youth will be harassed and victimized and also seem to resist any suggestion of being subjected to any social control. In India Panchayati Raj system was introduced with the aim of decentralization & democratization yet there remain certain mysteries on the name of Panchayats which were not established under any Law is called Khap Panchayats. Working as a self-proclaimed courts of caste Lords in a village enjoy full legitimacy and authority among the sections of their castes as the custodian of order. Members of this unconstitutional

parallel system of justice often summon an all mail get together that crouches around a chabutra in the village aspiring of taking quick, unilateral and incontestable decisions on multiple issues like social transgressions, marriage, offences, property rights, inheritance or regarding situations threatening tranquility. It is very distressing to know that in the times when people chat via 3G technology. Indian society has regressed to the dark ages.

Today, where the societal norms are constantly changing there is always a tiff between the ancient practices being followed and the modern liberal opinion of the youth.

India is a democratic country and its citizens have various freedoms and rights granted under Indian constitution. The person residing in India has a right to peaceable assembly and also has the right to form an association except not violative of the rights of others, article 21 of the constitution guarantees to the citizens life and personal liberty. The simple meaning of this article is that every person has the right to live in India according to his will also has the right to do some acts according to his/her will except some restrictions. But on the name of freedom whether the person can do such type of acts which is specially the act of judiciary and legislature. On the one hand we see Indian laws have been made on the basis of some traditions and customs, but some evil practice has been restricted and some has been given the binding force as a law but now after independence we have various laws to govern ourselves in our various family

disputes. On the other hand giving decision through Khap Panchayats which are not legally recognized, whether this practice is in the violation of already established law relating to the property and matrimonial matters. If the Khap Panchayat will adjudicate all the matters relating to matrimonial then what will be the function and existence of court of justice and the competency of legislature in India. Now the problem is that either these Khap Panchayats should be legally recognized or abolished so far as the opinion of the members of the Khap Panchayat is concerned it is also the public opinion and the public opinion should be recognized as for making law in a democratic setup because the state is made by the public and also the state is the voice of the public. If the law which is made by public residing in that state as the **Jurist Salmund** said “ Law is not right alone or might alone but the perfect union of the two, it is just speaking to men by the voice of the state.”

2. John Austin also emphasis on that “ Law is a command of sovereign” but the sovereign must be politically organized body. But the functioning of the Khap Panchayats not recognized legally even then this practice has been seen in various places of India and especially these Panchayats have been organized in Northern India in some states like Haryana, Rajasthan and widely in Uttar Pradesh. These Panchayats are functioning in certain districts of Uttar Pradesh like Bagpat, Shaharanpur, Muzaffarnagar. These Panchayats are called by various name in various places like Ahlawat Khap consisting of 12 villages, Rathi Khap consisting of 84 villages, Tomar Desh Khan consisting of 52 villages, Nagar Khap consisting of 84 villages, Malik Khap consisting of 45 villages, Pachahara consisting of 360 villages in Mathura etc.the term Khap Panchayat has been used in the geographical sense since it has covered areas & organizations in the northern western india. The origin of Khap Panchayat is till date not known but is believed to start back in 600 A.D. In ancient times, during the times when men was living a nomadic life, villages were being formed at a rapid rate & men were heading towards civilization for better standards of living. Even after this rapid modernization & civilization a lot many villages and tribes continue to exist in all part of India which have their own custom & traditions & different activities to deliver justice to their people. But in the present time a Khap Panchayat function without having a legal identity that should be strictly prohibited. Its function is recognized against establish law in India & its decisions are against the Indian personal laws like against the Hindu Marriage Act, Hindu Succession Act, Shariat Law which is applicable on muslims & against the law of other communities. Khap Panchayats are not recognized as

a separate sect of religion, so that these traditions & practice should be protected like other personal laws. These Panchayats cover various villages consisting of various persons, men and women having their separate religion. Khap Panchayats enforces its summons through social prohibitions & sanctions, imposes heavy fines as even kills the victims or makes them commit suicide, a lot of youth couples are being killed because of flouting the Khap rules. The actual purpose of Khap Panchayats are to regulate the Khap formed under the some gotra (clans or sub-caste), families in the villages. It basically asked for amendment in the Hindu Marriage Act 1955. Banning marriage within the same gotra or even gotra from the same village. But some decisions of the Khap Panchayats seems to be beneficial to the society as they oppose to dowry system & female foeticide & also oppose lavish show of money in marriage functions. But the maximum decisions of Khap Panchayats are against the society & infringe the rights of persons like to put a ban on women visiting markets & using cell phones or ask them to cover their head in public. These type of Khap Panchayat orders are a slur on our society. Honour Killings have been reported from those areas the most where the Khap Panchayats are active. The worst affected districts in Uttar Pradesh are Meerut, Baghpat and Muzaffarnagar. The question arise that why do Khaps still exist in these type of formal democracy in India? Why the elected Panchayats had a little scope in the matters of governance? Why some caste Panchayats are giving such repressive judgments now? Why they are not scared of police & law?

Although Supreme Court had declared these Panchayats ‘illegal’ & called it ‘barbaric’ & ‘illegal’ on April 19,2011. Supreme Court wants a strict criminal action against people forming and ruling in Khaps, emphasizing that Khap Panchayats are ‘illegal’ & the honour killing they enforce to be ‘barbaric’ & ‘shameful’, along with demanding action against the police authorities & bureaucrats also fails to prevent them. According to Supreme Court these Khap Panchayats encourage Honour Killings or other atrocities in an institutionalized way on boys and girls belonging to different casts who have been married or are going to get married. In September 2010, a Harayana Panchayat ordered a couple to live like siblings. In January 2011, a UP Caste Court called for a ban on jeans & tops. Curiously in march 2011, a High Court commuted death sentence for the Manoj-Babli Honour Killing. In April 2010, a five member family committed suicide to evade Khap fines. In January 2010, a Rohtak Khap declared two married partners in the same gotra to be siblings. In Haryana, a police chief threatened critics of Khaps. These are cases where throats are slit and limbs chopped off. This is the tip of iceberg.

Khap Panchayats taking law in their hands and pronouncing on the invalidity and impropriety of Sagotra and inter caste marriages and handing over punishment to the couple and pressurizing the family members to execute their verdict by any means amount to flagrant violation of rule of law and invasion of personal liberty of the person affected. While in Indian law Sagotra marriages are not prohibited by law, but not in the view of olden times. After independence to dispel any doubts the Hindu Marriage Disabilities Removal Act 1946 was enacted. This act expressly declared the validity of marriages between Hindus to belonging to the same gotra or different sub division of same caste. In present time Hindu Marriage Act does not prohibit sagotra on inter caste marriage.

The view of village elders or family elders cannot be forced to do so and no one has right to use force or impose far reaching sanctions in the name of vindicating community owner or family owner. It is record, that drastic action including wrongful confinement, persistent harassment, mental torture, infliction of severe bodily harm is resorted to either by close relations or some third party against the so called erring either on the exhortation of some or all the Panchayatdars or with their convenience. Social boycotts and other illegal sections affecting the young couple, the families and even a sanction of local inhabitants are quite often resorted to. The cumulative effects of all such acts have also public order dimensions that must be strictly prohibited by the act of government either by direct enforcement agencies or by making law. If specific law is made to prevent such illegal practice so it is not the derogation of the provisions of Indian penal code which can take care of various offences of serious nature perpetrated by the members of caste Panchayats in prosecution of their unlawful objective.

3. In Arumugam Servai Vs State of Tamil Nadu 2011 6 SCC, strongly deprecated the practice of Khap Panchayats which are taking into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice. The court said these acts take the law into their own hands and amount to Kangaroo Court, which are wholly illegal. Justice Markandey Katju and Gyan Sudha Mishra, in his report to Supreme Court Raju Ramachandran, senior advocate appointed by the court to assist it in PILs against Khap Panchayat has called for arrest of 'self styled' decision makers and proactive actions by the police to protect the fundamental rights of the people. It also asked for the recommendations being converted as directions to all states and the union, till a law is enacted by the Parliament.

The Law Commission of India has drafted a fresh legislation that seeks to declare such Panchayats unlawful. The prohibition of unlawful assemblies (interference with the freedom of matrimonial alliances) Bill -2011 proposes no person of any group of persons shall gather with an intention to deliberate on or condemn any marriage not prohibited by law, on the basis that such marriage has dishonored the caste or community tradition or brought disrepute to all or any of the persons for being part of the assembly or the part of family or the people of the locality concerned. But the situation till now is worse. Cruelty on person in form of Khap Panchayat is ended and working without fear. The purpose of the research also is why these Panchayats pronounce such fatwa and what are the cases of its decisions.

The role of the agencies which have been given the power to prevent such crimes failed, specially police has been very dismal. The reality is that police is also from the same class or people who oppose this right to choice have become the part of the problem rather leading from the front in protection of fundamental rights. These agencies failed in providing necessary protection to couples. The protection which is the fundamental right under article 21 has to be validated by high court or district court for the police to act. Till the time this validation occurs the couple have to live a life under hiding. There police in many cases have played the role of mute inspector. In many cases they could have save the lives of the couple had they acted as mandate by the law. Some of the cases where the law failed and the state become hindrance are as follows

In case of Jogindra kumar Vs state of up AIR 1994 SC, the police also have strong guidelines in the case of runaway couples. In Lata Singh case, Faiz Ahagnes case and also in Pradeep Kumar case are the same guidelines. In case of Bhupindra on marriage, the government of NCT of Delhi approved the parole of the accused in spite of being aware that two accused are absconding and one accused killed just after coming out in parole. In case of Gaurav Saini the law failed Gourav many times. In spite of the couple showing credible proof the police went out of the way to arrest Gaurav. In Priyanka case in 2010 which was concerned with the caste Panchayat. The Panchayat forced the village of boys to ask all women to leave the village whereas our constitution guarantees equality of sexes and in fact grants special favour to women.

4. **DISCUSSION:** The working of political parties through legislature, the leadership of social activist and the working of democratic forces and to feel the necessity of younger generation to come forward. To find the reasons for the evolution of such types of Panchayats specially in northern India. The

decisions of Khap Panchayats which seems to be beneficial to the society whether it should be protected or given them to binding force. The personal laws on the concept of marriage and property with the view of Khap Panchayats. The impact of abysmal sex ratio resulting of rampant female sex selective abortions, neglect of girl children a minuscule but still present female infanticide beside it that it is only women. In this male- dominant society who have publically stood to the might of Khap Panchayat.

Khap Panchayats view on the caste marriage, the reaction of panchayats are much stronger and violent when a girl marry a dalit or to a lower caste then her own instead of the girl marrying into the higher caste the reaction has been less violent. The real question we need to ask today in the face of such heinous crimes are how the state can facilitate the exercise of choice till the state legislates or provides the necessary support for the right of choice the explanation will continue. The state needs to facilitate the process of marriage becoming choice between two individuals. In order to eradicate this social evil it is vital to understand what holds this archaic set of laws together with set of modern and formal institutions like Panchayati raj, judiciary, police and the larger state. The causes whether Khap Panchayats are making gender violence or in what way it is discriminates weaker sections of the society like dalit, women, youngsters. whether Khap Panchayats are dividing factors and why these Panchayats are male dominant Panchayats. The points that what the role public, NGOs and other women organizations playing to curb or in enhancing the crimes. To raise the points on which Khap Panchayats functioning on the violation of Indian personal laws like the concept of marriage in establish law at the fatwah of Khap Panchayat on marriage.

‘Acknowledgement:

To analyze what the role enforcement agencies are playing to curb Khap crimes and to empirically search it out how many cases are reported in the police stations and what actions has been taken on that. The aim and objective of researcher is also see the functioning of NHRC, State Human Right Commission of Uttar Pradesh and the working of National Commission for women in India. Authors are thankful for the co-operation given by NHRC, State Human Right Commissions & NGO'S in India.

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1/8/2013