

Role of Khap Panchayat in Honour Killings

Komal Dahiya

Research Scholar, BPS Mahila Vishwavidyalaya, Sonipat

ABSTRACT

“This is wholly illegal and has to be ruthlessly stamped out. There is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of the personal lives of the people committed by brutal, feudal minded persons deserve harsh punishments. Only 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.”¹

INTRODUCTION

Khap panchayats which are generally found in UP, Punjab, Delhi, Rajasthan and Haryana are in news because of the diktats passed by it, in relation to honour killing cases or in any other cases in the name of protecting the customary evil practice prevailing in the society. In Honour Killing cases they pass diktats like declaring the young couple as brother and sister whereas per law it is clearly observed that these marriages are permitted as per law and may also pass an order to kill the young couple as they have dishonoured the customs prevailing in the society. According to the members of khap panchayat the young boy or the girl who perform inter-caste or inter-religion marriage or marry in the same gotra or marry within the same village have violated the customs of marriage which are prevailing in the society and the young couple who violate such customs should be punished for the same.

Khap Panchayat is a system of social administration and organisations, mainly in states of Rajasthan, Haryana, Uttar Pradesh and Delhi. These are the extra- constitutional bodies, which tries to legitimate their decisions by an old age custom or tradition which is followed in the community. They have emerged as quasi- judicial bodies who pronounce harsh punishments like calling the girl and the boy who have as brother and sister, mental harm, continuous harassment, wrongful confinement and also bodily harm to an extent by any of the relative which may even cause death to the person and also tries to impose them by various methods like social boycotts, commission of violence against the victim as well as fine.

Khap Panchayat is an old age institution whose origin may be find way back in 600 A.D but the exact origin of the Khap Panchayat is not known. Since that time, it has worked as a social institution which provides justice in rural areas but without applying the principles of natural justice. It may be called either as Khap Panchayat or caste panchayat. It mainly consists of elderly people of the village or persons who belong to upper caste.

Killing of an individual in the name of Honour of the family or society is most highlighted and burning issue which came to the limelight when reported by the media. If you look at the recent post, there are lot many cases reported of Honour killing, somehow connected to the act of khap panchayat who doesn't care about the life of the person. Honour crime defined as women or the girl of the family is considered Honour of the family and when she acts is contrary to the rules made is the community, declared to bring dishonor, due to that male family members created violence against her and is usually murdered as per their perception they dishonored the family examples of dishonorable acts are performing inter-caste, inter-religion or love marriage or having sexual relationship before marriage or getting pregnant before marriage, or getting divorce and also includes assault or raped. But this not an end to it even if there is suspicion of any dishonorable act may be killed.

¹ Supreme Court's statement, Bench of Justices Markandey Katju and Gyan Sudha Mishra.

Being a patriarchal form of society, how one should behave is determined by the men who also has judicial power to decide what is wrong and what is right women don't become independent throughout her life. They are under the control of the fathers, brothers, husbands and sons. Everyone, expect women to be well behaved daughter, a submissive wife and forgiving mother. Moreover, women can't revolt against the suppression, and have to work without complaining and has to follow the rules and norms. If she acts contrary to it, interpreted as dishonoring the family. Ultimately punished harshly and even intimated to be murdered. The Khap panchayat in Haryana fix a punishment to be killed when the young couple who married is the same gotra or inter-caste or inter- religion marriage. Here Honor means controlling movement and females are kept under the control of the family. For the Honour of the family women has to obey rituals and customs prevalent in the community. They are not to be involved in any sexual relations before they are married and also can't marry as per her own choice, can't perform inter caste or inter- religion marriage, cannot have extra martial affair and also cannot come out of her happy married life and if she revolts against any of these many lead to loss of her life too. So, it is concluded that her behavior is totally controlled by the male member of the family.

As a Punishment young couple are either killed or sometimes even made brother and sisters while tying rakhi in front of the Khap panchayat. Majority of the cases where Khap panchayat decides killing of young couple was the result of inter-caste marriage and while there is very a smaller number of cases of Honour killing in the case of same gotra marriage. This highlight that the caste system is deep rooted in our society and still traditional pattern in marriage is followed. Marriage performed in the same gotra is not a panicking-issues. As it can be concluded that the Khap panchayat which is formed by combining same gotra has more opposition in regard to inter-caste marriage because in case of same gotra marriage they declare the marriage of the young couple as null and void and declare the couple as brother and sister.

Khap panchayats perception which they propagate in the community is that any couple who perform marriage of their own are solely based upon their attraction towards each other where according to them marriage is a relation between two family and which bring the families together. So, Khap panchayat is promoting patriarchal form and targeting couples with a clear motive to have control over women and also to consider women as the property of men.

However, in case of honour killing it clearly looks that, the men are not killed by their own family but they are killed by the family of the women. In many cases men influences the Khap panchayat because of the power he has in the society and bargains to the Khap panchayat by paying fine.

KHAPS AND THE JUDICIARY

Independence of Judiciary being the basic feature of the Constitution of India and which cannot be amended and also Article 50 of the Constitution of India which provides for separation of powers between the different organs of the government and where one organ cannot interfere in the functioning of the other organ. Because of which people have great faith in the Judiciary and also by the proactive role played by judiciary in giving decision. Sometimes Judiciary also act as a law makes in the situation where no law is made by the legislature upon a particular point and in such situations by passing the judgment and setting up a precedent which is to be followed by the other courts of the country, it makes the law.

The Judiciary is also vigilant about the role played by the khap panchayats, kangaroo style court etc. have also not escaped the eye of the vigilant Supreme Court and the judicial system, realizing the extent and frequencies of the malpractices and atrocities inflicted by medieval alleged Taliban-styled caste courts, has by its interference, tried to, some extent, put brakes on their working.

The Supreme Court in **Arumugam Servai & Others. v. State of Tamil Nadu**², observed-
"Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal. Hence, we direct the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge sheet them and proceed against them departmentally if they do not (1) prevent the incident or if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred,

² 2011 (2) SCC 405.

they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection .”

The present case is against the appellant where he has used certain words which are used in derogatory sense to insult someone. While deciding the appeal the Supreme Court has observed that the words ‘pallan’, ‘pallapayal’, ‘parayan’ and ‘paraparaya’ are used with the intention to insult the other person and accordingly highly objectionable and also an offence under SC/ST Act. The court further held that today when we have entered in the modern world, every person must try not to hurt the feeling of the other person on basis of his caste, religion, tribe, language etc. The court stating the object of the SC/ST Act held that the Act aims to prevent any kind of humiliation and harassment to the person belonging to SC/ST community and also stated that in the era of democracy and equality there should be no looking down upon the any person. Hence, no one should use such words while addressing any person which may hurt his feelings.

While reiterating the judgment passed in Lata singh case where it was clearly mentioned that the court has held that various news which are coming to our knowledge where the young girls and boys are harassed, threatened if they marry outside their caste. But these threats are wholly illegal and person who commits the same must be severely punished. They further expressed their view that the caste system which is prevailing in the society is a curse to the nation and performance of inter-caste and inter-religion marriage is a step forward to have a Uniform Civil Code. In order to curb Honour Killing the court further issued directions to the state authorities to see that people who perform inter-caste marriage should be protected as inter-caste and inter-religion marriages are in national interest as they will help in eradicating the caste system prevailing in the society and also for the establishment of Uniform Civil Code.

“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. There is nothing honourable in honour killing or other atrocities against women and, in fact, it is nothing but barbaric and shameful murder. Other atrocities against women 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.”

The Court declaring such kangaroo styled courts to be illegitimate, further directed the administration to tackle with them strictly.

Finally, on 27th March 2018 **Shakti Vahini V. Union of India And Others**³ was decided by the Supreme Court of India. The recent judgment passed by the Supreme Court has led to the conclusive determination of the right of an adult individual to choose their life partner. A Bench of Chief Justice Dipak Misra, Justice AM Khanwilkar and Justice DY Chandrachud held that such a basic right is above the concept of class reputation and family prestige and that it is illegal for Khap Panchayats or any such assemblies to pass dictats of social exclusion or to punish the couples in any other way for exercising the right to choose their life partners.

“That honour killing is not the singular type of offence associated with the action taken and verdict pronounced by the Khap Panchayats. It is a grave one but not the alone one. It is a part of honour crime. It has to be clearly understood that honour crime is the genus and honour killing is the species, although a dangerous facet of it. However, it can be stated without any fear of contradiction that any kind of torture or torment or ill-treatment in the name of honour that tantamount to atrophy of choice of an individual relating to love and marriage by any assembly, whatsoever nomenclature it assumes, is illegal and cannot be allowed a moment of existence.”

The Supreme Court while deciding upon the authority of the Khap Panchayat held that when two major persons who chooses to marry each other, the consent of the family, society is not required and Khap Panchayat also doesn’t have an authority to determine the validity of their marriage and for doing the same they cannot take law in their hands.

“What we have stated hereinabove, to explicate, is that the consent of the family or the community or the clan is not necessary once the two adult individuals agree to enter into a wedlock. Their consent has to be piously given primacy. If there is offence committed by one because of some penal law, that has to be decided as per law which is called determination of criminality. It does not recognize any space for informal institutions for delivery of justice. It is so

³ AIR 2018 SC 1601

since a polity governed by 'Rule of Law' only accepts determination of rights and violation thereof by the formal institutions set up for dealing with such situations. It has to be constantly borne in mind that rule of law as a concept is meant to have order in a society. It respects human rights. Therefore, the Khap Panchayat or any Panchayat of any nomenclature cannot create a dent in exercise of the said right."

The court also observed that every person who is major has the Right to choose life partner and this right is also recognised by the Constitution and once it is recognised by the Constitution it needs to be protected from any kind of violation and the same cannot be taken away in the name of Honour.

"Honour killing guillotines individual liberty, freedom of choice and one's own perception of choice. It has to be sublimely borne in mind that when two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognized under Articles 19 and 21 of the Constitution. Such a right has the sanction of the constitutional law and once that is recognized, the said right needs to be protected and it cannot succumb to the conception of class honour or group thinking which is conceived of on some notion that remotely does not have any legitimacy.

While deciding upon the constitutionality of the Khap Panchayat the court held that Khap Panchayat being unconstitutional body and does not have a legal status should not assume them with the power of law enforcing agency. It observed that

"The 'Khap Panchayats' or such assembly should not take the law into their hands and further cannot assume the character of the law implementing agency, for that authority has not been conferred upon them under any law. Law has to be allowed to sustain by the law enforcement agencies."

In Shakti Vahani Vs. UOI⁴ The Supreme Court while deciding upon the authority of the Khap Panchayat held that when two major persons who chooses to marry each other, the consent of the family, society is not required and Khap Panchayat also doesn't have an authority to determine the validity of their marriage and for doing the same they cannot take law in their hands.

"What we have stated hereinabove, to explicate, is that the consent of the family or the community or the clan is not necessary once the two adult individuals agree to enter into a wedlock. Their consent has to be piously given primacy. If there is offence committed by one because of some penal law, that has to be decided as per law which is called determination of criminality. It does not recognize any space for informal institutions for delivery of justice. It is so since a polity governed by 'Rule of Law' only accepts determination of rights and violation thereof by the formal institutions set up for dealing with such situations. It has to be constantly borne in mind that rule of law as a concept is meant to have order in a society. It respects human rights. Therefore, the Khap Panchayat or any Panchayat of any nomenclature cannot create a dent in exercise of the said right." So, through this judgment the Supreme Court clearly declared the Khap Panchayats as the unconstitutional body.

THE PREVENTION OF CRIMES IN THE NAME OF 'HONOUR' & TRADITION BILL, 2010

The bill titled "Prevention of crimes in the name of 'Honour' & Traditional Bill, 2010" was drafted by the National Commission for Women in 2010. The main object of the proposed Bill was to deal with the incidents of killing in the name of Honour of family or the society which are taking place in many parts of the country especially in North India which includes Western Uttar Pradesh, Rajasthan, Punjab, Rajasthan and Haryana. The crime specially committed in the name of Honour is one of the most violent and abusive acts committed against the victim by their own family member under the instigation of the Khap panchayat. Khap panchayat, being against the matrimonial alliances of the young couple who have married by their choice is passes an order where they punish the young couple. So, to create a deterrent effect upon the other young couple who may follow the same. These unconstitutional bodies justify their action on the ground of violation of custom and tradition followed in the society. But the commission of crime in the name of Honour not only kills the person but is also violative of the fundamental rights provided by the Constitution of India, which includes right to life and liberty given under the Constitution of India. So, the main aim of the Proposed Bill to prevent the happening of such incidents in the name of Honour and also to protect the violation of fundamental rights of the individual.

⁴ AIR 2018 SC 1601

*“All persons including young persons and women have the right to control their own lives, a right to liberty and freedom of expression, and a right of association, movement and bodily integrity. They have a right to choose their own partners in marriage or otherwise and any action to prevent the exercise of these rights shall amount to an offence under the provisions of this Bill.”*⁵ So, Section 3 of the bill gives every person liberty to choose their own life partner and in case any person who tries to interfere in restricting the person from exercising such right would amount to an offence under the proposed Bill and the person would be punished accordingly under section 4 of the proposed Bill, which says that any person whether member of family or of a group who entices or causes grievous hurt or any other kind of injury to the person who have exercised his /her right given under section 3 of the proposed Bill shall be punished according to the punishment provided in Indian Penal Code, 1860 for the offence.⁶

As per Section 6 of the Proposed Bill, if any person or group of people found engaged in the harassing, killing or committing any kind of violence against the young couples or against their family members in public shall be punished and the punishment may extend up to 2 years or fine.⁷

As per Indian Evidence Act, the burden of proof generally lies upon the prosecution to prove the case against the accused but here in such offences as mentioned in the Bill, the burden generally lies upon the person/persons to prove that they have committed no offence.⁸

However, while drafting the proposed bill failed to deal with unlawful assemblies specially gathering to discuss about the matrimonial alliances which are taking place against the customs and tradition of the society and also about their influence upon the society. So, the law commission while submitting its 242nd report came up with the proposed Bill titled, the “Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliance) Bill, 2011” with major focus on punishing the unlawful assemblies which specially interfere in the matrimonial alliances of the young couple i.e. who perform inter-caste, inter-religion marriage or marriage in the same gotra or village and also to restrict such unlawful assemblies to gather at a place.

PROHIBITION OF UNLAWFUL ASSEMBLY (INTERFERENCE WITH THE FREEDOM OF MATRIMONIAL ALLIANCE) BILL, 2011

The proposed Bill aims to criminalize the action of unlawful assemblies which interfere in the matrimonial alliances of the young couple i.e. who perform inter-caste, inter-religion or marriage against the customs of the society. The main aim of the Bill is to restrict the person to assemble together in order to discuss the issue of young couple who have married or about to marry by their choice or by inter-caste, inter-religion or marriage in same gotra or village. So, the proposed Bill aims to punish the member of this Unlawful Assembly and also any person who act upon the direction issued by the unlawful Assembly. If the proposed Bill is passed it will reduce the role of khap panchayat and its influence upon the society. Khap panchayat passes a decision against the young couple. The proposed Bill also provide punishment for assembling together for the same purpose. Now the khap panchayat can only be punished under section 120B for criminal conspiracy and also under section 107 read along with section 108 for abetment under Indian Penal Code, 1860. But there is no special legislature to punish the member of the unlawful assembly which are

⁵ Section 3 of Prevention of crimes in the name of ‘Honour’ & Traditional Bill, 2010

⁶ Section 4 reads: If any person or persons, whether he or they are members of the victims family or 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), kills or kill , a woman or her partner(or any person/persons associating with her or them) causes grievous hurt or any form of injury or to persecute her or them for exercising the rights Stated in Section 1, or participates or incites such an act , shall be guilty of murder or any offence and shall be punishable with the punishment prescribed in the Indian Penal Code, 1860.

Explanation I – For the purpose of this section, all members of the caste or clan or community or caste panchayat, present or participates or incites the commission of an act by which death is caused was ordered, shall be deemed to be guilty of having committed such act.

⁷ Section 6 reads- If any person or persons, including a body of persons by whatever name it is called, eulogises or publicly supports or incites, the harassment or killing or any kind of violence against the couple or either of them or any member of their family, he or they shall be punishable with a term of imprisonment upto two years and with punitive fine.

⁸ Section 7 of Prevention of crimes in the name of ‘Honour’ & Traditional Bill, 2010

against the matrimonial alliances which are not permitted by the custom and tradition prevailing in the society. So, the Bill aims at preventing hatred or spreading of violence by these unlawful assemblies. So, the Bill aims to punish the member of unlawful assembly along with the punishment which is provided in Indian Penal Code.

Section 2(1) of the proposed Bill provides that *“no person or 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 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.”*⁹ So, as per the section 2(1) of the Bill prohibits gathering of persons in order to discuss about the issue related to marriage which are not prohibited by law.

Section 2(2) of the Bill also declare any such kind of gathering as unlawful and every person who being member of such gathering shall be punished with imprisonment which may be from six months up to one year.¹⁰

By virtue of section 4 of the proposed bill provides that any person being the member of unlawful assembly who are involved in intimidating the couples in order to disapprove their marriage shall be punished with an imprisonment for not less than one year and may extend up to 2 years and also fine. The explanation to the section clearly shows that the term criminal intimidation would have the same meaning as given in section 503 of the Indian Penal Code, 1860.¹¹

Section 4 of the Bill reads as- *“any member of an unlawful assembly who, with a view to secure compliance with the illegal decision of that assembly in relation to the marriage that is being objected to, indulges in criminal intimidation of the couple or either of them or their relatives or supporters shall be punishable with imprisonment for a term of not less than one year but which may extend to three years and shall also be liable to fine up to thirty thousand rupees provided that if the threat be to cause harm or injury of the description referred to in second part of Section 506 IPC, the maximum punishment shall extend to seven years of imprisonment instead of three years and fine extending to thirty thousand rupees Explanation: The expression ‘criminal intimidation’ shall have the same meaning as is given in section 503 of the Indian Penal Code”.*

Section 6 of the proposed Bill provides liberty to the court to raise a presumption against the person who is prosecuted under section 3 and 4 of the proposed bill still continues to the member of unlawful assembly has an intention to act upon the decision passed by the unlawful assembly.¹² The section 6 of the proposed bill reads as- *“In a prosecution under section 3 or section 4, if it is found that any accused person participated or continued to participate in an unlawful assembly, the Court shall presume that he intended and decided to take all necessary steps to put into effect the decision of unlawful assembly including the commission of acts referred to in Sections 3 and 4.”*

As per section 8 of the proposed Bill, The Collector or the District Magistrate are given the authority to take all necessary steps to prohibit the meeting of unlawful assembly specially about to take place to commit an offence under the proposed Bill and also to protect the couple who are targeted by this unlawful assembly.¹³

The offences which are committed under the proposed Bill shall be tried by Special Courts which will be constituted after the notification and to be presided by a Sessions Judge or Additional Sessions Judge.¹⁴ The Special Court are

⁹ Section 2(1) The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011

¹⁰ Section 2(2) reads as: Such gathering or assembly or congregation shall be treated as an unlawful assembly and every person convening or organizing such assembly and every member thereof participating therein shall be punishable with imprisonment for a term of not less than six months but which may be extend to one year and shall also be liable to fine up to ten thousand rupees.

¹¹ Section 4 of The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011

¹² Section 6 of The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011

¹³ Section 8. (1) Where the Collector or District Magistrate receives information that there is a likelihood of convening of an unlawful assembly, he shall, by order, prohibit the convening of any such assembly and doing of any act towards the commission of any offence under this Act by any person in any area specified in the order.

(2) The Collector or District Magistrate may take such steps as may be necessary to give effect to such order, including giving of appropriate directives to the police authorities.

(3) The Collector or District Magistrate shall also take such steps as may be necessary to ensure the safety of the persons targeted pursuant to the illegal decision taken by the unlawful assembly.

given the powers to take cognizance of the offence under the proposed Bill either upon the complaint of the person or upon the police report.¹⁵ As per section 12 of the proposed bill, all the offences mentioned in the proposed Bill are considered to be cognizable, non-bailable and non-compoundable offences.¹⁶

The main object of the proposed bill is to punish the person who are members of the unlawful assembly, which specially gather to take decision against the young couple who have married by their choice. The Bill is not in contravention with any other existing law and is to be read in addition to the same. Though the act of commission of homicide act is still covered under Indian Penal Code, 1860.

After the Proposed Bill was drafted, it was kept for the open suggestions for the people. So, there are certain suggestions which are suggested by the NUJS. An analysis of the proposed Bill was done by NUJS and these are certain suggestions which are made to the Bill like, if a law is made, it should be capable of achieving its objective i.e. what was the reason to make law and the law should also be verified as if it is capable is achieving its objective i.e. what was the reason to make law and the law should also be verified as if it is capable is achieving its objective and what is the issue to which law has to deal and is case if the half issue remains unaddressed, the purpose of making the law is defeated.

In case of the proposed Bill, it fails to secure freedom of choice and right to have family of their choice. The Bill also fails to include the provisions for protection and prevention and it only talks about the punitive provisions. There were certain suggestions made by NUJS before enacting the law i.e. to declare act or omissions which are prohibited by law, to include protection and preventive provision to the Bill and also some punishment for the person who violate these protective and preventive provisions.

In so far as the caste or community Panchayat plays a constructive role in addressing the common problems concerning the society or amicably settling the disputes between the local inhabitants and families, dissuading the people from criminal path, the mission and the work of these village elders and Panchayatdars can be commended; but if they exceeds their limit, as it is often happening, impose their decisions in matters relating to matrimony and interference with the legitimate choices of youngsters and indulge in acts of endangering their life and liberty, the law cannot remain silent spectator in our progressive democratic polity wedded to cherished constitutional values.

¹⁴ Section 9 (1) Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be triable by a Special Court constituted under a notification issued in the official gazette and the special court shall be presided over by an officer of the rank of Sessions Judge or Addl. Sessions Judge.

(2) The State Government shall in consultation with the High Court constitute one or more Special Courts for the trial of offences under this Act and every Special Court shall exercise jurisdiction in respect of the whole or such part of the State as may be specified in the notification.

¹⁵ Section 10. (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

¹⁶ Section 12. Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be cognizable, non- bailable and non -compoundable.