

**KHAP PANCHAYATS IN RELATION TO WOMEN’S HUMAN RIGHTS: INDIAN PERSPECTIVE**

By Ritupriya Gurtoo<sup>64</sup>

The word ‘*Khap*’ connotes village area inhabited by a clan.<sup>65</sup> ‘*Panchayat*’ literally means assembly of five prudent and respected elders chosen and accepted by the village community. Thus, “*Khap Panchayats*” connotes an institution which controls a particular area where it has supremacy either in the name of the clan or the gotra<sup>66</sup>, which either controls that area, or by the name of geographical area.<sup>67</sup>

Khap Panchayats evolved in different geographical areas and were shaped by a range of socio-economic factors. Of these, other than the issue of clan, the two most important were caste<sup>68</sup> and ownership of land.

**Khap Panchayats Role: Past Perfect, Present Tense**

The Khap Panchayats have a long history of resolving disputes and governing many aspects of life, including caste marriages. Before the establishment of an effective judicial system in India,

<sup>64</sup> ASSISTANT PROFESSOR, DEPARTMENT OF LAW, PRESTIGE INSTITUTE OF MANAGEMENT AND RESEARCH

<sup>65</sup> Srividya Kaimal & Manik Ahluwalia, *Impact of Panchayati Raj Institutions on Autonomy of Villages in India*, Journal of Politics & Governance, Vol. 2, No. 1/2, June 2013 at [http://www.jpg.net.in/Journal%20of%20Politicis%20&%20Governance%20Vol.%201%20No.%204/JPG-June\\_2013.pdf](http://www.jpg.net.in/Journal%20of%20Politicis%20&%20Governance%20Vol.%201%20No.%204/JPG-June_2013.pdf) (last accessed on April 7, 2014)

<sup>66</sup> Gotra is synonymous with clan, meaning thereby that all those who claim to have descended from one common ancestor are known as gotra or clan

<sup>67</sup> Mahi Pal, *Haryana: Caste and Patriarchy in Panchayats*, Economic and Political Weekly, Vol 39, August 07, 2004.

<sup>68</sup> L. Kroeber, “Caste”, in Encyclopedia of the Social Sciences, ed.-in-chief, Edwin R. A. Seligman, Macmillan, New York, 1930, III, 254-57; p. 254 defined Caste as an endogamous and hereditary subdivision of an ethnic unit occupying a position of superior or inferior rank or social esteem in comparison with other such subdivisions

these village courts were responsible for the amicable resolution of disputes, but with the establishment of nationwide rule of law, many lost their relevance.<sup>69</sup>

These institutions began to play a political role only in the post-colonial period.<sup>70</sup> /They have been fielding candidates and extending electoral support to various leaders and parties. Moreover, they have also become notorious in recent times for some of their decisions such as breaking of the marriages and punishing those who violate the so-called tradition. Khap Panchayats impose rulings and judgments by various means such as social boycotts, fines and violence. Their role as a non-formal system of justice overshadows their other roles.<sup>71</sup>

The untrammelled power that the Khap Panchayats wield without any legal basis to it, the obstructionist and dogmatic attitude of people at large in villages, the shocking inaction of the police, the reluctance of the state government to catch the proverbial bull by the horns shows that Haryana and other states where Khap Panchayats have their presence still have a long way to go in jettisoning outdated beliefs of caste marriage and gender base violence.<sup>72</sup>

### **Policing Norms against Women**

The fight against caste oppression and political patronage to regressive casteist institutions is one for the long haul. 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.<sup>73</sup> The ire of the Khap Panchayats is, without an exception, always targeted at the women of their community. Khap or caste Panchayats wield much more power than the statutory Panchayats in states like Haryana, western U.P and order harsh punitive measures against women.<sup>74</sup>

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<sup>69</sup> Dr. Ranjana Kumari, *Women's Empowerment in South Asia: Choices and Challenges*, SAARC Journal of Human Resource Development 2011

<sup>70</sup> Ranbir Singh, *The Need to Tame the Khap Panchayats*, EPW, Vol XLV No.21 May 22, 2010.

<sup>71</sup> Prem Chaudhary,(2004): "Caste Panchayats and the Policing of Marriage in Haryana: Enforcing Kinship and Territorial Exogamy", *Contribution to Indian Sociology*, Vol 38, Nos 1 and 2.

<sup>72</sup> *Khaps Call the Shots, Tough Steps Needed to Stop Honour Killings*, The Tribune, 13 August 2009 at <http://www.tribuneindia.com/2009/20090813/edit.htm> Last accessed April 8, 2014

<sup>73</sup> Prem Chowdhry, "Crisis of Masculinity in Haryana", EPW, 3 December 2005

<sup>74</sup> Bhupendra Yadav, *Khappanchayats: Stealing Freedom?* EPW, Vol 44 No.52 December 26, 2009

The main criticism of Khap Panchayats is that rights of women are not respected. Khaps adhere to impose outdated concept of women's dignity and submissiveness to men on the ground of patriarchal society. They enforce age old patriarchal notions of the society and punish those who violate them. Women are abused and their issues are never addressed. Most of the Khap rules are against law. Rule of men rather than rule of law prevails.<sup>75</sup> They have become less transparent in functioning, oppressive and in conflict with the law of the land.

### **Interrelationship between Culture and Women's Rights**

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. Of the many reasons of such extra judicial bodies exercising their control in society, their main trump card is culture. They invoke cultural practices that deeply rooted beliefs and values held by men and often by women to make the later to comply with their orders. Khap Panchayats have been adopting this course to enforce their diktat "by assuming to themselves the role of social or community guardian".<sup>76</sup> They override any notion of gender equality or gender empowerment that the Indian legal system provides. It is often seen that culture is camouflaged and seen as a potential tool for curbing the basic human rights of women. The redefined concept of culture has significant implications for theoretical understandings of the linkage between law and culture.<sup>77</sup> Cultural excuses are used worldwide to tolerate or justify discrimination and violence against women.<sup>78</sup>

### **Diktats of Khaps against Women**

Examples of bizarre diktats by Khap Panchayats can be summarized under the following

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<sup>75</sup> Jagmati Sangwan, *Khap Panchayat: signs of desperation?*, The Hindu, May 8, 2010 at <http://www.thehindu.com/todays-paper/tp-opinion/khap-panchayat-signs-of-desperation/article763178.ece> Last accessed April 8, 2014

<sup>76</sup> *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework*. Law Commission of India. August 2012.

<sup>77</sup> M.B. Hooker, *Legal Pluralism* (1975)

<sup>78</sup> Anamaria Vargas, *Challenging 'Cultural' Excuses for Gender-Based Violence in India*, Culture and Human Rights series (Pt II), January 13, 2012 at <http://www.genderacrossborders.com/2012/01/13/challenging-cultural-excuses-for-gender-based-violence-in-india/> (last accessed on 30<sup>th</sup> March, 2014)

1. A Khap Panchayats in a Hisar village has banned mobile phones for youngsters and ordered girls not to wear jeans and T-shirts or carry mobile phones in 2013.<sup>79</sup>
2. In Jind district, dancing by girls at social functions was banned by a Panchayats saying that it was a "crime against women".<sup>80</sup>
3. In 2004, the Tevatia clan, in Haryana, issued a decree stating that families with fewer than two sons could not approach a village council for the settlement of property disputes. The implication was that families with daughters did not deserve equal consideration.<sup>81</sup>
4. In 2004, in Bhawanipur village in Moradabad, Uttar Pradesh, 20-year-old Chetan eloped with Pinky, the daughter of an influential Yadav family. The boy belonged to the barber caste. The Tevatia Khap ordered that while the couple should be traced, Sia Dulari, Chetan's mother, should be raped turn-after-turn by the members of the Yadav family, since her son had dishonoured the Yadavs and later she was burned alive. The police knew about it but did nothing. Only after activists intervened were some arrests made but everyone was later released on bail.<sup>82</sup>
5. In a decision similar to that of Afghanistan's Taliban, in March 2007, the Ruhai Khap banned DJs from playing in marriage parties in Rohtak, citing the 'disturbance to milch animals' as the reason. The real reason for the prohibition was the determination to stop girls from entering dance floors.<sup>83</sup>

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<sup>79</sup> Bhaskar Mukherjee, *Khap bans jeans and T-shirts for girls in Hisar*, Jan 8, 2013 at <http://timesofindia.indiatimes.com/india/Khap-bans-jeans-and-T-shirts-for-girls-in-Hisar/articleshow/17933563.cms> Last accessed on April 6, 2014

<sup>80</sup> Jaideep Sarin, *From chowmein to skirts, Haryana's strange diktats*, Deccan Herald, Mar 23, 2013 at <http://www.deccanherald.com/content/320961/from-chowmein-skirts-haryanas-strange.html> Last Accessed on April 7, 2014 .

<sup>81</sup> Nilanjana S. Roy , *A Challenge To Doing Gender Justice By Violence*, New York Times, May 17, 2011 at <http://www.nytimes.com/2011/05/18/world/asia/18iht-letter18.html?pagewanted=all& r=0> Last accessed on April 6, 2014

<sup>82</sup> Tarun Sehrawat, *A Taliban Of Our Very Own*, Tehelka Magazine, Vol 6, Issue 32, Dated August 15, 2009

<sup>83</sup> *ibid*

Randhir Singh, member of sarv Khap Panchayats of Meham Chaubisi has on record stated that, “our predecessors have laid down rules, the lines along which life ought to be lived. Women, if they overstep and if they are driven by their desire may end up being murdered.”<sup>84</sup> He has also further stated that co education is ruining the lives of girl. It is due to education that the society is witnessing the transgression of *maryada* by women which is ultimately leading to chaos. *O.P. Dhankar*, a member of sarv khap has even went a step ahead and said that women are bound by certain boundaries of society. No one can overstep it.

### **Phenomena of “Honor Killings” and Laws regarding Khap Panchayats in India**

An analysis of honour killings in India would be incomplete without an understanding of the origins of social systems that typify and actively promote this social phenomenon.

Khap Panchayats denounce marriages that are inter-caste and violently react to marriages that are intra-gotra.<sup>85</sup> Objection of the Khap Panchayats to intra gotra or sagotra marriages<sup>86</sup> on the basis of brotherhood is intended to preserve privilege and property. So, even as Khaps spit fire at courts for holding such marriages legal, it is instructive to learn about the rigour with which two reputed judges went into the issue in 1945, much before Hindu personal law was codified. The case, *Madhavrao vs Raghavendrarao*<sup>87</sup>, involved a Deshastha Brahmin couple and the two-judge bench comprised Harilal Kania, the first chief justice of independent India, and P B Gajendragadkar, who became CJI in the 1960s. The essence of the case was whether 'sagotra' marriage or marriage within the same gotra was valid under Hindu custom. The court after going

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<sup>84</sup> *Izzatnagari ki asabhya betiyaan*, Nakul Singh Sawhney, 2012 at <http://www.youtube.com/watch?v=XV6qIOMZsEQ> last accessed on February 18, 2014.

<sup>85</sup> Raji, (2000): “*Crimes of Honor and Shame: Violence against Women in Non-Western and Western Societies*”,

The Red Feather Journal of Postmodern Criminology at <http://critcrim.org/redfeather/journal-pomocrim/vol-8-shaming/araji.html> last accessed on 12 March, 2014.

<sup>86</sup> Intra gotra or sagotra marriage according to Khap is on territorial basis, rather than on the norms prescribed under law. Same gotra marriages have not been referred in the Hindu Marriage Act, 1955. this law only speaks about prohibition on sapinda marriages and ban on marriage within prohibited degrees.

<sup>87</sup> *Madhavrao Raghavendra And Ors. vs Raghavendrarao And Ors.* AIR 1946 Bom 377

over several court rulings on the evidence to prove a custom, the bench concluded that the marriage in question between a husband and wife belonging to same gotra was valid.<sup>88</sup>

The honour crime also violates Article 14, 21 and 39 (f) of the Constitution of India. It is against various international commitments of India. It is against the spirit of the international laws which India is bound to adhere. Shamefully, even today there is no legal definition of honour crime in India. However, this huge number of penal provisions has proved inefficient to deal with this social evil.

The conditions of a valid marriage under the Hindu Marriage Act, 1955 require under Section 5 shows that if the conditions as aforementioned are satisfied then, there is no bar to marriage. It follows that these conditions remaining fulfilled an individual who is governed under the Hindu Marriage Act may enter into a matrimonial alliance with any person of her choice. This is the correct legal position.

The bar to marry a person within the degrees of prohibited relationship means that no marriage is valid if it is made between persons related to each other within the prohibited degrees, unless such marriage is sanctioned by the custom or usage governing both the parties. The custom, which permits a marriage between persons who are within degrees of prohibited relationship, must fulfill the requirements of a valid custom. The rules relating to 'degrees of prohibited relationship' are prescribed in the definition clause of Section 3(g) and have been discussed under that clause.

Marriage 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), then there is no bar to marry. Khap Panchayats demand of intra gotra marriage is not based on the laws rather marriage between man and woman is prohibited on territorial basis, a claim not recognized in eyes of law.

Legally speaking, under the Hindu Marriage Act, 1955 which is the governing law of the land on marriage in India, except for the observation of certain prohibited degrees of relationship, legal restrictions on the choice of marriage partner are almost non-existent. This implies that under the

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<sup>88</sup><http://timesofindia.indiatimes.com/india/Same-gotra-marriage-legal-court-had-ruled-65-years-ago/articleshow/5932546.cms> last accessed on 12 March, 2014.

law, both agora (kin in the patrilineal line of descent whose members claim descent from the same gotra ancestor) and inter-caste marriages are permitted. Therefore, the functioning of the Khap Panchayats is not only obsolete but ultra vires of the law. Similar laws relating to this are Special Marriage Act, 1954, Indian penal code, 1860, The Indian Majority Act, 1857 and The Protection of Human Rights Act, 1993

### **International obligations with regards to Women Rights**

The Preamble of United Nation Charter affirmed explicitly ‘the equal rights of men and women’<sup>89</sup>. India, as a State party to the International Convention on Economic, Social and Cultural Rights, 1966 (ICESCR) is legally obligated to ensure that women who can become victims of honour crimes are able to live a dignified life according to provisions

Special Rapporteur on Violence against Women, Its Causes and Consequences<sup>90</sup>, Declaration on the Elimination of Violence against Women<sup>91</sup> and Beijing Platform for Action<sup>92</sup> discourage States not invoke custom, tradition or religion to avoid their obligations to eliminate such violence along with providing women access to the mechanisms of justice for effective remedies.

The 2005 World Summit underlined the urgency of eliminating all forms of discrimination and violence against women and the girl child and linked this to the achievement of the Millennium Development Goals.<sup>93</sup>

Working towards the Elimination of Crimes against Women and Girls Committed In The name Of Honour<sup>94</sup> calls upon states to continue to intensify efforts to prevent and eliminate crimes against

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<sup>89</sup> Janus Symonides, *Human Rights: Concept And Standards*, Rawat Publication, New Delhi, 2002..

<sup>90</sup> Vienna Declaration and Programme of Action, World Conference on Human Rights, A/CONF.157/2, 25<sup>th</sup> June 1993

<sup>91</sup> General Assembly resolution 48/104 of 19 December 1993

<sup>92</sup> Fourth World Conference on Women, Beijing, China, 4-15 September 1995 (United Nations publication, Sales No. E.96. IV. 13)

<sup>93</sup> General Assembly resolution 60/1, para. 58. United Nations Millennium Project, Taking Action: Achieving Gender Equality and Empowering Women, Task Force on Education and Gender Equality (London, Earthscan, 2005)

<sup>94</sup> *Working towards the elimination of crimes against women and girls committed in the name of honour*, Resolution adopted by the General Assembly [on the report of the Third Committee (A/59/496)] 2005

women and girls committed in the name of honour, which take many different forms, by using legislative, administrative and programmatic measures.

According to the Country Reports on Human Rights Practices - India, 2011 the problem of honor killings should be the cause of concern for Indian government, especially in Punjab and Haryana, where as many as 10 percent of all killings were honor killings.<sup>95</sup>

On 25 January, 2013, The UN High Commissioner for Human Rights Navi Pillay<sup>96</sup> welcomed the report of the Verma Committee as a groundbreaking basis for action against violence against women in India, and urged the Government to follow through on its vision and recommendations on cracking down on extra-legal village councils, known as Khap Panchayats, which often issue edicts against women.

### **Relation between Khaps and Modern State**

The power of Khap Panchayats exists parallel to the political power of the state government. Politicians from among the big Jat landlords occupy important ministerial posts in every government in the state and they have been eager to put a stamp of approval on the diktats of Khap Panchayats.<sup>97</sup>

To make matters worse, the Khaps even have the political support of their regional leaders<sup>98</sup>, just to keep the count of their votes intact. The police and the administrative machinery also tend to stand by the perpetrators against the victims or at best play the role of mute spectators in cases of inter-caste marriage, violence on women and caste atrocities.<sup>99</sup>

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<sup>95</sup> United States Department of State, 2011 Country Reports on Human Rights Practices - India, 24 May 2012, available at: <http://www.refworld.org/docid/4fc75a94c.html> [accessed 6 March 2014]

<sup>96</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12950&LangID=E> (last accessed on March 20, 2014)

<sup>97</sup> Vir Singh, ed. (2005): *The Jats: Their Role and Contribution to the Socio-Economic Life and Polity of the North and North-West India*, Vol 2 (Delhi: Low Price Publication).

<sup>98</sup> *Khap Panchayats are NGOs, says Haryana Chief Minister Bhupinder Hooda*, February 07, 2014 at <http://www.ndtv.com/article/india/khap-Panchayats-are-ngos-says-haryana-chief-minister-bhupinder-hooda-480540>

<sup>99</sup> K Sangwan, (2008): *"Khap Panchayats in Haryana: Sites of Legal Pluralism"* in Kalpana Kannabiran and Ranbir Singh (ed.), *Challenging the Rule(s) of Law: Colonialism, Criminology and Human Rights in India* (Sage: New Delhi).



### **Response of Civil Society on Khaps**

Jagmati Sangwan,<sup>100</sup> of All India Democratic Women's Association says that the Khaps have become redundant and should have been disbanded after the Panchayati Raj system was instituted. She has openly criticized them by stating that they may have been reformist in past but instead of focusing on issues related to female foeticide, dowry and alcoholism in the society today, their sole concentration now is only on caste marriages and passing bizarre diktats against women.<sup>101</sup>

Critics liken the Khap Panchayats to the Taliban, accusing them of being unmindful of the rights of the individual.<sup>102</sup> In a study conducted by Shakti Vahini<sup>103</sup> of 560 cases from Haryana, Punjab and Western Uttar Pradesh, in which couples were threatened with violence, 83 percent of cases were related to inter-caste marriages, 2.5 percent were inter-religious, 3.2 percent were from the same gotra, while 9.8 percent were from the same caste and 3.2 percent were "other" issues.<sup>104</sup>

### **Response of Indian Judiciary to Tackle Khap Panchayats through Judicial Pronouncements**

On February 18, 2014, P. Sathasivam, Chief Justice of India wrote to the Prime Minister stating that "*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. Cases relating thereto have also been filed in the Supreme Court*". He further said, "*Though it (the extra-Constitutional courts and Khap Panchayats) has no legal sanctity, but the same may be quick*

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<sup>100</sup> Jagmati Sangwan, vice-president of the Left-oriented All India Democratic Women's Association and a former director general of the Maharshi Dayanand University in Rohtak,

<sup>101</sup> Sahil Makkar, *Panchayats under the shadow of the 'Khaps*, Live Mint & Wall Street Journal, May 01 2013 at <http://www.livemint.com/Politics/nW03eT80k8lmHDfAUGh33J/Panchayats-under-the-shadow-of-the-khaps.html> Last accessed on April 6, 2014

<sup>102</sup> Taliban-style diktat near Delhi: Lack of political will to take on Khap Panchayats? NDTV, July 12, 2013 <http://www.ndtv.com/video/player/left-right-centre/taliban-style-diktat-near-delhi-lack-of-political-will-to-take-on-khap-Panchayats/239190>

<sup>103</sup> NGO fighting for women rights against Khap Panchayats at <http://shaktivahini.org/about-us>

<sup>104</sup> Dhananjay Mahapatra, *No specific legal framework to stop Khap-dictated honour killing, UP tells SC*, The Times Of India, July 17, 2012 at <http://timesofindia.indiatimes.com/india/No-specific-legal-framework-to-stop-Khap-dictated-honour-killing-UP-tells-SC/articleshow/15011191.cms> last accessed on April 8, 2014

*redressal and forced redressal* ".<sup>105</sup> The Supreme Court has also said that Khap Panchayats' diktats violate the law.<sup>106</sup>

The issue relating to the role of Khap Panchayats is pending before the Court in *Shakti Vahini v. Union of India and Ors*<sup>107</sup> in which the court has observed that the State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage. This was reiterated in *Arumugam Servai v. State of Tamil Nadu*<sup>108</sup> (2011). In *Bhagwan Dass v. State (NCT) of Delhi*<sup>109</sup> (2011) court held that 'All persons who are planning to perpetrate `honour' killings should know that the gallows await them. In *Manoj-Babli Honour Killing Case*<sup>110</sup> verdict, District Judge Vani Gopal Sharma stated, "This court has gone through sleepless nights and tried to put itself in the shoes of the offenders and think as to what might have prompted them to take such a step. Khap Panchayats have functioned contrary to the Constitution ridiculed it and have become a law unto themselves."<sup>111</sup> There is an ugly nexus between khap leaders, the police, and local politicians" that also need to be exposed. In *Shakti Vahini v. Union of India and Ors*<sup>112</sup>(2010) the court held that "till such time legislation regulating such bodies is enacted, we will issue whatever direction which is legal and proper, and suggested that the guidelines could be implemented as a pilot project in few of the worst affected

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<sup>105</sup> Dhananjay Mahapatra, *High court judges' strength to go up by 25%*, The Times Of India, Feb 18, 2014 at <http://timesofindia.indiatimes.com/india/High-court-judges-strength-to-go-up-by-25/articleshow/30589891.cms> Last accessed on April 6, 2014

<sup>106</sup> *Khaps' diktat on women's dress and cell phone unlawful: Supreme Court* , January 14, 2013, NDTV at <http://www.ndtv.com/article/india/Khaps-diktat-on-women-s-dress-and-cell-phone-unlawful-supreme-court-317235>

<sup>107</sup> *Shakti Vahini v. Union of India and Ors* Writ Petition (C) No. 231 of 2010.

<sup>108</sup> *Arumugam Servai v. State of Tamil Nadu* AIR 2011 SC 1859

<sup>109</sup> *Bhagwan Dass v. State (NCT) of Delhi* AIR 2011 SC 1863

<sup>110</sup> Murder Reference No.2 of 2010Criminal Appeal No.479-DB of 2010 and Criminal revision No.2173 of 2010 In The High Court Of Punjab & Haryana, Chandigarh at <http://nlrd.org/wp-content/uploads/2012/01/Manoj-and-Babli.pdf>

<sup>111</sup> Sharma, Vibha, "Who gave Khaps the right to kill: PC, (The Tribune),28 March 2010 at <http://www.tribuneindia.com/2010/20100328/main4.htm> Last accessed on 4 April, 2014

<sup>112</sup> *Shakti Vahini v. Union of India and Ors* Writ Petition (C) No. 231 of 2010.

*districts where Khap dictated violence against matrimonial alliances had been recurring.*<sup>113</sup>. In *Lawyers for Human Rights International v. State of Haryana & others*<sup>114</sup> it was contended by the petitioner before the Court that the Khap Panchayats that the decisions of the Khap Panchayats of Haryana, which are against the spirit of Constitution of India, be declared to be illegal. In *Lata Singh v. State of Uttar Pradesh and Anr*<sup>115</sup> (2006) the court in this case acknowledged that they cannot remain silent in matters of great public concern, such as the present one. Court held that *"Honour" killings of such persons who undergo inter caste or inter-religious marriage is out of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment.*

*Madhu Priya Singh v State Of Uttar Pradesh*<sup>116</sup> (2004) the court strongly directed that everyone in the State should know how to conduct themselves with regards to matters of Honour Killings. The administrative and police authorities must see to it that anyone who threatens or attacks or intimidates or confines a major who wants to marry outside the caste or religion is prevented from doing so, against such person criminal proceedings should be instituted.

### **Insufficiency of Laws in India**

In so far as the Khap Panchayats play 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 a criminal path, the mission and the work of these Khaps can be commended. Recently, Haryana's biggest Khap Panchayat called by Satrol Khap in Hisar

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<sup>113</sup> Dhananjay Mahapatra, *Norms must to end Khap violence: SC*, The Times Of India, January 5, 2013 at <http://timesofindia.indiatimes.com/india/Norms-must-to-end-khap-violence-SC/pmredirectshow/17894540.cms> (last accessed on April 5, 2014)

<sup>114</sup> *Lawyer for Human Rights International v State of Haryana*, C.W.P No. 11100 of 2009, In The High Court Of Punjab & Haryana.

<sup>115</sup> *Lata Singh v. State of U.P. and Anr* (2006) 5 SCC 475

<sup>116</sup> *Madhu Priya Singh v State Of Uttar Pradesh II* (2004) DMC 294

gave a go-ahead to inter-caste marriages to tackle the issue of bride in their state.<sup>117</sup> There have also been sparingly instances on where they have been vocal about other social issues like dowry prohibition, ban on female foeticide. But, if they exceed their limits, the law cannot remain a silent spectator in our progressive democratic polity wedded to cherished constitutional values.<sup>118</sup>

The merciless methods adopted by these Khaps for meting out justice are excruciating in times when human rights are the inalienable rights; when right to life also means life of dignity and freedom; when equality and justice are prime virtues and when rule of law is the supreme. Such reprehensible events will only deal a blow to India's international image. The rapidly rising terror of undeterred Khap Panchayats' illegal diktats reflects the failure of our existing legal system. Even though our judiciary has shown remarkable activism, there is a need to bring forward a comprehensive legislation to deter such attempts in future. It is necessary to enact laws to curb their menace.

### **Suggestions**

The ends of justice would be met if the contemplated law brings into its ambit all those who perpetrates crime against women and transgress their rights under the existing laws in the country. The law as it stands does not act either as deterrence or as a sobering influence on the Khap Panchayats who regard themselves as being outside the pale of law. This combination of need to protect Fundamental and human rights and vulnerability of women as their victim has called for a comprehensive legal framework to regulate the advent of the so called custodian of honour, in society by the name of Khap Panchayats.

As preventive measures, in India, there is an immediate need of specific legislation with stringent provisions that specifically criminalizes forms of violence, faced by people, within the context of

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<sup>117</sup>Manveer Saini, *Haryana's biggest khap panchayat scripts history, allows inter-caste marriages*, The Times Of India, Apr 21, 2014 at <http://timesofindia.indiatimes.com/india/Haryanas-biggest-khap-panchayat-scripts-history-allows-inter-caste-marriages/articleshow/34016585.cms> (last accessed on April 6, 2014)

Satpal Singh, Dalbir Singh, Identifying the Centripetal and Centrifugal Forces through Khap

<sup>118</sup> Preeti Malik, *Honour-Based Violence with Special Reference to Khap Panchayat's in Haryana and the Indian Panel Code*, Volume 3, Indian Streams Research Journal, June, 2013

the Khap Panchayats. Such comprehensive legislative approach would encompass not only the criminalization of all forms of violence against women and the effective prosecution, punishment of perpetrators but also the prevention of violence, support and protection of survivors. There must be an explicit provision in the Indian Penal Code, 1860 to deal with honour killings. The idea behind this is to widen the ambit of the existing provision so as to include even those cases where death is caused indirectly as a result of Khaps diktats. These offences cannot be likened to other murders as the kin of the couple themselves indulge in the offence. The officials are to be made accountable for the failure or omission on their part to take necessary steps to prevent unlawful assembly of Khap Panchayats or to give protection to the targeted couple. Law Commission 242<sup>nd</sup> report suggestion on having a threshold bar against the congregation or assembly of Khaps should be implemented. This will serve the purpose of disapproving the future diktats of Khaps against the intended marriage and thereby brings the conduct of the panchayatdars within the purview of penal law. District administration should be empowered to issue prohibitory orders as soon as they get information about Khaps meetings that have to do with the violation of the Fundamental Rights defined by the law. The Supreme Court, as public defenders of the law, should expeditiously frame guidelines for the regulation of working of Khap Panchayats until the law is passed. Government should initiate more Gender Responsive Budgets in a comprehensive manner.

Preventive measures alone would not suffice in tackling Khap Panchayats. Various measures can be undertaken to promote women's human rights such as women must be made aware of their rights and must assert them. Government, through Self-help groups for the women and NGOs should expand the network of legal aid offices to which the female segment of the population can turn for information and assistance. To combat the issue of culture, training or awareness-raising programmes of women should be done in areas where Khaps have their presence. The workshops should take place in the local language and not through translation. There is a need to be trained national staff, which represent and can understand the local population and the culture. Counseling committees should be made available for the women. In order to be useful to the local population these committees need to have well-trained female members, who assure confidentiality and have access to legal services. An effective way of reducing gender based violence is economic security. This can be done through various micro finance programmes focusing on women's education and enhancing their skill building capacity to make them economically independent. Media and

politicians can play a pivotal role in raising the public's awareness about the rights violated by Khap Panchayats, especially against the women.. Governments must promote communication policies, through media, and coordinate public awareness campaigns that portray violence against women as an unacceptable crime.

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. Under the garb of culture their Taliban style diktats attacks the very foundation of human rights being inalienable rights which cannot be snatched away under any circumstances. Culture, in modern times, has to be interpreted differently. Every transition brings some changes and causes inconvenience to the other. One cannot question the change. This does not imply that certain groups of people have the right to trample the rights of a vulnerable group. Similarly, culture ought to change with time. Criminal acts of extra Constitutional bodies, like Khap Panchayats, which restrain the rights of women, do not enjoy the sanction of law in India. As said by one of the jurist that, the very idea of Khap Panchayat needs to be nipped in the bud, lest there should be parallel courts of Khaps throughout the country in future and future generations hold the present incumbents responsible for the situation.