



REVIEW ARTICLE

KHAP PANCHAYATS IN INDIA: PRECEPTS AND PRACTICES

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ABSTRACT

In India, the Panchayati Raj System was introduced with the aim of decentralization and democratization. However, Khap Panchayats, the self proclaimed courts of caste lords in a village, enjoy full legitimacy and authority as 'custodians of honor'. It is through them that most regressive views are sought to be implemented. Khap adjudications are purely feudal and patriarchal in nature. Honour killings, barbaric murders committed for the sake of preserving the honour of a family, a clan or a village, are the medieval remnants of regressive tribal societies that have persisted for far too long into the modern liberal age. In the name of preserving Indian culture, they are perpetuating crimes and thereby nurturing a culture of crimes for descendents. These are acts that the International community considers as mostly confined to the Arab-Muslim world. Khap Panchayats, institutions originally designed for defense against invaders were and remain essentially caste Panchayats comprised of upper and middle-caste land owners. They function as judicial entities parallel to the state judiciary that have built their power by subordinating the poor and their *diktats* are focused on perpetuating caste hierarchies. Khap Panchayats/ Caste Panchayats, the earlier credible bodies with a social outlook, are now highly politicized. They are active in various states of the country at a time when the country is going through rapid social and economic advancements. As India tries to fly high the disgraceful judgments of the self proclaimed courts of caste lords definitely erase its reputations. Indian judiciary has come a long way but still much remains to be achieved in order to protect our society from the clutches of unlawful and unconstitutional dispensers of (in) justice. It is in this backdrop that the paper attempts to highlight the pattern of crime propagated by the so called custodians of honour.

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INTRODUCTION

Appropriation of legitimacy by socially and economically upward mobile castes has gained unfortunate importance in contemporary times. In the age of globalization and growing consumerism the retention of such identity has led groups to enforce self promulgated caste rules and regulations. This led Khap Panchayat to issue dictates to regulate the 'gotra' marriages in their community. Such attempts at regulation unfortunately have frequently ended in gruesome 'honour killings'. These have assumed alarming proportions in recent times and pose a serious threat to the democratic and constitutional functioning of civil society. The origin of the word 'khap' is derived from 'faank', meaning an off-shoot or fraction. Historically the word 'khap' was used for the first time in Rajasthan in the context of Rajput ruling class during the medieval period. The first census report based on religion and caste was prepared in Jodhpur in the year 1890-91, thereby dividing the people of India on the basis of religion and caste. Even the castes were divided on the basis of gotras.

The word khap has come into existence in the said census report. People of all castes were divided into 'gotras' meaning khaps. Khaps were placed in a hierarchy on the basis of their economic position. Khap panchayat means the panchayat of the villagers who belonged to the same gotra. Thus different gotras had their own khap panchayats. Khap panchayats believe themselves to be autonomous from the state and claim to represent all members of that particular community (Bharadwaj, 2012).

Gotras

The popular perception about gotra is that it consists of a large number of cognates supposed to be descended from the same rishi-ancestor who lived in the ancient past. In course of time the number of descendants of each rishi-ancestor has increased so that not only have all ties of common residence and even territorial proximity been snapped, but a large number of new derivative gotra kin groups have sprung up named after new rishis. Gotra comes to have its social significance in so far as members of the same gotra, even if they have never known or heard of each other nor are related by blood, cannot intermarry. But today, we find that each gotra consists of a

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large number of culturally heterogeneous people, among whom there are no traces of historical links. It has, therefore, become imperative to advocate a relaxing of gotra restrictions on marriage. The gotra seems to consist of an evolved institution coming down from Rigvedic Society. Since Rigvedic society was basically a cattle rearing community, it indicates that the formation of gotras must have been along economic lines. People of a particular group used to maintain a *Gaushala*, and their survival depended on the sale of milk. Historians suggest that because of their cooperation with each other and the feeling of brotherhood, the people of a single *Gaushala* were termed as belonging to the one gotra. This is viewed as the basis of the origin of the gotra system in Rigvedic society. With the shift to agriculture from cattle rearing, the gotras started being identified with different farming settlements instead of *Gaushalas*. As tribal society gradually turned into a farming community, new gotras sprang up. The process was rapid and by the beginning of the medieval period the number of gotras increased to 500. Hence, a number of pastoral tribal communities transformed themselves into agriculturalists and subsequently, caste became the basis around which gotra identities crystallized. Many of these communities subsequently asserted themselves as organized armed groups to make their presence felt and to evolve their specific identities. (Bharadwaj, 2011)

Various Jat Gotras

Research indicates that the jats got transformed into an agrarian community only after the 12th and 13th centuries. So, it is clear that their gotra identity could have got solidified only after that period. The word 'jat' is usually found in Indo-Persian sources after the establishment of the Delhi Sultanate (1206 AD), particularly in north India. Jat formed various gotras such as

Neharwal gotras – Jat farmers who settled near the canals (Nehr).

Berwal gotras – The area of Berwal jats was less fertile (they lived in the region of Rajasthan and later moved towards Haryana) because of the scarcity of water. Thorny bushes and berries were found in the region in plenty. The term Ber was associated with the social identity of the Jat farmers of that area who were known as 'Berwal'.

Malik gotra – they were found in Haryana and also in western UP. The Malik gotra is not confined only to the Jats but also refers to other Hindu castes such as Punjabi, Harijans and Gujjar. This gotra is found in the Muslim population of Pakistan too. During the Sultanate period, Malik used to be a title or rank in the army, just like *Mansabdar* in the Mughal army. So the identification of this gotra emerged from military ranks.

By the end of the 18th century the Jats were thus able to form more than 250 gotras. The identity of the majority of Jats was based either on occupation, village, region or some kind of totem (Moor gotras have peacock as totem). The Jats used the gotras to forge a new social identity which was composite as well as specific. In the late 17th and the early 18th century a

large number of Jat peasants and Zamindars participated in revolts against the Mughal state to assert their own socio-economic position. The most important cause for the revolt can be explained in the economic exploitation Jats suffered at the hands of the Mughal authorities. Thousands of peasants belonging to different castes such as Meena, Meo and Gujjar were involved in the Jat struggles to protest the land revenue policy of the Mughals. The agrarian movements during the late 17th and early 18th centuries by the Jats against the Mughal Empire strengthened their social identity. During this period, the Jat Zamindars were able to mobilize a large number of Jat peasants, in their fortress. The peasants of the surrounding villages used to assemble in the fortress of the Jat Zamindars hoping to get rid of their heavy land revenue burdens. This process not only strengthened the feeling of brotherhood among the Jat peasantry and Jat Zamindars but it also provided a strong political and social identity to the Jat community.

However, it was only after the year 1960, with the politics of Chaudhary Charan Singh, that a well defined identity of the Jat of western UP took concrete shape. During this phase, based upon their own gotras, numerous khaps also came into existence which were earlier in an 'embryonic' stage, if present at all. These khaps produced several local political leaders. Even in Haryana the rise of khap panchayats can be attributed on the lines of western UP. No doubt, khap panchayats are patriarchal in nature. These bodies have always opposed the right of inheritance for women. They are not only undemocratic in their approach but are also anti-women. Khap panchayats are being actively used as platform to project political image. On the pretext of safeguarding culture and tradition the khap panchayats are being harnessed to gain political mileage. Khaps were (and still are) an informal but well-established social institution in the Jat dominated areas that fall in present day Haryana, western Uttar Pradesh and parts of Rajasthan. In course of evolving in different geographical areas they acquired forms shaped by a variety of socio-economic factors. Of these the important were gotra tie, caste and ownership of land.

They served as public forums where differences could be sorted out by direct negotiated settlements between both parties without wasting too much time or money. They also acted to enforce a measure of social control of the traditional moral code of conduct, if conduct was violated. Decisions taken by them were binding on all members and on the rare occasions if a party desired a review, it could approach the *Sarv-khap*, a higher assembly of representatives from all neighbouring khaps in a locality. The relative ease and speed with which justice was dispensed and the sense of solidarity and support that villages and communities provided to families gave khaps firm social standing. Given the strong hold patriarchy had on all aspects of society women played no part in khap deliberations. The position of the lower castes and the scheduled castes was no different (Bharadwaj, 2011). With independence, a democracy based on secular principles, courts and the principle of the rule of law, khaps ought to have faded away but an asymmetrical pattern of landownership combined with a potent mix of caste, customs, patrilineal norms of inheritance and others have ensured their survival in many rural areas. Their beneficiaries at present appear to be the well-

to-do, who fear for their material assets, social standing and privileges. Unlike helping to maintain social order as they did, they now act as important agencies of social control. Wielding the concept of *bhaichara* (brotherhood) and traditional values which socio-economic circumstances of an earlier time may have justified, but in many ways are outdated now, they have attracted widespread attention by opposing love affairs and marriages if they involve members of the same gotra or different castes. This not only goes against the law of the land, but also individual and human rights. (Kumar, 2012)

Honour Killings

Honour is the most cherished value in the Indian sub-continental patriarchal families irrespective of the caste, regional and religious identities. The ideology of honour being a gendered notion in India, both men and women embody notions of honour in totally different ways. Women are the repository of the family honour as a daughter, wife and mother while man regulates it. Honour is presumed to be a female linked commodity coupled with the male right to ensure that she does not jeopardize its balance at any cost. Upon this social perception of the man's creative ability, the whole notion of honour is built. Subordination of women is proportionately related to caste hierarchy. Higher the constraint on her, the higher is the caste in the so called hierarchy. 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 rendered an object of protection and violence at the same time.

The fear of losing this honour makes the men rationalize and justify masculine aggression and violence against her. Violence against her has a public face and is always committed in response to the cultural expectations of the later community. Even if the family wishes, it is not allowed to settle the matter of inter-caste marriages amicably but is compelled to treat, it as a matter of honour by the community which is ready to take over, if the family is unwilling, thereby forcing the family to sacrifice their sons and daughters in the collective interests of the caste group. Thus, the concept of honour operates at the cost of human sentiments and values. (Vishwanath and Palakonda, 2011). Honour killing refers to the murder committed by family members and the people belonging to the concerned caste/gotra/class of family members who are believed to have brought shame and dishonour on the family name.

Honour crimes may occur as a result of inter-caste marriage, inter-religious marriages, marrying within the same gotra, pre-marital affairs, inter-class marriages, marriage against parents' wishes and so on. Most of the honour killings have been reported from those 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 'honour' and in the process going 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. The family of the accused is excommunicated which results tremendous agony and humiliation (Kachhwaha, 2011). There are many instances of honour killings which are said to be instigated by the decisions of the Khap Panchayats

Mehrana Killing, 1991: A Jat middle class girl of the village named Roshni eloped with Jaatav (erstwhile untouchable caste) boy named Vijendra. One of the friends of the boy helped them. The village people caught all three. Village Khap Panchayat ordered to hang them with 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.

Manoj-Babli Murder, 2007: The Manoj-Babli murder case has set up precedent in the field of honour killing. It was the case of honour killing of Indian newlywed Manoj-Babli in June 2007 and the successive court case which historically convicted accused for an honour killing. The killing was ordered by a khap panchayat of the Karoara village in Kaithal district, Harayana. The Khap Panchayats ruling was based on the assumption that Manoj and Babli belonged to the Banwala gotra, a Jat community, and therefore considered to be siblings despite not being directly related and any union between them would be invalid. Nevertheless, the couple went ahead with their marriage, following which they were abducted and killed by relatives of the deceased.

Shiva 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 Shiva Kumar was cruelly killed with sickles. (<http://www.legalservicesindia.com/article/article/khap-panchyats-adjudicating-cultural-dishonour-1610-1.html>)

Shalishi Adalats and Katta Panchayats

In West Bengal similar diktats are issued by *Shalishi Adalats*, which are 'courts' working on the same line as Khap Panchayats. 'Shalishi', a Bengali word of Persian origin means mediation or arbitration, Shalishi Adalats operate in vast areas of Bengal specifically in rural areas and have been known to hand out Taliban-esque diktats. Those who defy have to pay a heavy price. Munirul Haque in Midnapur district was fined by a Shalishi Adalat a sum of rupees 25,000 for allegedly making a pass at the daughter of a trader in the village. Munirul was unable to pay the amount. In lieu of fine Munirul was asked to give his sixteen years old daughter in marriage to a 46 years old man who already had two wives. Munirul had to agree

because he had no alternative. The death sentences imposed are usually executed in utmost secrecy and the whole village takes an *Omerta* or oath of silence, thus, foiling any effort by the law enforcement machinery to bring members of such courts to justice. One of the known cases is that of Sheikh Sariul, a 29 years old van rickshaw operator in Malda district. Sariul was accused of having an illicit affair with the wife of an affluent farmer of the same village and was summoned to a Shalishi Adalat in August, 2010. The Adalat sentenced Sariul to death. He was beaten to death and his body dumped in the septic tank of the farmer's house. An FIR was lodged and ten persons arrested but they are out on bail and the investigations have not progressed due to lack of evidence. A lot of factors come into play in the decision of these Adalats, but it is always those without political and financial clout who are subjected to the most ruthless sentences. Very often, the Shalishi Adalats are used by party in power to settle political scores over rivals. (Mazumdar, 2014). In Tamil Nadu such 'courts' are known as *Katta Panchayats*, they are similar to Khap Panchayats of North India.

Both the courts mean to silence the new social forces that have risen from among the deprived sections of society. Many actions taken by the Katta Panchayat result in deprivation of social status, access to basic facilities like food, water and shelter, denial of cultural facilities like common worship, access to religious events, denial of economic opportunities like employment and so on. In a particular case, an employee of the Telecom Department, along with her mother was ordered to pay a fine of rupees 50,000 for not complying with the direction of Khap Panchayat to join her husband. The panchayats also made the victims prostrate before them repeatedly from 10 a.m. to 5 p.m. to reduce the quantum of fine. Katta panchayats are run by persons who have close links with political bigwigs operating in cities and towns. Police intervention is totally absent whenever the Katta panchayats indulge. Non-profitability of agriculture, lack of alternative jobs and the increasing problem of unemployment in rural areas have contributed to the flourishing of Katta panchayats. (https://groups.google.com/forum/#!topic/upscportal/gt_eXkQ4oeo)

Judicial Intervention

Realizing the extent of the atrocities inflicted by the Taliban-styled courts several important judicial interventions have taken place in India. The case of *Arumugam Serwai v. State of Tamil Nadu* is noteworthy. The case arose in the context of violation of certain provisions of Schedule Tribe and Schedule Caste (Prevention of Atrocities) Act, 1989. The court in this case identified certain practices prevalent in India which also included the human rights violations carried out by Khap Panchayat. The Supreme Court in this case observed and directed as follows:

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 institutionalised 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". In the case of Lata Singh, 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 personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way 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. (p.227)

In *Bhagwan Das vs. State (Nct) of Delhi* (2011) the Apex court opined that "all persons who are planning to perpetrate honour killings should know that the gallows await them". (http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf)

In the *Manoj-Babli* case five of the seven convicts were sentenced to life imprisonment by the Punjab and Haryana High Court. The court also ordered action against the police officers who delayed the case. (<http://www.legalservicesindia.com/article/article/khap-panchayats-adjudicating-cultural-dishonour-1610-1.html>)

Honour crimes in India are prevalent and widespread. There are no official statistics available on honour killings. Statistics for honour crimes are difficult to trace because there is no specific definition of honour crimes. There are also no estimates available on other types of honour crimes such as forced marriages or physical assaults. According to Human Rights Watch 2010 there are approximately 900 honour killings each year. Many honour crimes go unreported. Sometimes honour killings are distinguished as suicides or natural deaths. Several cases of honour killings between 2010-2013 occurred in Delhi, Haryana, Uttar Pradesh, Kolkata, Maharashtra, Jammu and Kashmir, Jharkhand, Tamil Nadu and Bihar. Both men and women are targets of honour crimes. Children are also killed as a result of honour crimes. *Shakti Vahini* (a New Delhi based NGO) found that in 89 percent of the 560 cases in their study the girls family was the perpetrator of violence. Male family members are the typical perpetrators but they are supported by members of the community.

Khap panchayats play a role in honour crimes that occur in rural areas. In urban areas such crimes do not occur at the same rate or level. In urban areas the perpetrators of honour crimes tend to be upper class or middle class families rather than poor families. Police is described as ineffective in protecting people who fear becoming victims of honour crimes. They are reluctant to register the complaints or carry out investigations. Many of the police officers have traditional patriarchal values. In interviews with 300 police officers in northern India *Shakti Vahini* found that 85 percent were against same Gotra marriages, 70 percent against inter-caste marriages and 62 percent reported they would react strongly if an inter-caste marriage occurred in their family. (http://www.ecoi.net/local_link/248801/359140_en.html)

Suggestions

Khap Panchayats are essentially caste Panchayats comprising of upper and middle-caste landowners. They function as

judicial entities parallel to the state judiciary that have built their power by subordinating the poor. More than class and clan, their diktats are focused on perpetuating caste hierarchies. Marriages and unions that transgress the boundaries of caste and gotra and threaten the power structure of Khap Panchayats, essentially all those who defy the rules, have been at the receiving end of extreme wrath from family and community. Inspired by the constitutional spirit and international commitments India's judiciary has played an active role to curb the power of Khap Panchayats. However, the rapidly rising terror of undeterred Khap Panchayats' illegal dictates reflects our failure. The reason is simple. The law enforcement agencies strike a conciliatory note as there is hardly any case reported or action taken against these perpetrators of injustice. Moreover, police and political figures have their vested interests in its continuance. In this light the following suggestions are submitted.

- Prohibition on the Sagotra marriages makes little sense today. Members of any particular Gotra today are removed by hundreds of generations from its original founder. Many Gotra names are territorial or professional in significance. The general public ought to be made aware of this reality.
- The power of the caste panchayats need to be curtailed by appropriate legislation. In India, there is no specific criminal law to deal with the offence of honour crimes. Need is there to either enact a special law or to add specific provisions in the Indian Penal Code in order to curb this menace. Any person convicted under such law should also be debarred from contesting any election.
- Special fast track courts should be considered for handling cases of honour killings. There should be amendment in the Evidence Act in order to shift the burden of proof on accused, thereby making him responsible to prove his innocence in the vent of honour killing.
- The administration should come up with various help lines numbers and special cell where people can approach for protection.

Measures such as universal adult franchise and reservations in Gram Panchayats for the lower castes and for women have already been instituted to break the traditional power structures of the khap panchayats. But we need to go beyond these officious measures and ensure that what is brought to an end is the informal collusion between State actors and the khap panchayats. Most importantly, we need to pay unerring attention to the root cause of this problem and not be seduced away by political exigencies. Unless this is done, the bane of Indian society, caste, will continue to be perpetuated in its very worst form at a time when democratic equality and a location in the modern world have no place for it.

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