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Khaph Panchayats: The Unconstitutional and Illegal Bodies of Rural Social Architecture

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“We have in recent years heard of “Khaph Panchayats” (known as “Katta Panchayats” in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out.”

- Arumugam Serwai v. State of Tamil Nadu

ABSTRACT

In India, the Panchayati Raj System or the Local Self Government was introduced with the aim of decentralizing the powers of Legislatures and democratizing the country from the grass root level. However, some self-proclaimed courts of caste lords in the village (also known as Khaph Panchayat) which usually consists of male members of a particular “gotra” who think that they have the power to control the choices made by people enjoy full legitimacy and authority as “Custodians of Honor”. It is because of their meaningless diktats that most regressive views are implemented as they exercise a vast support from the villagers who believe that whatever they are doing is good for their community. The adjudications given by Khaph Panchayats are purely patriarchal in nature and “Honor Killings” or “Barbaric Murders” committed on their orders (Khaph Panchayats) for the sake of preserving the honor of a family, a clan or a village is one of them which have continued to persist in the Modern times too. In the name of preserving Indian culture, they are perpetuating crimes and thereby setting an example to be followed by their descendants. These are the acts which are usually considered as quintessential mindset of Arab-Muslim world by the International Community. Khaph Panchayats, institutions which were originally incorporated for maintaining law and social order in the society comprised of upper and middle caste land owners. They started functioning as judicial entities in parallel to the State Judiciary by subordinating their powers over the poor and their diktats mainly focused on perpetuating caste hierarchies. Khaph Panchayats or Caste Panchayats, which were originally incorporated to be credible bodies having a social outlook, are now highly politicized. They are active in

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various states of India during the time when the country is going through rapid globalization and social and economic advancements. As India tries to fly high, the disgraceful judgements of the self-proclaimed “Custodians of Honor” definitely effect its reputation. Even though Indian Judiciary has come a long way in delivering some of the most incredible landmark judgements of all time but there still remains a lot to be achieved in order to protect the society from the clutches of these so called “Unconstitutional” and “Unlawful” dispensers of Justice.

Keywords: *Khap Panchayat, Honour, Custodians, Unconstitutional, Illegal, Patriarchy.*

I. HISTORICAL PERSPECTIVE OF KHAP PANCHAYATS

The origin of Khap Panchayats can be traced back to the Vedic period. It dates back to the period when the migrating clans or their segments settled in a particular area after conquering nearby villages. A cluster of such villages formed was called as a “Khap”. There was a lot of anonymity as to what actually constituted a Khap?? Some believed that they could be arranged either on the basis of gotra or caste or either on the basis of geographical vicinity. The decisions taken by them were usually binding on all people living in the village and on the rare occasions when a party desired a review, it used to approach the Sarv-Khap (all-Khap), a higher assembly of representatives from all neighboring localities.²

Gradually, Khap Panchayats started to evolve as a Socio-political institution with an aim to maintain law and order in the village. It assumed the role of a “Dispute Resolution Body” consisting of elderly people who had the experiences and knowledge of life and people. The general public of villages started to accept Khap because of their capability to resolve disputes among them (Villagers) and slowly started to conform to their decisions. After that they started to spread their roots across these regions and thus became the “Ultimate decision making” or “Dispute Resolution” authority of these villages. They made sure that no person acts in defiance of the prevailing social norms in the village. If required, they used to impose punishments on those who defied and disrespected these social customs and norms. And thus, 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.³

Taking a look at the varied functions which were performed by the Khaps is instrumental for analyzing their present Social Position During the Mughal Era, Khaps played a key role by acting as an intermediary between the Mughal rulers and the Jat landlords. While on one hand

²Sakshi Duggal & Saumya Sinha, *Khap Panchayats: Transgressing Constitutional Ethos*, 4 JCIL 146, 147.

³Ibid at pg.147.

Khaps were used by Jat landlords to strike bargains with the Mughal rulers. On the other hand, they assumed the role as “Intermediaries” in the Land Revenue System by maintaining control over the tenants, artisan classes and castes in menial occupations. In addition to this, they also performed various administrative functions such as collecting taxes. Thus, in total it can be said that Khap Panchayats became very significant in the lives of Jat landlords for maintaining control over the society.⁴

This period of Mughal rule was followed by the colonial period with the advent of Britishers. Even in this period also Khap Panchayats continued to serve the interest of the influential class. This continued even after 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, their “Social Position” in the Jat Community can be witnessed in the present times as well.⁵

II. KHAP PANCHAYATS AS THE CORNERSTONE OF RURAL SOCIAL STRUCTURE

The present population of Khap Panchayats is found in the areas that have been historically dominated by the Jat Community. These areas comprise of present day Haryana, eastern Rajasthan, western Uttar Pradesh and some parts of Punjab. The Khap Panchayats exercises unrestricted and unchecked powers having no legal basis to it in these areas. The ill and dogmatic mentality of people living in these villages, the shocking inaction of the police and the reluctance of the state government to catch the bull by the horns further contribute in strengthening the social position of these Khaps. The Khap Panchayats which have existed since the earlier times has become an integral part of the “Rural Social Architecture” in the modern times. These Khaps capitalize on the four cornerstones of rural life, that are, “aikya (unity), izzat (honor), biradari (community) and bhaichara (brotherhood).”⁶

Since these Panchayats claim that they protect the values that every member of that particular community holds in high regard, their social and political position is nearly impossible to touch. These panchayats mainly deal with social problems. Originally, they were meant to deal with issues threatening the peace of villages, disputes over property and inheritance and sexual/ marital transgressions.⁷

There are certain features of the present time Khap Panchayats. Firstly, they are an all-male

⁴Ibid at pg.147.

⁵Ibid at pg. 147-148.

⁶Sakshi Duggal & Saumya Sinha, *Khap Panchayats: Transgressing Constitutional Ethos*, 4 JCIL 146, 149.

⁷Ibid at pg 149.

organization which shows 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 claim that they have 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 resort to 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.⁸

III. CASES OF HONOUR KILLINGS BY KHAP PANCHAYATS

Honour is the most cherished value in the Indian sub continental patriarchal families irrespective of the caste, regional and religious identities. The concept of "Honor" is depicted in different ways as it is regarded as a gendered notion with both women and men embodying the notions of honor in completely different ways. In India, women are considered as the "Repository" of a family's honour in the form of a daughter, wife or mother while on the other hand it is the men who are the absolute authority to regulate and protect it. It is because of this reason that this concept of "Honour" in India is presumed to be a female linked commodity coupled with the male's right to ensure that she does not jeopardize this valuable social stigma at any cost. And on this perception of man's social status, the whole idea of honour is built. The notion of honour is proportionately related to subordination of women in which control is exercised over her sexuality through arranged marriage, child marriage, prohibition of divorce, strict monogamy and ban on widow remarriage including strict seclusion of the widow. Being a woman is considered as an object of protection and violence at the same time in Indian societies.⁹

The fear of losing this honour and their social status makes the men justify their masculine aggression and violence against the women. This violence has a public face and is always reflected as a response to the cultural expectations of the male dominated society. If a female who is a major wish to marry a guy from other caste, it is usually treated as a matter of honour by the society as well as the girl's family, thereby forcing the girl's family to sacrifice their daughter along with her husband for the collective interests of these caste groups. Thus,

⁸Ibid at pg. 149-150.

⁹Dr. SheerenSadiq& Asif Khan, *Khap Panchayats in India: Precepts and Practices*, 7 IJCR 11753, 11755 (2015).

the concept of honour operates at the cost of human sentiments and values.¹⁰

Honour crimes mostly occur as a result of inter-caste marriage, inter-religious marriages, marrying within the same gotra, premarital affairs, inter-class marriages, marriage against parents' wishes and so on. Most of the honour killings have been reported from the areas where Khap Panchayats are more active. The existence of Khap Panchayats has been justified in the name of preserving the honour and values of the community and to uphold the sanctity of age-long customs and practices by regulating the conduct of people. These panchayats follow a certain 'code' which is an unwritten law for them, through which they save and defend their so called 'honour' and in the process of doing so also goes to the extent of murdering people for the sake of this 'honour', with the sanction of their whole community. Many a times, barbaric ways are adopted. For example, either ear or nose of the accused is chopped off, hair is cut, or face is polished black. Sometimes the land of the accused is seized and forcibly taken away from his possession, huge fines and penalties are imposed. Couples are forced to go for divorce without any cogent reasons and are sometimes remarried against their wishes.¹¹

There are many instances of honour killings which are said to be instigated by the decisions of the Khap Panchayats. They are:-

- **MEHRANA KILLING OF 1991:-**

This case was the first one to attract attention on the topic of Honor Killing in India. In this case, a middle class Jat girl of the village named Roshni eloped with Jaatav (untouchable caste) boy named Vijendra. One of the boy's friends helped them to elope from the village. After few days they returned back to their village thinking that the anger of the villagers must have subsided but the villagers caught all three of them. After that, the village Khap Panchayat ordered to hang them with the tree and burn them. In the morning the order of the so called 'panchayat' was executed and all of the three were burnt alive to death in front of the whole village.¹²

- **MANOJ-BABLI MURDER, 2007:-**

This case set up a precedent in the field of Honour Killing in India. In this case, the Khap Panchayat's decision was based on the assumption that since Manoj and Babli belonged

¹⁰Ibid at pg. 11755.

¹¹ Ibid at pg. 11755.

¹² Manbir Bhinder, *Khap Panchayats: Adjudicating Cultural Dishonour?*, LEGAL SERVICES INDIA, accessed at <http://www.legalservicesindia.com/article/1610/Khap-Panchayats,-Adjudicating-Cultural-Dishonour?.html>, accessed on May 30, 2020 at 8:20 PM.

to the same gotra i.e. Banwala of Jat Community, they should be considered as siblings in spite of being related directly and any union between them will be invalid. Despite that, the couple went ahead and married each other, following which they were abducted and killed by Babli's relatives. In March 2010, a Karnal district court sentenced the five perpetrators to be executed. It was the first time an Indian court had done so much in an honour killing case. The Khap head who ordered but did not take part in the killings received a life sentence, and the driver involved in the abduction a seven year prison term.¹³

- **THE CASE OF SIVA KUMAR AND MEGALA, 2010:-**

The menace of honour killings under the pressure of Khap Panchayats has spread its tentacles all over India. A 20 year girl Megala was told that she could not marry her lover, a 24 year old Siva Kumar as they were related and so her family got their daughter married somewhere else in June, 2010 from where she eloped with her lover. The couple was finally traced by the family and ShivaKumar was cruelly killed with sickles.¹⁴

(A) SHALISHI ADALATS (WEST BENGAL) AND KATTA PANCHAYATS (TAMIL NADU)

In West Bengal, similar diktats as of Khap Panchayats are issued by “*Shalishi Adalats*” which are known to be courts working on the same line as of them (Khap Panchayats). These adalats covers a vast area of Bengal especially the rural areas and have been known to pronounce Taliban-esque diktats. “*Shalishi*” is a Bengali word of Persian origin which means mediation or arbitration. But instead of mediation these kangaroo courts are the finest examples of mockery of mediation. Though these courts are supposed to handle and resolve only petty civil disputes, these adalats are responsible for often passing flawed and biased judgements of crimes ranging from thefts to extra marital affairs to rape. In most of the rape cases, the accused if he comes from a very affluent or influential background gets away with petty fines.¹⁵

Those who defy their diktats usually have to pay heavy fines unless they come from an affluent background. Take an example of MunirulHaque of Betla village in East Midnapur district. In this case, the “*Shalishi adalats*” was presided over by Nizamuddin Alam, a local Trinamool Congress Leader who asked Munirul to pay a fine of Rs 25,000 for allegedly making a pass at a trader's daughter in the village. Since Munirul was a poor farm laborer, he

¹³Ibid

¹⁴Ibid

¹⁵Jaideep Mazumdar, *The Injustice of Justice*, THE TIMES OF INDIA (Jan 26, 2014, 06:45 PM), accessed at <https://timesofindia.indiatimes.com/home/sunday-times/deep-focus/The-injustice-of-justice/articleshow/29385084.cms>, accessed on May 30, 2020 at 7:10 pm.

couldn't pay such a huge amount and instead asked for a waiver of the fine in front of the Adalat. Nizamuddin, a cousin of the trader, then interfered and asked Munirul to give his 16 year old daughter to a 46 year old man who is already married and has two wives in lieu of waving of fine. At last, Munirul had to agree to this illogical demand because he had no alternative.¹⁶

These courts are categorically biased in adjudging sentences. For example, an offence like adultery could attract anything ranging from a death sentence to a few thousand rupees. Whereas, a petty theft on the other hand could expect to be fined, flogged in public or even ostracized from the village. "In total the functioning of these adalats depends on the social and financial status of the offender, the mood of the elder members of the adalats at the time of making diktats and the relationship of these members with the accused or his or her family. If a woman from an affluent background commits adultery, chances are that she would be let off the hook with just a warning or fine, but on the other hand if the same offence is committed by the woman of a poor family, the repercussions of it would be much more harder and severe, like being tortured or paraded naked in front of the village."¹⁷

The death sentences imposed by these courts are usually executed in utmost secrecy and the whole village takes an oath of silence, failing the efforts of the Law Enforcement Agencies to bring the people behind these to justice. One of the well-known cases is that of Sheikh Sariul, a 29 year old rickshaw driver in Malda district. Sariul was accused of having an illicit affair with the wife of an affluent farmer of the same village and thus was summoned to a Shalishi Adalat. The Adalat sentenced Sariul to death. After that, he was beaten to death and his body dumped in the septic tank of the farmer's house. Eventually, an FIR was lodged and ten persons were arrested but they got out on bail and the investigation did not progress due to lack of evidence. This shows that these courts are governed by the affluent people as they could easily get off from the crimes that they have committed by using their social status and influence. Whereas, the poor person who have no influence or financial aid become the victim of this vicious cycle of corruption, predomination of power and authority and is thus mooched off by these evil people. Though, in 2014, an attempt was made by the Left front government to give a legal recognition to "Shalishi Adalats" through the West Bengal Level Pre-Litigation Conciliation Board Bill (which later came to be known as the Shalishi Bill). Under this bill, "Conciliation boards" were to be set up in every administrative block for adjudication of minor disputes. But, the Bill was faced with a lot of agitations from the

¹⁶Ibid

¹⁷Ibid

Opposition Congress and Trinamool Congress and ultimately, the government was forced to abandon its plan to introduce the Bill in the State Assembly.¹⁸

In Tamil nadu, courts similar to those of Shalishi Adalats and Khap Panchayats are known as “Katta Panchayats”. It can be said that both the courts adopts illegal, severe and brutal punishments to silence or shut up the new social forces which are said to have risen from among the deprived sections of the society. The brutal punishments of Katta Panchayats includes deprivation of social status along with the access to basic facilities like food, water and shelter, denial of cultural facilities like common worship, access to religious events, denial of employment etc. The Katta Panchayats are usually operated by people who have close connections with Political bigshots operating in the cities or towns. That’s why; there is no police interference in the matters of Katta Panchayats. Non-profitability of agriculture, lack of alternative ejobs and the increasing problem of unemployment in rural areas have led to the spread of Katta panchayats.¹⁹

IV. JUDICIAL INTERVENTION WITH RESPECT TO UNCONSTITUTIONALITY OF KHAP PANCHAYATS

Looking at the atrocities committed by the Khap Panchayats since a long time, the Judiciary finally stepped in and adjudicated the unconstitutionality of Khap Panchayats in its various judgements. With this regard the case of “*ArumugamSerwai v. State of Tamil Nadu*”²⁰ is noteworthy. In this case the Supreme Court declared that:

“We have in recent years heard of "Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in Lata Singh case, there is nothing honorable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.”

¹⁸Ibid

¹⁹Dr. SheerenSadiq& Asif Khan, *Khap Panchayats in India: Precepts and Practices*, 7 IJCR 11753, 11755-11756 (2015).

²⁰(2011) 6 SCC 405.

Moreover, in the case of “*Bhagwan Das vs. State (Nct) of Delhi*”²¹ the Supreme Court opined that

“All persons who are planning to perpetrate honour killings should know that the gallows await them”.

In addition to this, the landmark judgement “*Lata Singh vs. State of Uttar Pradesh and Others*”²² on honor killing and the illegality of Khap Panchayats is worth mentioning. In this case, the Supreme Court adjudicated some key points on our deep rooted Caste System which has eaten our society and eradication of it is the need of the hour. The Supreme Court in this case stated that:

“The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo Inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished.

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-casts or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stem action is taken against such persons as provided by law.

We sometimes hear of "honour" killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honorable in such killings, and in

²¹(2011) 6 SCC 396.

²²(2006) 5 SCC 475.

fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism.”

V. CONCLUSION AND RECOMMENDATIONS

At the end, it can be said that it is the need of the hour that these Panchayats should be rooted out through their base from the society because they are those evil elements which is destroying one of the basic principle on which our Indian Democracy is structured, that is, “Liberty” (which includes freedom to choose the partner and get married to the person of your choice). Although these panchayats are illegal and have no legal sanctions yet they enjoy the support of the majority of the people in their villages which gives them immense power and authority to decide the person’s choice of partner, the quantum of punishment which should be given to the person committing an offence depending on his social and financial status etc. It is because of these reasons these so called “Custodians of Honour” usually cross their line of dictating other people’s life and commit illegal, brutal and barbaric acts. It is because of the long standing custom which has been passed on from legacies in these villages, the Khap Panchayats have almost become the dictators or the government in these areas whose command cannot be called in for question by the subordinating people. In addition to this, these Khap Panchayats have also close links with the Political big shots and affluent people which make it more difficult for the poor and weak people to raise a voice against these people. The adjudications of these Panchayats are usually categorically biased in favor of socially and financially affluent people making the poor people suffer like animals even for the petty crimes that they have committed. And it is because of this, it has actually become very difficult for the Law Enforcing authorities and the Judiciary to completely eliminate these evils from the society as there is no support shown on the part of the villagers to stop this menace. There are often the cases where the Police was unable to finish the investigation as there was a lack of evidence and this was particularly because the people of these villages adopted Omerta or an oath of silence and didn’t come forward to help the Police. These things motivates these Khap Panchayats that whatever they are doing is right and therefore they continue to take the law in their own hands and twist and turn in the way they want it to. Hence, it is really important that there is a change in the mentality of these people and for that the government will have to take really careful steps to instill the thought of “Liberty” in the minds of these people and making them aware that they shouldn’t let their and their family’s fates fall in the hands of Khap Panchayats.

Hence, there are certain suggestions which need to be incorporated in order to completely eliminate Khap Panchayats from Indian society. They are:

- a.) The State governments of the areas consisting of Khap Panchayats should start campaigns against eliminating these Khap Panchayats from rural areas. And this can be done right from bringing a change in the mentality of the people and introducing them to the idea of taking independent decisions and in the case of conflict, to approach Judiciary instead of these Khap Panchayats. Although, it is a gradual process but with continuous effort this problem can be eradicated from its root cause.
- b.) The Parliament should come up with a legislation to give legal recognition to these “Khap Panchayats” so that they could be brought under the purview of Law and social order and the offender could be punished accordingly.
- c.) And any person convicted under that law should be completely debarred from contesting any future elections.
- d.) The mediation or conciliation courts should be set up in each administrative block to deal with the cases of Honour Crimes.
- e.) In addition to this, there should be a uniform definition of Honour Crimes so that there shouldn't be any ambiguity left.
- f.) Amendment should be made in the Indian Penal Code to define the honour crimes and their punishments accordingly.
