



WOMEN'S HAPPINESS A FARFETCHED DREAM: A CASE ON THE HEGEMONY OF KHAP PANCHAYATS

Ritupriya Gurtoo

Assistant Professor, Department of Law, Prestige Institute of Management and Research, Indore

ABSTRACT

Khap Panchayats connotes an institution which controls a particular area where it has supremacy either in the name of the clan or the gotra. Till today; they continue to have a caste based society where notion of brotherhood, marriage within the gotra, women as a custodian of honour still prevails. Their feudal mindset of strong kinship does not allow people of their community to take a decision contrary to the ideology of the Khaps. Their authority has become crucial to the degree that they wrangle with political parties and nowadays they have become disreputable for their rough-edged laws and rudimentary punishments, especially against women. Khap Panchayats wield much more power than the statutory Panchayats in the Northern states like Haryana, western U.P and often order harsh castigatory measures against women.. They are often accused of donning the role of upholders of Culture and guardians of public morality.

KEYWORDS :

The word 'Khap' connotes village area inhabited by a clan (Ahluwalia, 2013). Khap Panchayats connotes an institution which controls a particular area where it has supremacy either in the name of the clan or the gotra, which either controls that area, or by the name of geographical area (Pal, 2004).

Before an effective judicial system came in to existence in India, these Panchayats had the task to maintain social order by resolving village council disagreements, deciding chastisement for misdemeanors and even performing executive and administrative functions such as land revenue collection and the general administration of the Khap areas (Kumari, 2011). These Panchayats also worked for the social welfare of the people falling under their jurisdiction (Hayden, 1999). In modern times, Khap are exhibiting unethical values of patriarchal society that often compels women to adopt gender impartiality and disregard their Fundamental rights to live with dignity and happiness. Recently, Apex Court has also censured Khap Panchayats as the Kangaroo courts serving as parallel extra-Constitutional courts to the judicial system of India (Arumugam Servai Vs. State of Tamil Nadu, 2011).

INTERRELATIONSHIP BETWEEN CULTURE AND GENDER VIOLENCE

Not all oppression of women around the world can be explained by culture and, not all cultures include the oppression of women. But the instances of it are many and varied: woman is restricted because of her gender or discriminated against under the law. Culture stands as a barrier to women's equality that has a general tendency to be interpreted as women's subordination in terms of cultural practices that suppresses them rather than addressing their economic or political problems (Nader, 1989). The idea of "society" and "choice of women" is challenged by the prevalence of informal social systems which rely on ideas of "culture", however contentious that term may be.

Similarly, the rights for women are not given due importance in the territories ruled by Khap Panchayats. The idea behind their ideology is the age old system of patriarchal family. One can draw an analogy to the violence faced by women from the diktats of Khaps with the "unequal power relation" (Yakin, 2009) existing between men and women in the society. Of the myriad reasons of such extra judicial bodies exercising their control in society, their main trump card is culture. They invoke cultural practices that are deeply rooted beliefs and values held by men which compel the women to comply with their orders. (Report, 2012) Khaps ideology is deeply entrenched in norms of patriarchy and cultural practices linked to notions of male superiority and female inferiority resulting in women accepting violence as part of their reality.

SOCIAL POLICING AND DIKTATS OF KHAP PANCHAYATS AGAINST WOMEN

Khap Panchayats are like "self proclaimed courts" managed by the people of dominant caste which are infamous for their "self styled decision making". The actions of Khap Panchayats are extremely relevant for the considerations in the context of crimes against women, on the basis of gender. As far as India is concerned, Khap Panchayats can be said to be exhibiting an interrelationship between culture, women's human rights and gender violence. They provide the society an alternative system of unelected governance to implement patriarchal codes and legitimize the use of particular forms of gendered violence. A unique and unremarked feature of the opposition to Khap Panchayats is that it is only women who have publicly stood up to their might and are challenging their writ. (Chowdhry, 2005) The ire of the Khap Panchayats is, without an exception, always targeted at the women of their community.

Most discriminative practices against women like female foeticide, honor killings, compromised marriages, child marriages, restricted mobility of girls, denial to property rights etc are rampant in areas where Khap Panchayats are much dominant and influential. The issues of rights for women, gender equality and gender sensitivity are mere hearsay in the territories ruled out by Khap Panchayats. The fact that marriage is not a trivial matter is reflected in the fact that "crimes of honour" often occur due to the fact that certain individuals have flouted the society's normative stance regarding matrimony.

LAWS RELATED TO KHAP PANCHAYATS IN INDIA

The right to marry or form matrimonial alliances is a Fundamental Right flowing from the right to life which every individual is entitled to enjoy. The right to marriage is without any kind of doubt a fundamental right under Article 21 of the Constitution of India. It does not expressly lay down specific provision for an individual's right to enter into a matrimonial alliance, but impliedly does so as the apex court has from time to time underlined the freedom to marry a person of one's choice in a number of decisions.

Furthermore, under Hindu Marriage Act, 1955 marriages within prohibited degrees is not a valid marriage. In other words if the bride and bridegroom are not related to each other within the degrees of prohibited relationship as outlined in Section 3(g) of the Act, then there is no bar to marry. The Special Marriage Act, 1954 lays down "degrees of prohibited relationship" in the Schedule in two Parts. Section 4 of the Act, which stipulates the conditions relating to the solemnization of special marriages; proclaim that parties are not to be within

degrees of prohibited relationship. However there is a proviso that reads that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized.

While the Indian Penal Code, 1860 is yet to explicitly criminalise "incest", village courts such as Khap Panchayats have taken it upon themselves to punish individuals engaging in sagotra marriages since, they argue, it would amount to incest. (Report L. C., 2008) Furthermore, Indian law is silent as to definition of Honour Killing.

The Indian Majority Act, 1857 states the age of majority before which the marriage cannot be solemnized by individuals. The Act is relevant in cases where the Khap Panchayats have forcefully separated married couples who are of eligible age to get married, thereby violating the provisions under this Act. The Protection of Human Rights Act, 1993 makes the provision for protection of individual rights of human beings and the Constitution of a National Human Rights Commission, State Human Rights Commission and Human Rights Courts for better protection of human rights of individuals, in cases where the human rights of individuals are violated. Show cause notices have been issued to various Khaps time and again demanding an explanation for their preposterous decisions.

It needs no mention that parallel extra-Constitutional courts and Khap Panchayats have, in the recent past, come into existence, and have been passing orders and decrees. Though Khap Panchayats has no legal sanctity, but the same may be quick and forced redressal. The very idea needs to be nipped in the bud, lest there should be parallel courts throughout the country in future and future generation may hold the present incumbents responsible for the situation. (Mahapatra, 2014) The Supreme Court has declared the Khap Panchayats "illegal" stating that no assembly can interfere in a marriage between two consenting adults.

DIKTATS OF KHAP PANCHAYAT CONTRAVENES WOMEN'S RIGHTS

Unlike the liberal notion of "pursuit of happiness" (Nussabaum, 2010) Khaps deem that adhering to marriage norms in society, within caste, is a paramount duty of women which when disregarded, causes disrepute to the family and kin of the "accused. One of the most prevalent practices employed by Khap Panchayats is to enforce their decisions that of "Honour Killing". Honour is a magic word, which can be used to cloak the most heinous of crimes. The concept of honour is especially powerful because it exists beyond reason and beyond analysis. But what masquerades as "honour" is really men's need to control women's freedom. A woman is tied to her family's honour, which facilitates violence against her, because to forgive an 'errant' woman would jeopardise the ability of her male relatives to hold their heads up in society. (Lynn Welchman, 2005) By existing beyond the means of judicial hierarchy, Khap Panchayats have morphed into watchdogs of communal honour and custom, usually to the detriment of vulnerable group who are routinely excluded from their narrative.

The controversial decisions taken by Khap Panchayats have long term impacts on the society. Culture, in modern times, has to be interpreted in relation to the rights. The need of the hour is working laws that will punish these Khaps when they violate women's rights and civil rights through their diktats. At a time when a younger generation of women is becoming more independent, the Khaps are becoming desperate to maintain traditional control over women and property.

Debating and banning the Khap Panchayats is not practical solution. While it is especially important to note that the

structures, procedures and substantive decisions of some informal justice system neither safeguard nor promote women's rights, the mere existence of these institutions do not per se contravene international or national rights. As a social institution exercising dominance on many villages and exerting heavy influence on the political system, if banned, they are bound to bounce back in some form or the other. As an alternative dispute resolution, these informal systems do give speedy justice to community problems as against going to a court, although at the cost of violating the law of the land. Furthermore, lack of capacity of formal system and community legitimacy of informal system has resulted in latter verdicts to be obeyed by the community at large. However, one cannot deny that their Taliban style diktats attack the very foundation of human rights, which being inalienable rights cannot be snatched away under any circumstances.

REFERENCES

1. Chowdhry, P. (2005). Crisis of Masculinity in Haryana. *Economic and Political Weekly*.
2. Hayden, R. (1999). *Disputes and Arguments among Nomads: A Caste Council In India*. New Delhi: Oxford university Press.
3. Kumari, D. R. (2011). Women's Empowerment in South Asia: Choices and Challenges. *SAARC Journal of Human*.
4. Lynn Welchman, S. H. (2005). *Crimes of Honour: Value and Meaning*. Zed Book.
5. *Madhu Priya Singh v State Of Uttar Pradesh (DMC 2004)*.
6. Mahapatra, D. (2014, February 14). *Times Of India*. Retrieved January 7, 2019, from thetimesofindia.com: <http://timesofindia.indiatimes.com/india/High-court-judges-strength-to-go-up-by-25/articleshow/30589891.cms>
7. Nader, L. (1989). *Orientalism, Occidentalism, and the Control of Women in Cultural Dynamics*. Leiden: EJ Brill.
8. Nussabaum, M. (2010). *A Right to Marry*. *California Law Review*.
9. Pal, M. (2004). *Haryana: Caste and Patriarchy in Panchayats*. *Economic and Political Weekly*.
10. Report, L. C. (2008). *Laws of Civil Marriages in India – A Proposal to Resolve Certain Conflicts*. New Delhi: Law Commission of India.
11. Report, L. C. (2012). *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework*.
12. Roy, N. S. (2011, May 17). *A Challenge To Doing Gender Justice By Violence*. New York.
13. *Sujit Kumar and Ors. v. State Of Uttar Pradesh & Ors (ACC 2002)*.
14. Yakin, E. (2009, May 27). *Report of Special Rapporteur on violence against women, its causes and consequences. 15 years of the United Nations SR on violence against women, its causes and consequences*.