

**DISCRIMINATIVE AND DEROGATORY PRACTICES  
AGAINST WOMEN BY *KHAP* PANCHAYATS, SHALISHI  
ADALATS AND KANGAROO COURTS IN INDIA: AN  
EMPIRICAL STUDY IN THE STATES OF HARYANA,  
UTTAR PRADESH (WEST), WEST BENGAL & RAJASTHAN.**

Submitted by

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**Discriminative and Derogatory Practices against Women By *Khap* Panchayats, *Shalishi*  
Adalats and *Kangaroo* Courts in India: An Empirical Study in the States of Haryana,  
Uttar Pradesh (West), West Bengal & Rajasthan.**

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## PREFACE

During the past few years, marriages within ‘gotra’ (clan) of the Jat community have come into the limelight. Frequently, those couples who have eloped have been brutally murdered by the diktats of the elders—these are known as ‘honour killings’. Many such incidents have occurred in Haryana, Western Uttar Pradesh, Rajasthan and the rural belt of Delhi. These areas have reaped the fruits of modernization and access to various facilities such as educational institutions, health centres, modernized roads and multinational business establishments that have encouraged foreign investment. There exists a vast gulf between this modernization and the almost feudal mind sets of people like the ‘Khap Panchayats’ who force couples who have entered intra-gotra marriages to return to the community fold, even to the extent of forcing the couples to tie each other rakhi and behave as siblings. A large number of such wedded couples have even lost their lives. Thus, as per their gotra affinity, the Khap Panchayats consider them as brother and sister. The Khap Panchayats try to legitimize their actions by quoting historical antecedents of uncertain origin to support their practices. They are of the opinion that the Khap Panchayat is an age old institution, having its foundation in the early medieval period.

Khap Panchayats have had a long innings in the Jaat-dominated areas of north-western India and some of their decisions that go against individual rights have led to heated controversy. These days, the very mention of khap Panchayats brings to mind images of the horrific faces of murdered couples who married for love or the burnt dwellings of Dalit villagers. Sections of Indian society and the media have for some time been demanding that these Panchayats, modern-day avatars of traditional social assemblies in rural north-western India that were primarily engaged in resolving disputes and ensuring adherence to custom, be restrained.

In some parts of West Bengal such type of kangaroo courts are known as Shalishi Adalats. Shalishi is a Bengali word of Persian origin, which means mediation or arbitration. But what actually happens at these kangaroo courts is a mockery of mediation. Though they are supposed to handle and resolve only petty civil disputes, these adalats pass judgment, and more often than not very flawed and biased ones, on a range of crimes ranging from thefts and extra-marital affairs to rape. In most rape cases, the accused, especially if they come from relatively

affluent or influential families, get away with just small fines. Those who defy diktats have to pay a heavy price.

These courts are whimsical in dishing out sentences. Adultery, for instance, could attract anything from a death sentence to gang rape or a fine of a few thousand rupees, while a petty thief could expect to be fined, flogged in public or even banished from the village. The death sentences imposed by the 'shalishi adalats' 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 kangaroo courts to justice. Even the bodies of the victims remain untraceable.

This report consists of data collected from various villages of Haryana, Uttar Pradesh, Rajasthan and West Bengal. The respondents were asked about the Khap Panchayats, honour killings, rights of women to inherit property and several other questions on women rights. The report provides the present status of women in these states, the role of khap panchayats and the derogatory practices which are very much prevalent in these states, including the opinions of the respondents.

## LIST OF CASES

1. *Arumugam Servai & Ors. v. State of Tamil Nadu*, 2011 (2) SCC 405.
2. *Bhagwan Dass v. State of NCT, Delhi*, 2011(5) Scale 498.
3. *Fiaz Ahmed Ahanger and Ors. v. State of J& K*, 2009 (3) R.A.J. 692.
4. *Lata Singh v. State of UP and Another*, AIR 2006 SC 2522
5. *Manoj Babli case*, Murder Reference No. 2 of 2010 Criminal Appeal  
No.479-DB of 2010 and Criminal revision No.2173 of 2010.
6. *Shakti Vahini v Union Of India*, W.P(Civil) no 231 Of 2010.
7. *Smt. Laxmi Kahhwaha v. The State of Rajasthan*, AIR 1999 Raj 254
8. *State of UP v. Krishna Master*, AIR 2010 SC 3071
9. *Vivek Kumar @ Sanju v. The State*, CrI.M.C. No. 3073-74/2006 decided  
on 23.2.2007

## Chapter 1

### INTRODUCTION

These days, the very mention of *Khap Panchayats* brings to mind horrifying images of murdered couples who married for love or of women being gang raped for falling in love outside the community. In Haryana and Western UP this body is an institution which refuses to embrace modernity. The all powerful Khap Panchayats consisting of village elder's form on the line of caste or community are motivated by the need to perpetuate a feudal and patriarchal order. In Haryana and Rajasthan, Khaps usually consists of upper caste people (Hodas, Sheorans, Ruhals, Punias, and Sangwans, Maliks) with larger lands as well as muscle power. These self styled guardians of the rest of the members of the village or concerned society impart justice at their will. They issue diktats to ostracize families, declare marriages as void, declare husband and wife as brothers and sisters and give different other discriminative and derogatory orders. In their system a girl falling in love with a boy from the same gotra is the worst crime possible and is to be translated into immediate wilful punishment, such as the guilty can be expelled from the village made to drink urine, paraded naked, beaten up or killed. Their families are also boycotted and some time made to paid heavy fines.

Now days even the lower castes have started their own Khaps. Khap is and old system of social administration followed mainly in the north-western states of Haryana, Rajasthan and Uttar Pradesh. These are extra constitutional, extra judicial bodies that began as clannish organizations in the tribal era but have literally transformed into kangaroo courts. In Haryana's villages, they run a largely retrogressive and parallel law enforcement bodies. Khap Panchayats are not to be confused for elected gram Panchayats, but the kind of support Khaps enjoy in villages as well as in urban areas with little or no oppositions, it isn't surprising that they have become more powerful than the elected gram Panchayats as one unit of khap takes care of the social affairs of almost 84 villages from the same caste.

Although recently with the news of Satrol Khap allowing Inter-caste marriages between the families within a radius of 42 villages has arisen some hope for human rights in the khap land.

Inter-caste marriages have been a major reason for so called “honour killings” in the recent past. However, marriages within same village and same gotra are still barred.<sup>1</sup> Khap panchayats are collective patriarchal bodies which function as extrajudicial bodies and hold political influence in the area. They are highly patriarchal in nature and mobilize a large number of people on the basis of family, gotra, community and villages. Accepting the predominantly chauvinistic nature of the self styled courts,” Justice Verma Committee report denied the khaps having any sanction under law.<sup>2</sup> The people affected by khaps *i.e.*, Haryana and Uttar Pradesh (West) defend khap as being a part of their tradition and age old culture. Khap is a way of honouring their culture and the values their ancestors taught.

Khap Panchayats are mostly quasi judicial & political in nature and are generally being used as a tool to consolidate the power in region. It is because of their powerful political stronghold that they overrule, with impunity, the constitutionally mandated administration of equality in favour of women, by using extra constitutional, oppressive methods of punishment.<sup>3</sup> Khap Panchayats are being used as launching pads by politicians as being an active member one get wider acceptability and exposure required for entering mainstream politics.

Caste system in its inherent patriarchal nature influences the ways of living and believing, giving power to units like Khap Panchayats. The Indian Society which is highly patriarchal in nature believes in a way of living which is very rigid and based on certain norms. These norms include the caste system which is prevalent all over the country. Along with the caste system comes the concept of *Gotra*. ‘*Gotra*’ is a lineage that is associated to an individual at his/her birth. The father’s gotra is carried forward by the child following the norms of a patriarchal society *i.e.* to people belonging to the same gotra are not permitted to marry since they are considered to be as brother and sister. Same gotra marriages are a sensitive issue and have helped the Khaps to gather mass public support. However, in today’s time where the norms of the society are constantly changing, there is conflict between the ancient practices and the modern liberal opinion of the youth. This conflict further result into certain type of punishments to the revolting youth, in the

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<sup>1</sup> Manveer Saini, “*Khap Panchayat okays Marriages between Castes*,” The Times of India, dated April 21, 2014.

<sup>2</sup>See report of the JS Verma Committee Report available at <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>

<sup>3</sup> See *ibid*.

name of restoring ancient customs and practices, and to set an example for others in the village. On many occasion the young boys and girls are killed in the name of the honour of the family and community. Such incidents are generally not reported and the culprits move freely and carry on. Apart from same gotra marriage, other issues which are dealt by Khap Panchayat are inter-caste and inter-religious matter.

‘Honour killings’ or killing in the name of supposed ‘honour,’ seeped in the cancer of patriarchy is not only a phenomenon restricted to India but witnessed worldwide. Honour is a social concept and its meaning varies from society to society. In a modern day, individualistic society, the term *honour* is synonymous with integrity, a person’s individual actions. However in communal cultures *honour* are collective terms referring not simply to the social behaviour of one person, but of the collective behaviour of a family. Women, it seems epitomise ‘honour’ across societies. In the April of 1999, Samia Sarwar was shot and killed in her attorney’s office in Pakistan as she was filing for divorce from her abusive husband. The murder was perpetrated by her own parents, who felt that she had tarnished their honour by seeking a divorce, even though they knew that her husband had violently abused her throughout their marriage.<sup>4</sup> Despite the number of witnesses, despite the pressure brought by women’s groups very little action has been taken against the family or the perpetrators.<sup>5</sup>

“Honour is generally seen as residing in the bodies of women. Frameworks of ‘honour’, and its corollary ‘shame’, operate to control, direct and regulate women’s sexuality and freedom of movement by male members of the family. Women who fall in love, engage in extramarital relationships, seek a divorce, choose their own husbands are seen to transgress the boundaries of appropriate” (that is, socially sanctioned) sexual behaviour. ‘Regulation’ of such behaviour may in extreme cases involve horrific direct violence – including ‘honour’ killing... in these contexts, the rights of women (and girls) to control their own lives, to liberty and freedom of expression, association, movement and body integrity mean very little.<sup>6</sup>

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<sup>4</sup> Yolanda Asamoah-Wade, “*Women’s Human Rights and ‘Honour Killings’ in Islamic Cultures*, 8 *Buff. Women’s L.J.* 21 (1999).

<sup>5</sup> Radhika Coomaraswamy, “*Integration of The Human Rights of Women and The Gender Perspective Violence Against Women*” Report of The Special Rapporteur on Violence Against Women, Its Causes and Consequences, Submitted in Accordance With Commission On Human Rights Resolution 2001/49 Cultural Practices In The Family That Are Violent Towards Women, E/CN.4/2002/83, Dated January 31, 2002.

<sup>6</sup> According to the former United Nation Rapporteur on *Violence against Women*.

A Khap mahapanchayat was held at Garhmukteshwar, 60 km from Ghaziabad, Uttar Pradesh to discuss the same *gotra marriages*. In this meeting the Bharitya Kisan Union leaders were present. They decided that such marriages will not be tolerated at any cost and the couples will be separated forcefully if they get married against their *diktat*. The khap Panchayat also demanded an amendment in Hindu Marriage Act, 1956, disallowing marriages between same *gotra*. As of now, by virtue of section 29 of the Hindu Marriage Act, 1956, sagotra marriages are recognised in law as being valid.

On May 14, 2010 a Khap Panchayat had issued death threat to a couple, who later married against their *diktat*. The Panchayat had barred Jaivinder, a resident of Chithera village, from marrying Manisha of Bisnoli Village, claiming their marriage will be against local societal norms. Although the boy and the girl belonged to different *gotra*, the Panchayat ruled that as residents of Chithera consider girls belonging to Bhatti *gotra* as their sisters, Jaivinder could not marry Manisha who belongs to the Bhatti sub caste, Jaivinder belongs to Banisha *gotra*. The Panchayat had threatened to kill them if they went ahead with the marriage. On two occasions in the recent past, the Panchayat had forcibly cancelled the marriage of local boys with Bhatti girls

Nawal, a twenty-four-year-old Palestinian woman, was accused by her family of behaving dishonourably because people in their village were gossiping about her. Fearing for her safety, she asked for police protection, and the police consequently made her brothers sign a pledge not to hurt her. Only three out of the four brothers signed the pledge. The fourth killed her by beating her repeatedly and then strangling her with a plastic wire around her neck.<sup>7</sup>

When Amal, a seventeen-year-old Jordanian girl, informed her family that she had been raped and impregnated by her father's friend, the family immediately tried to raise money for an abortion in an effort to avoid the stigma that would attach as a result of a premarital pregnancy. After a doctor refused to perform the abortion, Amal's father took the money, bought a shotgun, and, along with Amal's brother, shot Amal eight times in an attempt to kill her.<sup>8</sup>

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<sup>7</sup> Nadera Shalhoub-Kevorkian, "Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?," 36 *Law & Soc'y Rev.* 577, 589 (2002).

<sup>8</sup> Kathryn Christine Arnold, Comment, "Are the Perpetrators of Honour Crimes Getting Away with Murder?: Article 340 of the Jordanian Penal Code Analyzed Under the Convention of the Elimination of All Forms of Discrimination Against Women," 16 *Am. U. Int'l L. Rev.* 1343, 1345 (2001).

In Delhi, as the dust settles on the verdict for the Talwars for allegedly murdering their teenage daughter in the much publicized Arushi-Hemraj Murder case, it will be a while before Indian society really begins to digest the cancer of patriarchy manifested through honour killings. Like all social evils, unless society shuns these practices, the state machinery, be it law enforcement agencies, police or judiciary or the legislature, alone cannot save women who want to break free from arranged and abusive marriages.<sup>9</sup> In a case of attempted 'honour' killing, a couple who eloped and got married against the wishes of their parents was shot at by the girl's brothers in Safedpur village of Pataudi town in June, 2012. The National Commission for Women took a *suo moto* cognizance of the incident and constituted an Inquiry committee into the matter vide order dated 11.06.2012.

On June 15, 2012, a girl studying in a Bulandshehar college was allegedly cremated by her family in Bhaipur-Brahampur village, Greater Noida. The Police suspected it was a case of honour killing. Since no FIR was lodged nor a complaint was registered in the case, NCW took *suo moto* cognizance of the incident to inquire into the matter. In its recommendations, the inquiry committee, headed by NCW member Charu Wali Khanna, said, "The usage of the word (honour) has a tendency to rationalize and legitimize the motive of the crime by creating a false notion that the crime has been committed to save the 'honour' of the family. Thus implying society is bound by tradition to protect this violation of tradition."

In Kolar village, tehsil Sarada of Udaipur, a married woman, who had eloped with a 28 year old man was found sitting at a bus stand in the neighbourhood along with the man. On information, the villagers forcibly took them back to the village and tied them to trees. The woman was stripped in full view of the village and both were severely beaten. The Panchayat's men snipped their hair as well. The NCW took *suo moto* cognizance of the incident to inquire into the matter and set up an inquiry committee. The committee visited the place and met the victim and gave certain recommendations to the Chief Secretary, Govt of Rajasthan on 17.08.2012.

18-year-old Nidhi, was killed in cold blood along with her lover by her father who showed no remorse on killing her daughter for "honour" since their affair had insulted the family in the

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<sup>9</sup>Nupur Basu, "Honour killings: India's crying shame," available at <http://www.aljazeera.com/indepth/opinion/2013/11/honour-killings-india-crying-shame-20131127105910392176.html>.

society. The NCW again took *suo moto* cognizance of the incident to inquire into the matter and set up an inquiry committee vide order 27.11.2013. The committee visited Gharnavati village and sent its recommendations to the Chief Secretary, Govt of Haryana.

A twenty year old tribal woman has been gang-raped and brutalized at the order of a Shalishi Sabha, a community body in Birbhum, West Bengal. The offence committed by her was inappropriate romantic relationship (an affair with a man of different community). The residents of the village where the incident occurred are petrified and most of the villagers are refused to talk about the incident and few who spoke said that they did not know about the gang-rape. All they told is that all they know is the boy and girl was found in an objectionable situation and according to village rules they were tied to a tree for the entire night and were tried in a Shalishi Sabha (Kangaroo Court). Each of them was asked to pay a fine of Rs. 25,000. The Kangaroo Court released the boy after his family paid the fine while when the group of villagers went to girl's house to collect the fine but her family expressed inability to pay up. It was then that the girl was picked up and was gang-raped.<sup>10</sup> NCW took *suo moto* cognizance of the incident to inquire into the matter. The commission sought an ATR from DGP West Bengal vide letter dated 23.01.2014 and also constituted an inquiry into the matter under the National Commission for Women Act, 1990 vide order dated 28.01.2014.

The Birbhum incident mirrors the awful decrees of the Khap Panchayat in Haryana and Western Uttar Pradesh, which punishes any transgression of caste purities through extreme social intimidation to the extent of murder. These cases remind us the merging of difference between structured grass root governance (Panchayati Raj Institutions) and the sway of an atavistic community body (Khap Panchayat).<sup>11</sup> This incident is a sobering warning to all those who speak in terms of benefits of community justice or believe that the people should decide on matters of crime and punishment or other social issues.

Most of the societies are often liberal and their impulses are checked by civic democratic institutions and the rule of law. The will of the people filters through the structures of the decision making where diverse groups elect leaders who must weigh and balance competing interests within

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<sup>10</sup> Statesmen News Service, *Bengal SP Shunted in Birbhum Gang-rape Case*, Kolkata, January 23, 2014.

<sup>11</sup> Press Monitor, *We, the Mob: The Birbhum Gang-rape Case Illustrates The Oppression Of 'Community Justice'*, Indian Express, January 24, 2014

the framework of law. Direct democracy which relies on popular referendum has been demonstrated to hurt minority interests the most.

The Birbhum incident has led to outrage in India which some people describing it as inhuman and completely outrageous and calling for quick trial and punishment of the rapists. All the 13 accused were arrested and sent to judicial custody immediately. The accused include the Adivasi village's headman, Balai Maddi, who took the lead in brutalizing the twenty year old girl. In this case the role of the police has also come under scanner as it failed to seek custody of the accused in such a major plan. The public prosecutor also did not appear in the court.

The incident was described as highly condemnable and shocking as Adivasi communities had a culture of gender equality and they too have been succumbed to retrograde practices of so called Honour Killing. It is being observed that in West Bengal in several districts there is growing atmosphere of violence with gangs of armed anti-socials taking the law in their own hands. This is because many of them enjoy the political patronage resulting in the administration turning a blind eye to them.

On the face of it, the existence of Khap Panchayat, Kangaroo Courts and Shalishi Adalat/Sabha is unconstitutional and it is strange that they are still functioning in our country. In a democratic country which is based on rule of law no vigilantism can be permitted and the strictest punishment should be given to the culprit of such incidents.

'Honour' killings, commonplace in the states Punjab, Haryana, Rajasthan, Uttar Pradesh and a few pockets of Delhi, draw blood as also a sense of legitimacy from the very society these dishonorable doings thrive in, with the support of a powerful force that works behind the scenes and within it. These undisputed torchbearers of traditions and morality are the khaps, kangaroo courts and shaileshi adalats instructing and ensuring the social fabric remains untouched by 'defiled' influences of modernity.<sup>12</sup>

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<sup>12</sup> Gitanjali Gayatri, "*Till 'honour' do them part,*" report dated 30 September 2013, National Legal Research Desk – A Shakti Vahini Initiative, *available at* <http://honourcrimes.wordpress.com/2013/09/30/till-honour-do-them-part/>.

Certain sections of Indian society especially the NGO's<sup>13</sup> along with the media have for some time been demanding that these *Panchayats*, modern-day avatars of traditional social assemblies in rural north-western India that were primarily engaged in resolving disputes and ensuring adherence to custom, be restrained. *Khap Panchayats* are self styled setups that have gained notoriety for resorting to honour killings of young couples or social boycott of their families for a simple reason that they chose to marry by choice.

The role of Khaps is not restricted to limiting a woman's right to choose her partner for matrimonial purpose manifesting itself either by means of honour killings or forced marriages but also extends to putting restraints on her personal liberty. Be it the way she is allowed to dress, what kind of clothes she is allowed or not allowed to wear and her right to move within the geographical area.

Right to freedom of life and liberty are the basic fundamental rights enshrined in our constitution. Rarely has anyone spoken against the *Khaps* in spite of their brutal misdeeds let alone anyone coming forward to register a case against them. Justice Verma committee<sup>14</sup> had slammed khap Panchayats and their influence on honour killings and called them as extra-constitutional bodies that restrain the right of men and women to select a partner of their choice, and have no sanction of law in India.<sup>15</sup>

Along with *Khap Panchayats* have equally been notorious the *Kangaroo Courts* and the *Shalishi Adalats*. *Kangaroo Court* is an unofficial court held by a group of people in order to try someone regarded, especially without good evidence, as guilty of a crime or misdemeanor." A "*Kangaroo Court* is a mock-court set up to deliver a judgment arrived at in advance, the motivation being to punish a disloyal cohort. The kangaroo court is illegal and lack legitimacy. There are no norms of justice or judicial procedure which are observed and in it, as a rule, the

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<sup>13</sup> Special mention to be made of the NGO Shakti Vahini that filed a writ petition in the Supreme Court of India bringing to the notice of the court the parallel courts being run by khaps as extra-constitutional bodies.

<sup>14</sup> A three member committee headed by Justice JS Verma was constituted by GOI Notification no. SO (3003) E to recommend the amendments to criminal law in order to provide for quicker trial and enhanced punishment for criminals accused of committing sexual crimes. See [http://www.thehindu.com/multimedia/archive/01340/Justice\\_Verma\\_Comm\\_1340438a](http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a).

<sup>15</sup> Vijaita Singh, report dated January 24, 2013, "*Committee slaps Khaps, honour killings*," available at <http://archive.indianexpress.com/news/committee-slams-khaps-honour-killings/1063929>.

prosecutor; judge and executioner are one and the same person. The trial of hostage by the terrorist is one such example.”<sup>16</sup> The Supreme court many times raised the issue that illegal Khap Panchayat that encourages honour killing and the discriminative and derogatory practices against women should be stamped out. Despite penal laws against sexual violence and harassment has been strengthened significantly, it is strange that the entire village including women, backed the kangaroo court and the culprits got away with fine however the girl was raped for not having means to pay fine. The Birbhum incidence prove that stringent laws , procedure and security measures are not enough, it is social attitude which require to change reflecting liberal and human values for gender equality and protection of women. Our rural and interior India is outside the pale of country’s constitutional values and judicial system.

*Shalishi*, a Bengali word of Persian origin, means mediation or arbitration. But what actually happens at these *Kangaroo* courts is a mockery of mediation. Though they are supposed to handle and resolve only petty civil disputes, these *adalats* pass judgement, and more often than not very flawed and biased ones, on a range of crimes ranging from thefts and extra-marital affairs to rape. In most rape cases, the accused, especially if they come from relatively affluent or influential families, get away with just small fines. These courts are whimsical in dishing out sentences. Adultery, for instance, could attract anything from a death sentence to a fine of a few thousand rupees, while a petty thief could expect to be fined, flogged in public or even banished from the village. "It all depends on the financial and social status of the accused, the mood of the elders of the village who are members of the *Shalishi court* and their relationship with the accused or his or her family. In 2004, the Left Front government attempted to give a legal sanction to ‘*Shalishi adalats*’ through the West Bengal Block Level Pre-Litigation Conciliation Board Bill (which came to be better known as the *Shalishi Bill*). Under this Bill, ‘Conciliation Boards’ were to be set up in every administrative block for adjudication of minor disputes. But the opposition Congress and Trinamool Congress cried foul and launched a series of agitations against the bill, and the government was ultimately forced to abandon its plans to introduce the Bill in the state assembly. The opposition parties’ contention was that the Left (primarily the CPM) would appoint only their own party men to the ‘Conciliation Boards’ and the Marxists would thus strengthen their grip on power in the rural areas. Nonetheless, the ‘*Shalishi adalats*’ thrive and disburse “injustice” at

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<sup>16</sup> Vikram Singh, (2012) “*Public Administration Dictionary*,” TMH, New Delhi.

lightning speed, the Birbhum Gang rape case highlighting the worst of the “injustice” a shalishi Adalats can give.<sup>17</sup>

Death sentences imposed by ‘*Shalishi* adalats’ are usually executed in utmost secrecy, and the whole village takes an ‘omerta’ or oath of silence, foiling any effort of Police to arrest any one of them.

### **1.1 OBJECTIVE OF THE STUDY**

- a. To find out why discriminatory and derogatory practices like honour kill are still prevalent in the study areas despite more than 66 years of independence.
- b. To get an insight into the educational level of the people concerned such as the culprits, the victims and area/community people etc.
- c. To find out the views of the victims/ local area people with regard to the Khap Panchayats.
- d. To get a clear picture of the violence against couples, girls in villages and cities.
- e. To identify the inadequacy of the laws made by the Parliament to curb the atrocities of the Khap Panchayat and the Kangaroo courts.
- f. To find out the role of the law enforcement agencies, governmental bodies and concerned authorities.
- g. To know the status of the victims of unfair and discriminatory decisions passed/given by the Khap Panchayats and the kangaroo courts.
- h. To give suggestions on the reformation and improvement of the present legal system.

### **1.2 RESEARCH METHODOLOGY**

The researcher adopted purposive sampling technique, through which states are selected based on data available in (source name), the purpose is to find why these States are suffering with such problems. For conducting the study on the aforesaid topic following 4 States were chosen:

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<sup>17</sup> A 20-year-old tribal woman was allegedly gang-raped in a West Bengal village on the orders of a shalishi sabha for falling in love with a man from outside her community and then failing to cough up Rs. 50,000 fine imposed by the shalishi sabha, which eventually led to the woman being humiliated with a dozen men assaulting her dignity.

- i. State of Haryana
- ii. State of Uttar Pradesh (Western U.P.)
- iii. State of West Bengal
- iv. State of Rajasthan

The research team adopted the rapid appraisal methodology due to the short time commissioned for study, by taking large samples. Such sampling is not based on representation but includes different kinds of stakeholders. The research team employed multiple methods in order to validate the reliability of the data generated. The methods used for study were Focussed Group Discussion (FGD), Group discussion, observation and in depth case study. Audio recording of FGD and case study were also made. For the purpose of the study, for each state the category of sample included in the study were -

- i. Affected Women (victims)
- ii. Members of Khap Panchayat
- iii. Local Area People
- iv. Authorities Concerned

As the main focus of the study is on women and the impact of quasi-judicial systems like khap Panchayat, Kangaroo courts etc on the lives of the women, the main target group is women, however, researcher collected data from other people ie., members of khap Panchayat, local area people and authorities concerned (police personnel, District Magistrate etc.) for the purpose of getting a broader/true picture of the issues.

The entire data collection was done during the month of April-June2014. The study was conducted in the aforesaid four States, ie Haryana ,U.P (Western), West Bengal, Rajasthan. The details of the study area are as follows-

## RESEARCH TABLES

| S. no | State       | District   | Villages   |
|-------|-------------|--|--|
| 1     | Haryana     | 6 (Sonipat, Panipat, Mewat, Rohtak, Hisar, Karnal)         | 18(Kakroi, Badkhalsa, and Tiharah kala, Ujha, Ugrakhedi, and Seewah, Adbar Rewasan, and Mewli, Mokhra, Madina, and Sampla, Satrol, Nalwa, and Kaimri, Phusgarh, Ramba, and Kachhwa)  |
| 2     | U.P(West)   | 3 (Muzzaffarnagar, Meerut, Baghpat)                        | 12(Mallupura, Kakroli, Shahpur Lisad, Sisoli, Fugana, Ajrara, Bhopgarh, Harra, Asara, Baaud, Dhikoli)  |
| 3     | West Bengal | 6 (Birbhum, Bakura, Vardhman, Malda, North 24 Pargana)     | 14(Purendrapur, Sewari, Bolpur, Labhpur, Barikul, Cendapathar, Purnapusma, Ranibandh, Haluba Pandabeswar, Raniganj, Jamuria, Habibpur, Gazoli, Malatipur, Manikchak, Swarupnagar, Habra, Ashoknagar, Baduria, Baruipur, Marghat Purwa, Marghat Pashchim) |
| 4     | Rajasthan   | 7 (Bikaner, Jhunjhnu, Jodhpur, Siker, Hanumangarh, Naugur) | 22(Naikon ka mohalla, Udramsar, Udasar, Dhojasar, Himmatpura, Guman singh pura,)   |

The further details of the sample included in the study is prescribed in the following tables.

### 1. STATE OF HARYANA

| S. no | District | Villages                                | Number of meetings | Population covered |
|-------|----------|---|--------------------|--------------------|
| 1     | Sonepat  | 3 (Kakroi, Badkhalsa, and Tiharah kala) | 3                  | 40                 |
| 2     | Panipat  | 3 (Ujha, Ugrakhedi, and Seewah)         | 3                  | 40                 |
| 3     | Mewat    | 3 (Adbar Rewasan, and Mewli.)           | 3                  | 30                 |
| 4     | Rohtak   | 3 (Mokhra, Madina, and Sampla)          | 3                  | 25                 |
| 5     | Hisar    | 3 (Satrol, Nalwa, and Kaimri)           | 4                  | 30                 |
| 6     | Karnal   | 3 (Phusgarh, Ramba, and Kachhwa)        | 3                  | 20                 |

## 2. STATE OF U.P (WEST)

| S. no | District       | Villages/Mohalla                                       | Number of meetings | Population covered |
|-------|----------------|--|--------------------|--------------------|
| 1     | Muzzaffarnagar | 6 (Mallupura, Kakroli, Shahpur, Lisad, Sisoli, Fugana) | 3                  | 30                 |
| 2     | Meerut         | 3 (Ajrara, Bhopgarh, Harra)                            | 3                  | 30                 |
| 3     | Baghpat        | 3 (Asara, Baaud, Dhikoli)                              | 2                  | 10                 |

## 3. STATE OF WEST BENGAL

| S. no | District         | Villages  | Number of meetings | Population covered |
|-------|------------------|---|--------------------|--------------------|
| 1     | Birbhum          | 4 (Purendrapur, Sewari, Bolpur, Labhpur)                    | 5                  | 50                 |
| 2     | Bakura           | 5 (Barikul, Cendapathar, Purnapusma, Ranibandh, Halubanali) | 5                  | 30                 |
| 3     | Vardhman         | 3 (Pandabeswar, Raniganj, Jamuria)                          | 3                  | 30                 |
| 4     | North 24 Pargana | 4 (Swarupnagar, Habra, Ashoknagar, Baduria)                 | 3                  | 30                 |
|       |                  |   |                    |                    |

Geographical Location (on road or interior) size of village, community living in the area practices

## 4. STATE OF RAJASTHAN

| S. | District | Villages covered                        | Number of meetings | Population covered |
|----|----------|---|--------------------|--------------------|
| 1  | Bikaner  | 4 (Naikon ka mohalla, Udramsar, Udasar) | 3                  | 10                 |
| 2  | Jhunjhnu | 1 (Dhojasar)                            | 4                  | 12                 |
| 3  | Jodhpur  | 4(Himmatpura, Guman singh pura)         | 4                  | 20                 |
| 4  | Siker    | 2(Kaasli, Bheenchri)                    | 2                  | 10                 |
| 5  | Nagur    | 3(Deedwana, Sujangarh, Jaswantgarh)     | 3                  | 15                 |

|   |            |                      |   |    |
|---|------------|----------------------|---|----|
| 6 | Hanumagarh | 3(Bhaddi, Meghana)   | 3 | 10 |
| 7 | Churu      | 2(Rajpura, Modavasi) | 2 | 10 |

### **1.3 DATA COLLECTION**

#### **Planning for data collection,**

To carry the study on the given topic effectively so as to attain the aforesaid objectives, a research team was organised comprising of team members which included Research Director, Research Co-ordinator, Research Officer, Field Investigators, Typist, Research Analyst. Before the field investigator were sent on to the research areas for collecting information and data, an orientation was given to them regarding the Research Tools, Research area and how to conduct focussed group discussion.

### **1.4 LITERATURE REVIEW**

For the purpose of the study, a survey was done of the incidents reported of honour killings and other derogatory and discriminatory practices done against women as reported in the media. Cognizance of which had been taken by the National Commission for Women in its yearly report. Various written documents, books and articles on honour killing were also surveyed which pointed at the prevalence of crime against women in the name of honour world-wide.

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5. <http://www.jeywin.com/main/blog/menace-of-kangaroo-courts-or-katta-panchayats-in-india/> for details.

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8. Jaidip Majumdar, *"The Injustice of Justice," available at* <http://honourcrimes.wordpress.com/>.
9. Johanna Bond, *"Honour as Property," 23 Colum. J. Gender & L. 202(2012).*
10. John Alan Cohan, *"Honour Killings and the Cultural Defense," 40 Cal. W. Int'l L.J. 177 (2010) The Hindu, Aug 6, 2010, p 11*
11. Mazna Hussain, *"'Take My Riches. Give Me Justice': A Contextual Analysis of Pakistan's Honour Crimes Legislation," 29 Harv. J.L. & Gender 227.*
12. *NCW slams khap Panchayats for imposing customs on young couples*, Express News Service: Chandigarh Tuesday, 24<sup>th</sup> Sept., 2013
13. Report by Dhananjay Mahapatra, *"No Law in Place to rein In Khaps – SC in the Times of India,* dated July 19, 2012.
14. *Special law will deter honour killings*, CJI Sathasivam. 30<sup>th</sup> June, 2013 01:03. IST. The Hindu, 30<sup>th</sup> June, 2013.
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17. Manveer Saini, *"Haryana people prefer khaps over courts: Report"* reported in The Times of India dated Dec 16, 2012, *available at* [http://articles.timesofindia.indiatimes.com/2012-12-16/india/35850111\\_1\\_khap-panchayats-sub-e-singh-samain-bhaichara](http://articles.timesofindia.indiatimes.com/2012-12-16/india/35850111_1_khap-panchayats-sub-e-singh-samain-bhaichara)
18. Report dated July 08, 2011, *"Dishonour Killing: Father burns daughter to death," available at*
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22. Report by Sujoy Dhar dated January 23, 2014 “*West Bengal woman says gang-raped on orders of Panchayat,*” available at <http://in.reuters.com/article/2014/01/23/rape-panchayat-west-bengal-love-idINDEEA0M0AA20140123>.
23. Report by Chander Suta Dogra dated 11<sup>th</sup> February 2014, “*Retrograde avatar of repressive traditions*” The Hindu.
24. *Panchayat orders gouging lovers’ eyes,* Deccan Herald; February 12, 2012 Honour Killings / Crimes in India <http://www.deccanherald.com/content/59009/panchayat-orders-gouging-lovers-eyes.html>.
25. Anant Zanane, “*Marriages within clan cause dishonour killings, Supreme Court should not get into this mess:* dated February 19, 2014 *Khap leader,* available at <http://www.ndtv.com/article/india/marriages-within-clan-cause-dishonour-killings-supreme-court-should-not-get-into-this-mess-khap-lead-485630>.
26. Manveer Saini, “*Haryana’s biggest khap Panchayat scripts history, allows inter-caste marriages,*” The Times of India, dated April 21, 2014 available at <http://timesofindia.indiatimes.com/india/Haryanas-biggest-khap-panchayat-scripts-history-allows-inter-caste-marriages/articleshow/34016585.cms>.
27. Chaitra Arjunpuri, *Female mobile phone bans.* Al Jazeera 27 Dec 2012 11:59

A survey of cases decided by the Supreme Court and various High Courts was also done for the purpose of the study to find out the judicial stance on the parallel judicial system run by kangaroo courts and khap Panchayats. The report by NGO Shakti Vahini on honour crimes was also surveyed. The proposed draft bill on honor killings by the National Commission for Women and the proposed draft bill on prevention of unlawful assemblies by the Law Commission of India along with the consultation paper were also reviewed and analysed with great depth

## Chapter- 2

### BACKGROUND OF THE STUDY

#### ***KHAP PANCHAYAT, KANGAROO COURTS AND SHALISHI ADALATS IN INDIA***

##### **2.1 INTRODUCTION**

*Khap Panchayat*, Kangaroo courts, *Shalishi Adalats*(Bengali equivalents of Khap Panchayats) and other parallel judicial bodies have constantly been in the news off lately for all the wrong reasons, be it butchering of innocent lovers or gang rape of woman for falling in love with someone outside community, imposing ban on girls use of mobiles or restrictions on their wearing jeans or not giving them proper rights to female. *Khap* Panchayat is the union of few villages, mainly found in north India though it exists in similar forms in the rest of the country also. They have emerged as quasi-judicial bodies that pronounce harsh punishments based on age-old customs and traditions, often bordering on regressive measures to modern problems. Some of the diktats are gross violations of human rights putting humanity to shame.

These extra constitutional khap Panchayats and kangaroo style courts try to legitimize their actions by quoting historical antecedents of uncertain origin to support their practices. They are of the opinion that the *Khap Panchayat* is an age old institution, having its foundation in the early medieval period.<sup>18</sup> It is quite alarming that in a democratic country like India with an extensive and strong judicial system and local self-government institutions like elected Panchayats, there exists a pseudo-judicial institutions like the Khap Panchayats, Shalishi Adalats are the institution which has been staking claim to legitimacy when it comes to resolving disputes of local public or other welfare measures. Had these institutions been dispensing justice fairly by applying the

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<sup>18</sup> Suraj Bhan Bhardwaj, “Myth and Reality of the Khap Panchayats: a Historical Analysis of the Panchayat and Khap Panchayat,” available at <http://sih.sagepub.com/content/28/1/43>.

principles of natural justice in consonance with the Constitutional spirit as embedded in the Fundamental Rights and Directive Principles of State Policy, a furor against their functioning would not have been raised. In recent times, their role has been constantly under the scanner not only because of the controversial decisions/diktats issued but also because of regressive comments made by them.

With all the negative media coverage of projecting Khaps and other Kangaroo Courts as a hangover of regressive medieval history, it is somehow assumed that khaps are a burden on the society in which they exist. However, in December 2012, a survey carried out by a sub-committee constituted by Haryana Backward Class Commission (HBCC) to ascertain the possibility of reservation for *jaats* and other communities found out that traditional Haryanvi people have more faith in social Panchayats than judicial courts and prefer to approach khaps for remedial measures.<sup>19</sup> The survey which was conducted on 49,870 households in rural areas highlighted that 66.6% families from 16 different castes said they preferred approaching khap Panchayats than opting for judicial remedies for seeking justice whenever disputes arise.<sup>20</sup>

This stark difference in the perception about khaps in media and the masses is not only surprising but pointing towards a dangerous situation where ground realities are different from what is being projected in the popular media. The sensitive issue of Sagotra marriages is a major cause of khap Panchayat garnering mass support. Although, sagotra marriages are valid under the Indian law,<sup>21</sup> there is popular sentiment against it, especially in the rural heartland of Haryana and Western U.P. The khaps have been exploiting this in order to consolidate their power and secure mass support. Khap Panchayats want the law to be amended to disallow same-gotra marriages and have been mobilizing political opinion for doing so.

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<sup>19</sup> [Manveer Saini](http://articles.timesofindia.indiatimes.com/2012-12-16/india/35850111_1_khap-panchayats-sub-singh-samain-bhaichara), “Haryana people prefer khaps over courts: Report” reported in The Times of India dated Dec 16, 2012, available at [http://articles.timesofindia.indiatimes.com/2012-12-16/india/35850111\\_1\\_khap-panchayats-sub-singh-samain-bhaichara](http://articles.timesofindia.indiatimes.com/2012-12-16/india/35850111_1_khap-panchayats-sub-singh-samain-bhaichara).

<sup>20</sup> See *Ibid*.

<sup>21</sup> *The Hindu Marriages Disabilities Removal Act, 1946* permitted sagotra marriages between two Hindus. The Hindu Marriage Validity Act, 1949 further validated inter-caste marriages. Section 29 of the Hindu Marriage Act validates same-gotra marriages. The section, title “savings”, says that a marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to the different religions, castes or subdivisions of the same caste.”

The present study on the Discriminative and Derogatory Practices against Women By *Khap* Panchayats, *Kangaroo* Courts and *Shalishi* Adalats in India: An Empirical Study in the States of Haryana, Uttar Pradesh(West), West Bengal & Rajasthan, has been undertaken as an attempt to discover the truth of khap Panchayats and other quasi judicial bodies and their impact on the lives of women keeping all such aspects in sight.

## **2.2 PANCHAYATS AND KHAPS**

Disposal of local disputes by “Panchayat” is an ancient Indian concept which is now constitutionally recognised in the democratic State of India with the Panchayat representatives being now elected and the Panchayats constituted under the Panchayati Raj Act.<sup>22</sup> At every social level, Panchayat action begins when men of a group, whether categorised by lineage or caste, meets to deal with a problem that affects a particular group. Those who convene the meeting are ones who feel endangered or discomfited by the problem and the ones who feel they are going to be affected by it, attend the meeting. For arriving at a decision, the traditional Panchayat mobilizes a large number of people on the basis of family, kin, gotra, caste, community and village including persons from outside the local area. Issues such as breaking of social taboos, customs, rituals, and hierarchy are used as mobilizing strategies. With their highly emotive strategies, these succeed in uniting people and closing ranks in rural society where people are more driven by emotions than logic.

The enforcement of judgments by a Panchayat which is not constituted under law depends on united public opinion and action. The use of force is always a lurking possibility in executing the Panchayat’s decision. Once the decision is taken, enforcement is the responsibility of the leaders of the village in which the penalized party lives. The sanctions applied by the caste or the village Panchayat are usually fining, nominal or substantial, which has to be deposited in a

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<sup>22</sup> A 3-tier Panchayati Raj system - Gram Panchayat at the village level, Panchayat Samiti at the block level, and Zila Parishad at the district level was first adopted by state of Rajasthan in Nagor district on 2nd Oct 1958. This system was adopted by various other state governments during the 1950s and 60s, by enacting laws to establish panchayats. The system was given a constitutional stamp by the Indian Constitution, with the 73rd amendment in 1992 to accommodate the idea. On 24 April 1993, the Constitutional (73rd Amendment) Act 1992 came into force to provide constitutional status to the Panchayati Raj institutions. This act was extended to Panchayats in the tribal areas of eight states, namely Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, [Odisha](#) and Rajasthan starting 24 December 1996. Currently, the Panchayati Raj system exists in all the states except Nagaland, Meghalaya and Mizoram, and in all Union Territories except Delhi.

common fund of the Panchayat; ritual expiation; public humiliation, which would mean blacking the face or rubbing the nose in dust before the aggrieved party or even the entire gathering, touching other's feet, shaving the head, or drinking or dipping the nose in the urine of one or more persons. Orders of Panchayats to parade the penalised nude or gang rapes are not unheard of. The final weapon in the hands of traditional Panchayat is outcasting. Outcasting is an extreme form of group withdrawal.

The traditional caste Panchayats were part of the socio-political life of village communities even in the pre-colonial period. They were essentially informal, decision-making, caste-based bodies of elderly-'wise' men, drawn from their respective castes or from the dominant caste group, who commanded universal respect in the community. These members were not elected or self-appointed but were members by consensus and sometimes by heredity. Inter-caste matters are decided by the village Panchayat, which is called for a broad range of problems, both civil and criminal in nature. The membership of this Panchayat consists of important leaders of each of the caste groups in the village. From available evidence, it is certain that these meetings have always been controlled by the members of the dominant and the lower-caste groups, the former (due to the integrated nature of the economic system and the virtual monopoly over land) are able to control the later and enforce decisions upon them. This is normally achieved through threats of economic sanctions as well as using or threatening physical violence.

The strength of the traditional caste Panchayat lay in twin factors; one they are the numerical strength of a particular caste group and two, the landownership it commanded. That is why the high visibility of the caste Panchayats is evidenced in Jaat dominated areas of Haryana and Western Uttar Pradesh. Basic to the exercise of power by the caste Panchayat was the domination of jaats, constituting the single largest caste group in Haryana. According to 1931 census, the districts of Rohtak, Hissar and Karnal had 36.80 percent, 28.48 percent and 15.20 percent of Jaat population respectively. In these districts, the Jaats formed not only one-third of the total population but also held more than half of the agricultural land as proprietors, with the rest of the land distributed among a large number of different caste groups.

The numerical strength in combination with landownership patterns meant that the landowning class and upper-caste population of a village or a religion dominated the traditional Panchayats. We can say that these traditional Panchayats were all purpose local mechanisms for a

series of activities ranging from collection of revenue or overseeing works of public utility, acting as courts for dispute settlement and meeting out justice in community matters. All this was effected within the framework of the caste rules, custom or usage of the locality, trade or family.

The exact origin of the khap Panchayats is largely unknown. Historically, it has been a decentralized system of social administration in the north-western states like Haryana, Madhya Pradesh and Punjab. Khap Panchayat is sort of tribal organization. It is a traditional and informal organization. It is a sociological as well as a political organization. It regulates not only the social customs of the dominant clan of the jaats of the Khap but also of the jaats of other clans living in its jurisdiction.

The khap Panchayats is to be distinguished from the caste Panchayats or *biradari* Panchayat of various castes for dealing with intra-caste social norms and disputes. Khap is a different unit altogether. It is not made of one gotra but when more than three or four gotras assemble together and discuss some issue that is called a Khap Panchayat. Khap is thus a different form of Panchayat.

### **2.3 HISTORICAL BACKGROUND OF KHAP PANCHAYATS**

Ancient society had organized itself into clans or under Panchayat system. A clan at that time was based on one large *gotra* or a number of closely related *gotras*. Decisions relating to the activities of these social groups were made under the aegis and with the consensus of a Council of five elected members. In time of danger, outside invasion, or other kinds of crises, the whole clan rallied under the banner of the Panchayat and a leader would be chosen by the Assembly. A number of villages grouped themselves into a *Guhaand*. A number of *Guhaands* formed a '*Khap*' (covering an area equal to from a *Tehsil* to a District) and a number of *Khaps* formed a '*Sarva Khap*' embracing a full province or state. For example, there was a "*Sarva Khap*" each for Haryana and Malwa. At what level a Panchayat should gather depended upon the magnitude of the problem and the territory it involved.

The origin of the word ‘Khap’ is derived from the word ‘*faank*’, meaning an off-shoot or fraction.<sup>23</sup> Historically the word ‘Khap’ was used for the first time in Rajasthan in the context of Rajput ruling class during the medieval period. In Muhnaut Naiansi riyasat or the Khyats of Marwar State, we find that the word ‘Khap’ has extensively been used in the context of different sects of the Rajput ruling class. The first Census report based on religion and caste was prepared in Jodhpur in the year 1890–1891, 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. When it was translated into Hindi, the word class instead of being coined as ‘gotra’ was termed as ‘*Khap*’. Khaps are largely believed to be started by upper caste jaats in the fourteenth century, to consolidate their power and position. Each clan has a hereditary head man called as *chaudhry*. However some of the jaat clans have called this position as secretary (*wazir*). The clan head man is also the head man of Khap council. In case of Haryana, the head of khap Panchayat is elected in formal manner through consensus.

Khap Panchayat is an exclusively male dominated institution and the women have no share or say in it. Although the Khap leaders claim that they hold their women-sisters, daughters and mothers in high esteem and are prepared to make supreme sacrifice for safeguarding their honour. The women have largely remained excluded from it.

“*Khap*” is an ancient concept which has written references found back from the Rig Vedic times. There are basically social-political groups, which usually comprise the upper caste and elderly men who are united by geography and caste. Hence, *Khap* is a term for a social political grouping and used in geographical sense. *Khap* was a system of social administration and organization in the republics of North-western states like Haryana, Uttar Pradesh and Rajasthan in India since ancient times. *Khap Panchayats have had a long innings in the Jaat-dominated areas of north-western India and some of their decisions that go against individual rights have led to heated controversy.* It is commonly believed that they came into existence sometime around 600 AD. It is believed to have been started by the upper caste ‘*Jaats*’ to consolidate their power and position in the community.<sup>24</sup>

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<sup>23</sup> *Supra* note 1 at 47.

<sup>24</sup> Saumya Ramakrishnan, “*Khaps - Is history now becoming a burden?*,” Published January 18, 2013 available at <http://barandbench.com/content/212/khaps-history-now-becoming-burden#.U1T2r1X6NIg>.

*Khap* is a cluster of villages united by caste and geography. Each village is governed by the Panchayat, which is an elected council and the elected members of all the villages in the cluster would then choose a khap leader, who would then convene the meeting of khap Panchayats. The main feature of a khap is that all boys and girls within a *Khap* are considered as siblings and a *Khap* Panchayat governs the *Khap* formed by same *gotra* (clan) families from several neighbouring villages. *Khap Panchayats* are prevalent in Haryana, western Uttar Pradesh and parts of Rajasthan. Love marriages are considered taboo in areas governed by *Khap Panchayats*. Those living in a *Khap* are not allowed to marry in the same *gotra* or even in any *gotra* from the same village. Many young couples have been killed in the past defying *Khap* rules. *Khap Panchayat* imposes its writ through social boycotts and fines and in most cases end up either killing or forcing the victims to commit suicide. All this is done in the name of brotherhood and honour. Honour has always existed in one form or the other within most communities and often operates to constrain women's behaviour.<sup>25</sup> Although a common misperception links honour primarily with cultures in the Middle East and Asian countries, honour functions in similarly gendered ways around the world.<sup>26</sup> It is the woman who is the subject of honour and not her male partner. However, in a huge change witnessed, on April 21, 2014, the biggest Khap Panchayat in Haryana, the *satrol* khap scripted history by allowing inter-caste marriages which have led to a lot of bloodshed in the past.<sup>27</sup>

## **2.4. REASONS FOR DOMINANCE OF KHAPS AND KANGAROO COURTS**

Khaps and kangaroo courts have a great hold on the masses as is clearly reflected in the empirical study conducted during the period of this study project. Following are some of the various reasons which can be attributed for such dominance of khaps/kangaroo courts.

### **2.4.1 Weakness of the elected Panchayati Raj Institutions**

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<sup>25</sup> Johanna Bond, "Honour as Property," 23 *Colum. J. Gender & L.* 202(2012).

<sup>26</sup> *Ibid.*

<sup>27</sup> See Report by Manveer Saini, in The Times of India, dated April 21, 2014 "Haryana's biggest khap Panchayat scripts history, allows inter-caste marriages," available at <http://timesofindia.indiatimes.com/india/Haryanas-biggest-khap-panchayat-scripts-history-allows-inter-caste-marriages/articleshow/34016585.cms>.

The inherent weakness of democratically elected Panchayati Raj institutions is one major reason why the *Khap* Panchayats and other parallel quasi judicial bodies have emerged as powerful units in the rural heartlands of Haryana and U.P (West). The Panchayati Raj Institution boasts of having 33% reservation for women. But such a reservation ends up elected women candidates as mere proxies of their men folk. The elections for elected Panchayats again are influenced by caste factor majorly due to which khaps overpower PRI.

#### **2.4.2 Political failure**

Despite the blatant disregard of human rights by certain khap/kangaroo courts, the State especially the political class doesn't seem to take much interest in putting a leash on the growing power of khaps. The major reason behind it lies in the caste based vote dynamics. No political leader in whose constituency khaps fall, in his right mind would dare to rub the khap chaudharies in the wrong, doing so would essentially mean the end of political career in that constituency.

For every politician aiming to get a hold on the jat vote tries to justify the khaps. Haryana Chief Minister Bhupinder Singh Hooda and Aam Aadmi Party leader Arvind Kejriwal are at least two examples of such politicians. Mr. Hooda compared khap Panchayats akin to “NGOs” and a part of Indian culture. Aam Aadmi Party leader Arvind Kejriwal said that he saw no reason to ban these bodies, as they serve a “cultural purpose.”<sup>28</sup>

What cultural purpose khaps serve apart from maintaining a strict patriarchal hold in the society is a question every sensible person would ask. To quote former Union Finance Minister P. Chidambaram who believed the *khap* Panchayats to be retrograde organizations that cannot be a part of India's culture- “I am appalled to see somebody say it is a part of India's culture”<sup>29</sup>

#### **2.4.3 Judicial Delays and Distrust of System**

Delay in administration of justice by normal courts is one reason why villagers and local people defend these caste Panchayats, shalishi adalats *etc.* is that they deliver the verdict in one

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<sup>28</sup> Report by Anant Zanane, “Marriages within clan cause dishonour killings, Supreme Court should not get into this mess: Khap leader”, dated February 19, 2014 available at <http://www.ndtv.com/article/india/marriages-within-clan-cause-dishonour-killings-supreme-court-should-not-get-into-this-mess-khap-lead-485630>.

<sup>29</sup> Report by Chander Suta Dogra, “Retrograde avatar of repressive traditions” The Hindu. dated 11<sup>th</sup> February 2014

sitting whereas court cases drag for years. There is also a general distrust amongst the villagers of the law enforcement agencies. According to them, in many cases innocent people get harassed in the court and by police. The Panchs are all known, so the villagers trust them and are confident that the panchayats cross check everything to ensure neutrality and administer justice.

#### **2.4.4 Socio Economic Factors**

Women too, surprisingly support khap diktats for various reasons suiting their socio-economic situations. After a mahapanchayat of 52 villages banned girls from wearing jeans (what it termed the “denim devil), going out alone or using mobile phones a number of girls in the region felt bad but were of the view that the Panchayats other decisions- like not having DJ music in weddings or banning gifts of expensive items like tractors or motorcycles as dowry – were far more important and worthy of respect. As for the ban on jeans and mobile phones which holds in the case of unmarried girls, they happily bear to live with it.<sup>30</sup> Rekha, a teenager from Neemgaon, said jeans and mobiles were "not the end of the world, and not quite as necessary for girls as clean air and water." She further added perspective by mentioning that because of the khaps diktat her father would not be able to gamble and drink alcohol and also due to the steps taken by the khap Panchayat the incidents of sexual harassment would decrease.<sup>31</sup>

## **2.5 THE COMMON DISCRIMINATIVE AND DEROGATORY PRACTICES BY KHAP PANCHAYATS**

In some Haryana villages, the young girls are routinely threatened, abused and killed under *Khap* verdicts. It is acceptable for the families to feed pesticide pills to the teenage girls and then dispose off their bodies by burning them without any police records. The entire onus of siblinghood rests on the girl. She is the keeper of village honour. Sometimes rules are bending for the boys but a girl is never allowed to bend the rules. If a couple runs away then the families risk

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<sup>30</sup> "I will abide by the Panchayat's directions not because I don't like jeans, but because some very good decisions have been taken. There is a check on dowry and liquor sale in the villages, and these have been ruining families. Fathers have been selling land to get daughters married," said Sonal, an undergraduate student from Barsana village. See report by Ishita Mishra in the Times of India dated March 26, 2014, "Girls welcome khap Panchayat diktat on dowry, say they can live with ban on jeans," available at <http://timesofindia.indiatimes.com/city/kanpur/Girls-welcome-khap-panchayat-diktat-on-dowry-say-they-can-live-with-ban-on-jeans/articleshow/32738501.cms>

<sup>31</sup> See *Ibid*.

the boycott and hefty fines in lakhs of rupees. Even the other women of the house can suffer abuse. In keeping with the *Khap* rules, older villages try to keep the young people apart. Some schools are also forced to have separate timings for the boys and girls. Fearing their daughters would go astray, many parents marry them off at an early age. People have unquestionable faith in the justice of *Khap*. The question of rights for women does not exist anywhere in the territories ruled by *Khap* Panchayats.

The functioning of *Khap* Panchayats can be analyzed by studying the various forms in which they are imposed in the area wherein they claim their jurisdiction. These practices are seen in many of the forms which are being imposed on the people. These include:

### **2.5.1. Honour Killing**

Honour killings are the major reason why khaps have been attracting all the negative media coverage. In recent times, there have been many reports of honour killings in various forms which are more or less being attributed to the khap diktats. Human Rights Watch defines honour crimes as "acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonour upon the family."<sup>32</sup> Such "dishonourable acts" include seeking divorce, adultery, premarital sexual relations, premarital pregnancy, or being the victim of a sexual assault or rape. However, *honour* crimes are by no means limited to these circumstances, as a wide range of activities can trigger suspicion of dishonourable activity and result in subsequent attacks or killings of victim.

Notions of *honour* serve as barometers of familial worth.<sup>33</sup> Honour can be analysed as a relativistic concept, i.e; conflicts between individuals and even cultures arising as a consequence of material circumstances and ambition rather than fundamental differences in principle. It can also be viewed as nativist, as being real and so intrinsically attached to human condition, just as love, care, affection derive from the formative personal bonds that establish ones personal dignity and character.

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<sup>32</sup> Human Rights Watch, Integration of the Human Rights of Women and the Gender Perspective: Violence against Women and "Honour" Crimes, Intervention Before the 57th Session of the U.N. Commission on Human Rights (Apr. 6, 2001), available at [http://www.hrw.org/press/2001/04/un\\_oral12\\_0405.htm](http://www.hrw.org/press/2001/04/un_oral12_0405.htm).

<sup>33</sup> Mazna Hussain, "'Take My Riches. Give Me Justice': A Contextual Analysis of Pakistan's Honour Crimes Legislation," 29 *Harv. J.L. & Gender* 227.

*Honour* is frequently if not always gendered. Communities value women, at least in part, for the *honour* they bring to their families and punish women for the shame that they bring to their families for alleged transgressions of social and sexual norms.<sup>34</sup> Although expectations for women's behaviour vary somewhat from country to country, *honour* is a common theme, requiring women to adhere strictly to social norms. The social pressure to conform to norms of chastity and virginity is strong, and many families police the behaviour of unmarried daughters and sisters to ensure compliance with these social dictates.<sup>35</sup> Women are forced to consider every aspect of their life from the perspective of their 'honour' as a quality which is essential to reflect both the entirety of their social worth as well as the reputation of the male members of the family. Male reputation is quintessentially deemed to be dependent upon female honour. Female honour is passive in nature, completely centring around the expected behaviour of subordination, modesty and endurance, whereas male honour is by nature, dynamic, centring around qualities of self assertion, dominance and heightened propensity towards flaunting social status.

Gender roles are generally patriarchal in nature. Wives and daughters are expected to be sub-ordinate even servile to their fathers and husbands and sons. A women's role is restricted to be that of dutiful daughter an obedient wife and self sacrificing mother. They are not expected to show any kind of autonomy and are supposed to work without complaint. Young women are disempowered both as women and through their youth. Any perceived rebellion against the traditional expected behaviour may be construed as a loss of honour and might result in coercion or violence perpetrated by the woman's biological family, ranging from bullying, and beating even to murder. The most widely recognized reason for the same is the killing of both spouses for marrying in the same sub-caste, a practice which was widely endorsed and enforced by the *Khap* Panchayats in Haryana.

Shame, as a corollary of honour, operates to control and regulate women's sexuality and freedom of movement by the male members of the family. Women who dare to fall in love, choose their life partner, choose to move out of a unhappy marriage, engage in extramarital relationships, seek divorce are considered to have transgressed the boundaries of "appropriate" behaviour conforming to socially accepted sexual behaviour. It is the 'regulation' of such behaviour which in extreme cases involves horrific direct violence, including 'honour killing.' Honour which is seen

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<sup>34</sup> John Alan Cohan, "*Honour Killings and the Cultural Defense*," 40 *Cal. W. Int'l L.J.* 177 (2010).

<sup>35</sup> See *supra* note 8.

as a social quality revolving around public perception of individuals rather than their actual behaviour causing scandal or gossip within the community is the most significant aspect of an offence against honour. However, ultimately it is within the power of those men who with the internalization of the honour code through the policing of younger women, decide what acts are honourable and which bring them dishonour. Some actions which are strongly linked with honour-based violence are- loss of virginity outside marriage, pre-marital pregnancy, infidelity, extra-marital relationship, asking for divorce or asking for custody of children after divorce, leaving the family or marital home without permission, causing scandal or gossip in the community or falling victim to rape.

In some cases an honour killing may be a formal collective decision made by a council of family members who not only decide whether the girl or women's behaviour merits death but may also plan how the murder will be committed and who will carry out. In such a case the chances of the family for giving the insult to their honour are rare and a potential victim may need protection in perpetuity, especially where the family can call upon an extended network of relatives, friends and associates to assist them. Some honour killings are less structured but still carry the same collective pressure and the same motivation to monitor or guard women's behaviour in order to show the commitment towards a dominating patriarchal society with the object of having a deterrent effect on other girls who might be voicing against the restrictions dominating their lives.

In order to understand the functioning of a *Khap* Panchayat it is first important to understand Honour killings. Honour killings are murder committed by family members and the people belonging to the concerned caste/class of family members who believe that the acts of the victim have brought extreme and inexcusable shame and dishonour on the family name. This proposition of family killing their own daughter or sisters is prominently highlighted in the current study when the researchers visit *khap* villages in Haryana.<sup>36</sup> Another stark reality is that most of the honour killings have been reported from those areas where *Khap* Panchayats are more active. These killing are given shape by the ruthless rules of *Khap* system which takes away their lives with barbaric ferocity. People living in a *Khap* are not allowed to marry in same *gotra* from the same village. The rationale behind this, they argue is that people belonging to same *gotra* are believed to be from the same clan or family lineage and thus brothers and sisters.

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<sup>36</sup> See chapter 4.

However, surprisingly, it is not the same gotra marriage which is the major reason for honour killings. A recent study commissioned by NCW, which was conducted by NGO Shakti Vahini revealed that 72% of the 326 cases of honour crimes were in fact inter-caste marriages, while same *gotra* marriages were only 3 percent.<sup>37</sup> These facts point out that honour killings are more or less the outcome of clash between tradition and modernity and have more to do with the caste system than the gotra.

The statistics might be more inclined to show that the honour killings are more as a reaction to the inter-caste marriages but the issue of sagotra marriage cannot be said to be less important. It is the gotra which in reality binds the khaps and opposition to sagotra marriages is in reality the major factor which is helping the khap garner mass support. By creating the false impression that all marriages of choice between young couples are incestuous, what *Khaps* are actually opposing is the right to choose marriage partner. There have been several instances of *Khaps* issuing dictates in matters where the marriage was not an intra-*gotra* marriage, yet married couples were declared siblings, and their families made to suffer boycotts. As couples are selectively targeted, it is clear the real motive is to control women's sexuality to ensure that her share in the property remains within the patriarchal caste domain. Men may also occasionally fall victim to honour killings but they are rarely killed by their own family but by the relatives of the women or girl who is supposedly dishonoured by the victim. However men usually have greater bargaining power and may sometimes escape death by paying the other family of with money or women or they might be spared because their tribal or community connections. Some reported incidents of *Honour* killings by khap Panchayats as reported in national media are,

The *Panchayat* angry over the marriage ordered gouging of eyes of the couple who eloped and got married in the thakur dominated ghoribachera village not far from national capital, before shooting them as it felt that it had brought a bad name for the entire village. The family surprisingly were not a part of the decision of Panchayat.<sup>38</sup>

In another horrifying incident, a brother on discovering his married sister living with an old boyfriend, stormed into the home and dragged her onto the street in broad daylight and to the

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<sup>37</sup> The Hindu, Aug 6, 2010, p 11

<sup>38</sup> [Panchayat orders gouging lovers' eyes, Deccan Herald; February 12, 2012 Honour Killings / Crimes in India http://www.deccanherald.com/content/59009/panchayat-orders-gouging-lovers-eyes.html.](http://www.deccanherald.com/content/59009/panchayat-orders-gouging-lovers-eyes.html)

horror of the passers-by cut off her head while saying "she had sinned and had to be punished". He later on walked into the police station and placed the head of his sister, along with the butcher knife that decapitated her, on the table in front of the officer in charge.<sup>39</sup>

A 17-year-old girl, a resident of Khoraon village, Kaushambi in Uttar Pradesh, was hacked to death by her father for having an affair with a 20-year-old from another religion from the same village.<sup>40</sup> Such killings are not restricted geographically to North India, in the south, a 19-year-old woman in Sangameshwar village in Dharwad, Karnataka, was allegedly killed and burnt by her parents.<sup>41</sup>

Jasbeer, the only earning member of his family was brutally murdered after his hands were chopped off and legs cut with swords and other sharp-edged weapons by a group of four angry Rajputs in broad daylight in a local market. His fault hailing from the Jaat community, Jasbeer had dared to marry his neighbour a Rajput girl. The decomposed bodies of a boy and a girl were recovered from the fields. The couple were neighbours and wanted to marry. They were killed by the boy's family. Inder was forcibly married two months before.

Another killing in the name of "honour" and there has been a surge in such attacks over the past several months. Her brother discovered his sister was living with an old boyfriend, stormed into the home and dragged her onto the street in broad daylight. Passers-by looked on in horror as he cut off her head while saying "she had sinned and had to be punished". The policeman jumped to his feet as the man walked into the station and placed the head of his sister, along with the butcher knife that decapitated her, on the table in front of him. But the coverage - or so to say, the lack of it - failed to hide the true extent of a scourge that bedevils many Indian women. In a similar incident, a girl was hacked to death by her father for having an affair from another religion. In the south, a woman was allegedly killed and burnt by her parents on December 23.<sup>42</sup>

In another incident that was brought to justice by court of law, five members of a family were sentenced to death for the torture and "brutal" murder of a young couple from Delhi for

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<sup>39</sup>Chaitra Arjunpuri, "*Honour Killings*" *Bring Dishonour to India*, dated December 27, 2012 available at <http://www.aljazeera.com/indepth/features/2012/12/2012121614107670788.html>.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> See report by Chaitra Arjunpuri, "*Honour killings bring dishonour to India*," dated December 27, 2012, Al Jazeera. Supra note 19.

“honour killing.” The parents, uncle, aunt and brother of the woman were killed along with her boyfriend were all condemned to hang by additional sessions court judge Ramesh Kumar. A taxi driver, wanted to marry the daughter of a vegetable vendor, but the girl’s family was against the alliance because the boy belonged to a lower caste. India has seen an upsurge in such killings, which mainly involve young couples who marry outside their caste or against their relatives’ wishes and are murdered to protect what is seen as the family’s reputation and pride. Autopsy reports revealed that the young couple had been tied with ropes, beaten with metal pipes and electrocuted, local media news claimed. “Medical examination had revealed that the two had died due to the thermoelectric shock from repeated electrocution.” According to the Public prosecutor “All the five persons were handed the death penalty because it was proved beyond doubt that they tortured and killed the young boy and girl just because they were in love and wanted to marry. The murders were brutal and deliberate.”<sup>43</sup>

Some grisly cases that have been reported in the media in recent times from different regions in the country include that of Dharmender Barak and Nidhi Barak, who paid a heavy price for defying their families and falling in love. The couple, from a village in the northern state of Haryana, were tortured, mutilated and killed in public view by the girl’s father and their relatives when they tried to elope. A friend the couple had confided in leaked their plans to the girl’s parents, who lured them back with assurances, only to allegedly kill them in the cruel most manners.<sup>44</sup>

### **2.5.2 Forced Marriage**

In traditional societies, marriage is essentially a private domain concerning the family and the community. A marriage performed by pressurizing one or both the parties and without their free will and full consent is considered to be a forced marriage. Articles 16 of the Universal Declaration of Human Rights (UDHR), guarantees the consent to marriage as a basic human right. However, cultures which are obsessed with honour have a dominant feature of arranged marriage. This doesn’t imply that all cultures where marriages are arranged are ones where a potential honour killing might occur; rather it is violence which is risk within culture where the consent of

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<sup>43</sup>See Report dated October 5, 2012 in AFP News, “[Five condemned to death for India ‘honour’ killing](http://tribune.com.pk/story/447432/five-condemned-to-death-for-india-honour-killing/),” available at <http://tribune.com.pk/story/447432/five-condemned-to-death-for-india-honour-killing/>.

<sup>44</sup> See Report by Nupur Basu dated Nov 30, 2013 in Al Jazeera, *Honour Killings – India’s Crying Shame*,” available at <http://www.aljazeera.com/indepth/opinion/2013/11/honour-killings-india-crying-shame-20131127105910392176.html>

the individual is given less importance than the will of the parents and wider family and where marriages are considered a union of two families rather than of individuals. Seen in this context it may be considered acceptable to force an individual into marriage against their will keeping the interest of family in mind.

Child marriages where the couples are engaged as infants, is an example of a non-consensual marriage as the children are unable to give their consent. Such marriages are common in societies that cling to the notion of honour. Early marriage is favoured in such societies as prophylactic against dishonour as the girls married of in early adolescence or even before have little chances to form a relationship of their own choice, thus leaving no scope of dishonour by rejecting a match chosen for them by the family.

*Khaps* often declare marriage between two adults belonging to same village or *gotra* as illegal and force the female spouse to marry another person who belongs to a different *gotra*. It is considered to be a form of domestic violence. In spite of increasing number of such cases society, police and law is turning a blind eye to such incidents and it has been noted that people falling prey to such forced marriages have to undergo both mental and physical torture.

Some reported incidents of Forced marriages by *khaps* as reported in papers are-

A girl whose marriage was performed by her relatives against her wishes ended her life by setting herself ablaze. She was reportedly depressed as the marriage was performed against her wishes and off lately she doused herself in kerosene and set herself afire.<sup>45</sup>

An unmarried girl was allegedly burnt to death by her father and uncle for refusing to marry the chosen groom. She was dumped in a pit and set ablaze.<sup>46</sup>

### **2.5.3 Limitations on Personal Liberty**

Recently a dictum issued by the *Khap Panchayat* of Uttar Pradesh village which created an uproar in the country as it targeted women on the basis of gender. According to their dictum, women who are below 40 years of age should make minimal use of mobiles, go out with a male

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<sup>45</sup> See the report in *The Hindu*, dated January 27, 2014 “Minor ends life after being forced into marriage.”

<sup>46</sup> See report dated July 08, 2011, “Dishonour Killing: Father burns daughter to death,” available at [http://zeenews.india.com/news/uttar-pradesh/dishonor-killing-father-burns-daughter-to-death\\_718314.html](http://zeenews.india.com/news/uttar-pradesh/dishonor-killing-father-burns-daughter-to-death_718314.html).

and also banned love marriage. This dictum created waves throughout the country and also voice Panchayats are raised about what legal validity of such dictum is issued by so called *Khap* at. These types of dictum create suspicion in our mind whether we are really living in 21st century.

Sociologists and activists blame the killings to warped mindsets, as showcased by a recent ban imposed by village elders in the eastern state of Bihar on the use of mobile phones by women. The elders of Sunderbari village announced a \$180 fine if a single women or girl is caught using a cell phone, saying the technology spurred sexual relationships, even extramarital affairs. Married women face a 2000 Rs penalty.

The ban is justified by its enforcers by holding the mobile phone responsible for debasing the social atmosphere as even married women are allegedly deserting their husbands to elope with lovers, which is a shameful thing for the society, hence the diktat in order to tackle with the situation. It is not the first time in India that village councils have banned women from publicly using mobile phones. A similar prohibition was imposed for girls below age 18 in Udaipurwati in Rajasthan State. A female phone ban was also ordered on the streets of Baghpat district in Uttar Pradesh state.

In this context Activist Madhu Kishwar contended that parents and relatives have the right to be concerned about girls in the family. "We should avoid attacking people in different cultures without understanding the specific complexities of the situation."

Understanding the male mindset should obviously be the first step. But as Prabhavalkar says, perhaps the most necessary move is establishing gender sensitivity in Indian society. "This will do wonders in the long run," she says and hopefully, "honour killings" will no more besmirch India's reputation.<sup>47</sup>

Further in a move endorsing the retrogressive diktats of Panchayats, women of a cluster of villages in Muzaffarnagar have decided to burn jeans and tops. The decision was taken at woman Panchayats held at Dudaherdi, Moghpur and Mansoorpur villages of Muzaffarnagar. The three Panchayats, attended by women from all ages, have already announced their decision to throw away jeans and tops from their wardrobe and have started a movement to mobilize support from all the other khaps in the country.

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<sup>47</sup> Chaitra Arjunpuri, *Female mobile phone bans*, Al Jazeera 27 Dec 2012.

Subhash Baliyan, the general secretary of 'Sarva Khap' (the umbrella organization of all the 360 khaps in India), said that the topmost khap body of the country had decided to direct all the members in the country to include elder women of their respective areas while discussing woman-related issues. "This new provision will ensure that before announcing any decision related to women, the chaudhry (head) of the particular khap would discuss the issue with his wife before making the announcement."

A senior Bhartiya Kisan Union (BKU) leader Sohanviri, who is mobilizing support for boycott of jeans and cell phones by young women, said that the decision to torch the western outfits like jeans and tops was taken at an all-woman Panchayat held at the residence of the former Moghpur village pradhan Reshpal Singh. "We have spoken to the woman folk of the village and not a single of them has objected to the proposal, be it a housewife or a college-going girl." While most of the political parties have maintained a silence on the diktat of Aasara village khap Panchayat, a host of Jaat leaders have shown their resentment over the manner the issues is being highlighted. "The manner in which the media has projected khaps is shocking. Elders in every family tell their children about the dos and don'ts and expect them to follow their advice. This is precisely what we are doing on a village level," says Baliyan Khap's chaudhry Naresh Tikait.

A senior Jaat leader Yashpal Mallick, who is also the president of the All India Jaat Reservation Committee and has been defending khaps time and again, said: "The media has projected that the restrictions are only for women. But this is not true. Even young boys have been barred from using cell phones unless and until the need is beyond talking to their friends and families. We have also mooted boycott of families indulging in dowry, but the media has not projected that at all."

While the UP government remains evasive about the "anti-women" diktat of khap Panchayats an *amicus curie* appointed by the Supreme Court has suggested proactive police action against such them.<sup>48</sup> The idea behind the move, it is believed, is to counter allegations that the fairer sex was being given an unfair deal by khaps which have only male as their members. Many

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<sup>48</sup> Chaitra Arjunpuri, *Female mobile phone bans*. Al Jazeera 27 Dec 2012 11:59

call the provision eyewash. As the wife of any chauthry dare say no to what her husband has approved.

The sudden emergence of all-woman Panchayats in western UP ever since the Baghpat village khap controversy came into the light is also being viewed as a desperate attempt of khaps to establish that the women in such communities also have a say in the decision-making process.

#### **2.5.4 Property Rights**

Besides approving honour killings, ban on liberty, in recent years, *khap* Panchayats have mounted a campaign against the *Hindu Succession (Amendment) Act 2005* that gives equal inheritance rights to women. Last July, a *khap* in Jhajjar forbade a farmer from giving his daughter some money in return for withdrawing a legal case that she had filed to get her share of the family's ancestral land. The reasoning being that it would embolden other girls to follow suit. Activists in Haryana have for long been saying that the opposition to same *gotra* or inter caste marriages by *khaps* is actually aimed at preventing the economic empowerment of girls because those who choose their own marriage partners are more likely to go on and demand their share of ancestral land. All women are impliedly expected to leave their property share, in case anyone dares to ask for property share, blood relations ceases to exist. To avoid any conflict after a girls' marriage (arranged or love), the recent tradition in Haryana is to get her property share transferred in the name of the male members.

The adverse publicity that the khaps got as a result of their support for honour killings triggered some course correction and there is now, a conscious effort to refurbish their much dented image by projecting a socially responsible facade. But this change is more cosmetic than fundamental. Bibipur village in Jind district where the local *sarpanch* held women driven *sarvkhap* Panchayat comprising several major khaps of Haryana. The agenda was to combat female foeticide and scores of women were invited to participate. But as soon as some women activists tried to raise the issue of equal share of girls in ancestral property and how women are being denied this right, they were shooed off the stage.

### **2.5 KANGAROO COURTS IN INDIA**

A *Kangaroo* court is a judicial tribunal or assembly that blatantly disregards recognized standards of law or justice, and often carries little or no official standing in the territory within which it resides. Merriam-Webster defines it as "*a mock court in which the principles of law and justice are disregarded or perverted*". A kangaroo court is often held by a group or a community to give the appearance of a fair and just trial, even though the verdict has in reality already been decided before the trial has begun. Such courts typically take place in rural areas where legitimate law enforcement may be limited. The term may also apply to a court held by a legitimate judicial authority who intentionally disregards the court's legal or ethical obligations.<sup>49</sup>

It is a self-appointed or mob-operated tribunal that disregards or parodies existing principles of law or human rights, especially one in a frontier area or among criminals in prison. It is also a crudely or irregularly operated court, i.e. one so controlled as to render a fair trial impossible. A kangaroo court or kangaroo trial, sometimes likened to a drumhead court-martial, refers to a sham legal proceeding or court. The colloquial phrase "kangaroo court" is used to describe judicial proceedings that deny due process rights in the name of expediency. Such rights include, the right to summon witnesses, the right of cross-examination, the right not to incriminate oneself, the right not to be tried on secret evidence, the right to control one's own defence, the right to exclude evidence that is improperly obtained, irrelevant or inherently inadmissible, e.g., hearsay, the right to exclude judges or jurors on the grounds of partiality or conflict of interest, and most importantly the right of appeal.

The outcome of a trial by "kangaroo court" is essentially determined in advance, usually for the purpose of providing a conviction, either by going through the motions of manipulated procedure or by allowing no defence at all.<sup>50</sup> These Panchayats are strikingly similar to the *Khap* Panchayats of Haryana insofar as issuing dictates and awarding punishments such as fines and social boycotts. Predictably, women are kept away from these kangaroo courts.

Kangaroo courts/Katta Panchayats are unofficially run, and are in fact usurped powers by rowdies, who rule and run parallel governance in India. While such kangaroo courts are present elsewhere also they are more common in India than elsewhere. In the case of Kangaroo courts practiced in India, the rowdies who pass these judgments, always award the punishments to

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<sup>49</sup> *Supra* note. 1

<sup>50</sup> See <http://www.jeywin.com/main/blog/menace-of-kangaroo-courts-or-katta-panchayats-in-india/> for details.

innocent people and free the actual culprits/criminals. Or if they punish a person that would be for such a silly reason that it does not warrant even a reprimand or a few abuses. But in Kangaroo courts the punishment will be rape or amputations of men's legs. Very rarely the actual culprits or criminals would get the punishment through kangaroo courts.

Interestingly all the law enforcing agencies including police, intelligence, judiciary and the officialdom know about the operation of these kangaroo courts but none of them can do anything to stop them. The main reason is all the government agencies are passive or are active associates of these kangaroo courts and the associated criminals. For any problem, crime, issue that is small or big, constitutionally valid laws or courts are not given importance as the law enforcing agencies are there to mediate and investigate the cases. Certain judges have observed that 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, etc., and denial of economic opportunities like employment, finances, etc. As such, these would constitute violation of human rights guaranteed.

In January, 2014, a 20-year-old woman in West Bengal was gang-raped by 13 men on the orders of a village court as punishment for having a relationship with a man from a different community.<sup>51</sup> Police said that her male companion was tied up in the village square, while the assault on the woman happened in a mud house. The police have arrested all the 13 men, including the village chief who ordered the gang rape. The accused have been produced in court which remanded them to jail custody. The West Bengal victim's family told media that she was assaulted because the kangaroo court believed she had violated the rules of her tribe by falling in love with a man from another community. The couple was ordered to pay a fine of 25,000 rupees, upon the non payment of which the village head ordered the woman to be raped. It, obviously and understandably, sent shock-waves across the country. But what few know is that such kangaroo courts, known as '*shalishi adalats*', operate in vast swathes of Bengal, especially its rural hinterland, and have even been known to hand out death sentences. And rarely have those handing down such Talibanesque diktats been brought before the law. Some reported incidents of Brutality by *Kangaroo Courts* as reported in papers are-

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<sup>51</sup>See report by Sujoy Dhar dated January 23, 2014 "West Bengal woman says gang-raped on orders of Panchayat," available at <http://in.reuters.com/article/2014/01/23/rape-panchayat-west-bengal-love-idINDEEA0M0AA20140123>.

The incident in Subalpur village in West Bengal's Birbhum district is shocking in its unimaginable brutality and points to a larger malaise. The order by a kangaroo court led by a village headman is proof that a section of rural India is outside the pale of the country's constitutional values and judicial system. Ill-informed men with medieval social attitudes and patriarchal prejudices are allowed to adjudicate on the conduct and morality of women and pass unconscionable forms of punishment, such as social ostracism, payment of arbitrary fines and, as in this case, sexual violence in lieu of monetary penalty. The Supreme Court and the National Commission for Women have taken *suo motu* cognisance of the incident, which has caused widespread outrage and revulsion.

The West Bengal government, which has been sharply criticised in recent times for callousness and insensitivity towards crimes against women, has seen to it that the village headman and the 12 men who raped the hapless woman for a whole night have been arrested. And Chief Minister Mamata Banerjee, upset that the police did not seek custody of the accused for questioning and allowed them to be sent to prison directly, ordered the suspension of the Superintendent of Police. It is disturbing that the entire village, including women, backed the kangaroo court by whose verdict the man could get away with a fine, but the woman was punished for not having the means to do so.

## **2.6 SHALISHI ADALATS**

*Shalishi*, a Bengali word of Persian origin, means mediation or arbitration. But what actually happens at these Adalats are a mockery of mediation. Though they are supposed to handle and resolve only petty civil disputes, these adalats pass judgement, and more often than not very flawed and biased ones, on a range of crimes ranging from thefts and extra-marital affairs to rape. In most rape cases, the accused, especially if they come from relatively affluent or influential families, get away with just small fines. Those who defy diktats have to pay a heavy price. Adultery, for instance, could attract anything from a death sentence to a fine of a few thousand rupees, while a petty thief could expect to be fined, flogged in public or even banished from the village. "It all depends on the financial and social status of the accused, the mood of the elders of the village who are members of the shalishi court and their relationship with the accused or his or her family. If a woman from a well-to-do and influential household is accused of an extra-marital

relationship, chances are she would be let off with a warning and a fine. But the same 'offence' by a woman of a poor family would attract a much stiffer sentence, like being tonsured or paraded naked around the village. If a person accused of, say, drunkenness, belongs to a family that's aligned with an opposition party, the sentence would undoubtedly be more brutal. Debanjan Mishra, a teacher of sociology at Calcutta University who has been documenting cases adjudged by shalishi courts over the past couple of years says "A lot of factors come into play here, but it is always those without political and financial clout who are subjected to the most ruthless sentences by these courts,"

The death sentences imposed by the 'shalishi adalats' 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 kangaroo courts to justice. Even the bodies of the victims remain untraceable. In most cases, the 'shalishi adalats' are patronized by politicians and political parties. This is more so in the backward tribal belt where the village headmen and his honchos pass diktats to vote for a particular political party and are, thus, sought after by the parties who do not want to upset or anger them in any way. Very often, the 'shalishi adalats' are used by the party in power to settle political scores over rivals.<sup>52</sup>

Back in 2004, in a somewhat similar incident occurred in Bhawanipur village of Moradabad, Uttar Pradesh, the *Khap* had ordered turn-by-turn rape of a mother whose 20-year-old son eloped with a girl, the daughter of an influential Yadav family. The diktat was passed in order to save the honour of Yadavs since her son had dishonoured the Yadavs. The boy belonged to the barber caste. "Not only did they gang rape her, they burnt her alive to destroy any evidence. The police knew about it but did nothing," said the uncle of the boy.<sup>53</sup> Quite blatantly, the *Khap* becomes a hindrance for the law enforcement agencies. In January 2014, a village *Khap* Panchayat of Muzaffarnagar has decided that it will not allow police to arrest those allegedly involved in five incidents of gang rape during last year's communal riots. The Special Investigation Team, constituted by Uttar Pradesh government to probe into last year's Muzaffarnagar riots, had sent a list of 22 accused in five gang rape cases to the local police asking

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<sup>52</sup>See Jaidip Majumdar, "*The Injustice of Justice*," available at <http://honourcrimes.wordpress.com/>.

<sup>53</sup> See *Khap panchayats Taliban? When will barbarism 'in the name of honour' end*" available at <http://daily.bhaskar.com/article/CHD-Khap-panchayats-the-very-own-taliban-of-india-without-any-rein-4501055-NOR.html>

them to make the arrests. The arrest of one of the accused Vedpal on 24 January had triggered protests by locals and *Khap* members. Police had met with resistance from irate locals when it had gone to the village to arrest the accused.

In India, despite repeated court directives to end the practice, the system of dispensing ‘justice’ through kangaroo courts continues in rural and urban places like Tamil Nadu, Haryana etc. Interaction with leaders of political parties, activists of human rights organizations, lawyers and police officials reveal that the illegal system has its pervasive influence in almost all sectors and in rural and urban areas.

But what is the remedy to prevent these kangaroo courts that run parallel government. The law of the land has to extend its long arm to chase them away and keep a watch on their activities. Anywhere, any body passing individual judgments or threatening innocent people have to be booked. The whole network of these kangaroo courts, have to be brought before the court to restore a real democracy instead of the democracy followed now, which is a farce. Last but not the least, the Government of India should remember its obligations and commitment to protect its citizens from such violence under CEDWA.<sup>54</sup>

In Mushahari district in Bihar, [a rape victim was offered Rs. 10,000 as compensation](#) by the village council and her family was threatened not to report the incidence to anyone. One can go on with a list of such incidences which were ordered by village councils and dutifully carried out without a hint of shame or remorse. These village councils do not exercise any power to mete out criminal punishment under any law and yet, there are frequent cases in which these councils not only order gang rapes, illegal confinements and social boycotts, but go to the extent of ordering killings, a phenomena which has come to be known as ‘honour killings’<sup>55</sup>

Outposts of feudalism still thrive in vast swathes of rural India, ranging from khap Panchayats in the north to caste-based gatherings of village elders in the south. In 2011, the Supreme Court wanted illegal khap Panchayats that encourage ‘honour killings’ or other institutionalized atrocities to be stamped out ruthlessly. Over three years has elapsed since the country voiced its anger against sexual violence targeted at women and seemed to take a collective

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<sup>54</sup> United Nation *Convention on the Elimination of all forms of Discrimination against Women (CEDAW)*, 1981

<sup>55</sup> See Anshul Kumar Pandey, “Kangaroo Courts must go!,” available at <http://www.dnaindia.com/blogs/post-kangaroo-courts-must-go-1956917>.

vow to ensure the protection of all women. The penal law on sexual violence and harassment has been strengthened significantly since then. Yet, India's cities and villages continue to be unsafe for women. The locus of sexual violence is everywhere: in public spaces and private homes, under the cloak of darkness and in the open, and perpetrated by well-acquainted persons as also as by strangers. The Birbhum incident is a chilling reminder that legal processes, security measures and stringent laws are not enough. Social attitudes need to change, reflecting liberal and humane values, if the country is to ensure gender equality and protection for all its women.<sup>56</sup>

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<sup>56</sup> See report in The Hindu dated 25th January 2014, "*Stamp out kangaroo courts.*"

## **Chapter -3**

### ***KHAP* PANCHAYAT, KANGAROO COURT AND THE STATE**

#### **3.1 INTRODUCTION**

The State, in the Weberian sense, can be defined as a set of institutions that monopolize the legitimate use of force and rule making within a given territory. Monopolization of physical force is the very foundation on which the very existence of State rests. Such monopolization endows the State with power to make authoritative binding decisions and to perform other functions. Without such power, a State cannot be said to be effective. A democratic State like India, banks on the smooth functioning of the three organs of State *i.e.*, the Legislature, the Judiciary and the Executive. The three organs of the State work in tandem according to the principles of natural justice and rule of law. Kangaroo courts be they in the form of khap Panchayats or Shailishi adalats, which are without any doubt extremely influential in the areas they exist, by their bizarre diktats which seemingly possess a lot of social sanction and approval of the masses, question the effectiveness of the State with brazen impudence.

So strong is the influence of these Panchayats and quasi judicial bodies among villagers and sometimes even among educated class alike that the State machinery most of the times fails to respond timely to their unfair diktats which are nothing but pure mockery of rules of natural justice. Be it the ordering of gang-rape of women for having an affair with a man of higher caste or the banning of mobile phone use by young girls, the impact of diktats of kangaroo courts is profound on the geographical areas where they exist.

The political class for the fear of losing their votebanks, try their best to ignore the inhuman diktats which shock the very conscience of any civilized human being. What makes the

Khap Panchayat so powerful is that every Khap rules over eighty-four villages, turning them into leaders of powerful votebanks which are capable of controlling power play of numbers at the time of elections. Khap Panchayats grasp on the lives of the people is an indicator towards the States' inability or unwillingness interventionist role in these affairs.

Although there are various reasons which can be attributed to the overwhelming hold of khaps on the masses<sup>57</sup> but most importantly it is the absence of the State interference that has further emboldened such Panchayats to mete out their brand of capricious justice. Surprisingly, the rural population supports the Panchayats' inhuman decisions and it is because of such support that it is claimed by the Panchayats that their decisions essentially fall under the 'private sphere' of the village unit. There is also seen a reluctance on the part of the police and investigating agencies while pursuing the crimes committed in the name of honour.<sup>58</sup> We need to see whether the State does recede completely from the supposed 'private' sphere, especially when such a retreat has imperiled several innocent young lives. When a life is taken or a body of a woman ravished, can the State shirk its responsibility and watch the horrors of crime being committed as a dumb and deaf spectator?

In this chapter we would analyze the role which the State organs play when faced with barbaric diktats against women are being justified in the name of tradition, honour and culture.

### **3.2 KHAPS AND THE JUDICIARY**

The beauty and strength of Indian judiciary lies in the impact it creates in the lives of common people. Where the Legislature because of whatsoever reasons is not able to curb a social menace, the Judiciary comes to play its role and acts as the strong upholder of human rights. The evils of kangaroo style courts 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

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<sup>57</sup> Some of the reasons for dominance/overpowering of Khap Panchayats/shaileshi adalats are- *Weakness of the elected Panchayati Raj Institutions, political failure, judicial delays and distrust of system, socio economic factors*. For details See chapter - 2 of this Report

<sup>58</sup> The Manoj Babli case being the most blatant example of the laxity on the part of the investigating agencies in preventing dishonor crimes. See *infra* 3.1.

medieval alleged Taliban-styled caste courts, has by its interference, tried to, some extent, put brakes on their working.

We have already discussed that khaps, and shalishi adalats are self-appointed or at worst mob-operated tribunals that function with complete disregard to existing principles of law or human rights, especially one in a frontier area or among criminals in prison. It is a crudely or irregularly operated court, i.e. one so biasedly controlled so as to render a fair trial impossible. A kangaroo court or kangaroo trial, is in reality a sham legal proceeding or court. That is why the term “kangaroo court” is used to describe judicial proceedings that deny *due process rights* in the name of expediency. Such rights include, the right to summon witnesses, the right of cross-examination, the right not to incriminate oneself, the right not to be tried on secret evidence, the right to control one’s own defence, the right to exclude evidence that is improperly obtained, irrelevant or inherently inadmissible, e.g., hearsay, the right to exclude judges or jurors on the grounds of partiality or conflict of interest, and most importantly the right of appeal.

Since there is no right to appeal, the verdict of the khap/shalishi Adalat is virtually unchallenged and the power yielded by the heads of such kangaroo courts unchecked and uncontrolled. Laxity on the part of law enforcement further emboldens them and they continue with their illegitimate and inhuman dispensing of so called “justice.” The atrocities of the kangaroo courts in the name of honour and tradition have not gone unnoticed by the eyes of higher judiciary. In *Smt. Laxmi Kahhwaha v. The State of Rajasthan*,<sup>59</sup> a Public Interest Litigation (PIL) was filed in the Rajasthan High Court, drawing the attention of the court to illegal regimes of caste Panchayats on the weaker section of the society, especially on women. The court observed that these Panchayats had no jurisdiction whatsoever to pass social boycott, or impose any fine on anyone and to violate the basic rights of an individual.

On the menace of honour killings, the Supreme Court has time and again reiterated the barbaric offences committed in the name of honour cannot be allowed to go unpunished. In *Lata Singh v. State of UP and Another*,<sup>60</sup> the apex court observed: “We sometimes hear of ‘honour’ killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful

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<sup>59</sup> AIR 1999 Raj 254.

<sup>60</sup> AIR 2006 SC 2522.

acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism. The police at all the concerned places should ensure that neither the petitioner nor her husband nor any relatives of the petitioner's husband are harassed or threatened nor any acts of violence are committed against them. If anybody is found doing so, he should be proceeded against sternly in accordance with law, by the authorities concerned.”

The Supreme Court in *Arumugam Servai & Others. v. State of Tamil Nadu*,<sup>61</sup> observed-

“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. The court held-

“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, they do not promptly apprehend the culprits and

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<sup>61</sup> 2011 (2) SCC 405.

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<sup>62</sup>.”

This judgment has not gone down very well with the *Khaps*. Again the Supreme Court in *Bhagwan Dass v. State of NCT, Delhi*,<sup>63</sup> laid down that the honour killing satisfies ‘the rarest of the rare’ doctrine so as to attract the death penalty for its perpetrators. In the above decision the Indian Supreme Court held that in cases of ‘honour’ killing there must be a mandatory death sentence for the perpetrators of such crimes, and the police and administrative officials who did not prevent them must be immediately suspended. This decision raised a hue and cry among the caste organizations, but has been widely acclaimed by the enlightened section of Indian society.

Again in *State of UP v. Krishna Master*<sup>64</sup> the Supreme Court awarded life sentence to the three accused of the honour killing who murdered six persons of a family. The Bench further observed that wiping out almost entire family on the flimsy ground of saving the honour of the family would fall within rarest of the rare cases evolved by this court.

In *Faiz Ahmed Ahanger and Ors. v. State of J & K*,<sup>65</sup> the Supreme Court very clearly laid down the right of the couple getting married out of their own wish to seek police protection in case they fear violence on the part of the families. The court held that:

“In such cases of inter-caste or inter religion marriage the Court has only to be satisfied about two things: (1) That the girl is above 18 years of age, in which case, the law regards her as a major vide Section 3 of the Indian Majority Act, 1875. A major person is deemed by the law to know what is in his or her welfare. (2) *The wish of the girl.*” The court then directed that “in the circumstances, we direct that nobody will harass, threaten or commit any acts of violence or other unlawful act on the petitioner, Chanchali Devi / Mehvesh Anjum and the petitioner’ family members and they shall not be arrested till further orders in connection with the case in question. If they feel insecure, they can apply to the police and, in such event, the police shall grant protection to them.”

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<sup>62</sup> *Ibid.*

<sup>63</sup> 2011(5) Scale 498.

<sup>64</sup> AIR 2010 SC 3071.

<sup>65</sup> 2009 (3) R.A.J. 692.

It is also interesting to note the observation of the Delhi High Court in *Vivek Kumar @ Sanju v. The State*,<sup>66</sup> wherein the Hon'ble court held-

“There is no law which prohibits a girl under 18 years from falling in love with someone else. Neither falling in love with somebody is an offence under IPC or any other penal law. Desiring to marry her love is also not an offence. A young girl, who is in love has two courses available to her – *one is that she should marry with the consent of her parents after obtaining the consent of her parents*. If her parents do not agree to persuade them or to wait for attaining the age of majority and then exercise her right as a major to marry the person of her own choice. However, this is possible only when the house of her parents where she is living has congenial atmosphere and she is allowed to live in peace in that house and wait for attaining age of majority.”

The court further held that

*“Right to life and liberty as guaranteed by the Constitution is equally available to minors. A father has no right to forcibly marry off her daughter, who is below 18 years against her wishes. Neither he has right to kill her, because she intends to marry out of her religion. If a girl around 17 years of age runs away from her parents house to save herself from the onslaught of her father or relatives and joins her lover or runs away with him, it is no offence either on the part of girl or on the part of boy with whom she ran away and married.”*

The Delhi High Court also emphatically pointed out that the “scenario in this country in some regions or families in respect of out caste marriages and marriages in different religions is sufficient to create fear in the mind of a young girl whose parents rebuke her and tell her that she will be killed if she insists upon marrying her love because the person is not of the same religion or same caste. If such a girl leaves the house, the reason behind her leaving of the house cannot be enticing away by somebody but it is driving her away from home by her father.”

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<sup>66</sup> CrI.M.C. No. 3073-74/2006 decided on 23.2.2007.

In the infamous *Manoj Babli case*,<sup>67</sup> the Punjab and Haryana High Court while giving the judgment on the murder reference remarked- *“Even in the 21<sup>st</sup> century such a shameful act of hollow honor killing is perpetrated in our society. We feel that it is really a slur on the fine fabric of the Indian society. Abduction is really cruel and that too murder of the abductees is barbaric.”* The court admitted its predicament in deciding the case said- *“unfortunately in this case there is no eye witness to the occurrence.* The entire case of the prosecution depends on the circumstantial evidence. The court was left with the option of inferring certain facts from the circumstances projected by the prosecution. As we have rendered the verdict based on the circumstantial evidence, our conscious does not permit us to confirm the death sentence awarded to the accused..”

The Punjab & Haryana High Court’s comments at the end of the judgment on the apathy and laxity of the investigating agency in collecting evidence is an example of the deliberate failure on the part of law enforcement agencies which in this case is the police in protecting the young couples from the menace of dishonour killings. The court observed-

“On a careful perusal of the entire process of investigation embarked upon by the investigating officials, we find that they had just investigated the matter for the purpose of giving disposal to the investigation. They have not evinced any interest as warranted in this case, to collect telling materials as against the accused in a crime which has virtually thrown a challenge to the society itself. A team of the Police officials should have been employed considering the gravity of the offence to collect fool-proof evidence but quite unfortunately novices in the investigation field have been employed to detect the shocking crime for the reasons best known.”

The NGO *Shakti Vahini* had filed a writ petition<sup>68</sup> in the Supreme Court seeking to ban Panchayats, especially Khaps on the plea that they are the cause for “honour killings and that that they are working as “extra judicial” bodies. While hearing the petition Supreme Court said it was an offence to order women not to use mobile phones or to dress in a particular manner and warned that no one can run a parallel matrimony court to issue diktats against the law to harass young couples. The court observed, *“Imposing a dress code on women and asking them*

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<sup>67</sup> Murder Reference No. 2 of 2010 Criminal Appeal No.479-DB of 2010 and Criminal revision No. 2173 of 2010.

<sup>68</sup> (Civil) number 231/2010

*not to use mobile phones are such orders not socially retrograde. But these are also against the law. How can anyone ask women not to carry a mobile phone.”*

The Hon’ble Court, while hearing the petition also questioned the inspector general of police additional, director general (law and order) along with superintendents of police of on khap-dictated honour killings. All the police officers said, khaps sometimes adopt socially retrograde resolutions but there had been no instance of their members being involved in honour killings. The police said it was the family members who indulged in killings of youth who defy caste and gotra barriers. The bench found it surprising as to why the police of UP and Haryana were “*so anxious to give a good conduct certificate*” to the khaps. The additional advocates general of both States had sought time to file a proper affidavit on behalf of the police.

Since the filing of the petition by Shakti Vahini in 2010, the court had been conducting the proceedings in absence of any representation from the khaps. Realizing this, the court by order dated January 14, 2013 asked for representation of khaps to hear their response to the petition. Khaps response to the court is being discussed in part 3.3 of this chapter. The verdict of the PIL is still awaited.

### **3.3 KHAPS AND THE LEGISLATURE**

Until *the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliance) Bill, 2011* is passed and comes into force, there is essentially no legal framework created to counter the menace of honour killings prevalent in North India (Uttar Pradesh, Rajasthan and Haryana). There are no specific laws to deal with honour killings and an honour killing is just another offence which is to be dealt with under the Indian Penal Code, 1872.

In absence of specific offence in the IPC, honour killings would be treated as murder they fall under the category of section 300 of Indian Penal Code 1860.<sup>69</sup> Clause fourth of Sec 300 IPC specifies that if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such bodily injury as aforesaid commits the offence of murder. This very explanation covers the act of killings which are done for honour. Here the act is intentional, imminently dangerous and in all probability has the chances of causing death, so it will not be improper to say that the culprits involved in honour killings should be punished as the murderers and capital punishment should be imposed on them.

The Uttar Pradesh government submitted in its affidavit that “There was no specific legal framework to address the problem of honour killings but the Director General of Police and additional DGP have issued directions to ensure compliance with the provisions of *Protection of Women from Domestic Violence Act, 2005*.” The State of Rajasthan relied on two circulars, one issued in 2001 and another in 2006, to check activities of caste Panchayats. Haryana, on the other hand, said it had put in place an action plan to combat honour killings. This information was collated by *amicus curiae* Raju Ramachandran from the affidavits filed by the States in response to a PIL by NGO *Shakti Vahini* seeking the apex court’s intervention to protect couples, who were forced to annul their inter-caste marriages or killed for defiance. The Centre said it was actively planning to amend the Indian Penal Code to make honour killing a specific offence.<sup>70</sup>

Why it is important to have a separate offence for dishonor killings is highlighted by the Manoj-Babli case.<sup>71</sup> The Trial court sentenced to death five men who dragged out the young couple Manoj-Babli from a crowded bus and killed them for marrying against the wishes of their community in rural Haryana. Additional District and Sessions Judge taking a strict stand against the traditional caste-based 'khap Panchayats', one of which had come out against the May 2007

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<sup>69</sup> Section 300 Murder -*Except in the cases hereinafter excepted, culpable homicide is murder, Firstly, if the act by which the death is caused is done with the intention of causing death, or— Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or— Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or— Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*

<sup>70</sup>See report by Dhananjay Mahapatra, “No Law in Place to rein In Khaps; the Supreme Court of India, the Times of India, dated July 19, 2012.

<sup>71</sup> See supra note 10.

marriage of Manoj and Babli, sentenced to death the culprits which included Babli's brother Suresh, uncles Rajinder and Baru Ram, and cousins Gurdev and Satish. 'Khap Panchayat' leader Ganga Raj, who too was convicted for murder along with the five, was given life imprisonment. Mandeep Singh, a driver accused of abducting the couple, got seven years in jail.

The Couple had married in May 2007 after falling in love but the Panchayat of the area declared their relationship as void. Just a month after the marriage, their relatives dragged them out of a bus and murdered them. Later, they dumped their bodies in an irrigation canal.<sup>72</sup> The High Court however on appeal converted the death sentence to life imprisonment due to lack of direct evidence. The High Court observed that- “As we have rendered the verdict based on the circumstantial evidence, our conscious does not permit us to confirm the death sentence awarded to the accused.” The court convicted the offenders for the offence under Section 302 IPC sentenced them each life imprisonment. Adding that they shall not released unless each of them completes 20 years of actual imprisonment sans remission. They were also ordered to pay a fine of Rs.5,000/- each failing which they shall further undergo RI for a period of six months each.

Had honour killing been a specific offence under a special law, such a situation would not have arisen, and the High Court would not have been forced to reduce the punishment from death penalty to life imprisonment. Former CJI P. Sathasivam also favours a special law to combat Honour Killings. In this regard he stated,

“A special legislation will certainly be a welcome effort as it will help in generating additional protection to the victims. Though the prevailing law punishes the act of homicide, it does not directly punish the members gathering for such purpose.”

The stringent provisions of the proposed Bill coupled with those in the IPC would effectively combat honour killings and protect the helpless young couples and their families who are the victims of this social evil.<sup>73</sup>

Amicus curie Raju Ramachandran's report<sup>74</sup> keeping in view the legislative vacuum existing for the purpose of countering Khap Panchayats and honour killings dictated by them asserted that it would be appropriate for the Supreme Court to give appropriate directions to

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<sup>72</sup> *Ibid.*

<sup>73</sup> *Special law will deter honour killings*, says Sathasivam, The Hindu, dated 30<sup>th</sup> June, 2013.

<sup>74</sup> In Shakti Vahini case.

prevent atrocities in the name of honour and tradition. *He further suggested that the States must be directed to immediately identify areas, where Khaps are active and the police officers in charge of these areas must take every step possible to protect any inter-caste marriages, including protection to the threatened couple.* The amicus also said that the police must act in advance and prevent Khap Panchayat meetings aimed at taking decisions against couples in the name of honour and if required arrest key members to foil the gatherings.

The National Commission for Women in 2010 drafted a Bill titled “*Prevention of Crimes in the name of Honour and Tradition*” suggesting certain prohibitive and penal measures to curb the spate of murders and dishonourable crimes in the name of ‘honour.’ The bill very categorically affirms every individuals right to choose partner whether in marriage or otherwise. Clause 3 of the bill reads- “*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.” thus any attempt in preventing a life partner of one’s choice would be an offence under the act.

The Bill penalises any killing in the name of honour by punishment prescribed in the IPC.<sup>75</sup> It also penalised the harassing of any woman or her partner in order to prevent them exercising their right to marry out of their own choice.<sup>76</sup> The bill makes both physical and mental acts of harassment punishable and describes the acts of harassment with meticulous details.

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<sup>75</sup> Clause 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.

<sup>76</sup> Clause 5 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) harasses or harass a woman or her partner (or anyone connected with them) for exercising the rights in Section 1 or attempts/attempt to prevent either one or both of them from exercising these rights they shall be punished with imprisonment for a minimum term of one year and a maximum term of ten years and shall also be liable for punitive fine.

Explanation I of clause 5 reads- The acts of harassment and prevention in this Section shall include both physical and mental acts such as-

- i. Declaring the couple, who have got married, a brother and sister, provided that they are not children from the same natural parent and such marriages are recognised by any law or custom for the time being in force.
- ii. Extraditing the couple or their family or relatives from the village or area they live in,
- iii. Asking the couple or anyone associated with them or harbouring them to pay a fine,
- iv. Imposing social sanctions or social boycott on the couple or their family or anyone associated with them,
- v. Imposing economic sanctions or boycott on the couple or their family associated with them,
- vi. Divesting the couple or their family including the family of the male partner of any land or property belonging to them,
- vii. Repeatedly harassing the couple or either of them not to meet or associate with or live with each other, by physically visiting them or through any means of communication,
- viii. Threatening the couple or either of them or their family or anyone associated with them of retributive action of any kind whatsoever,
- ix. Causing harm or injury to the girl or the couple or anyone connected with them.
- x. Any other act or acts of harassment or intimidation, whether physical or mental or psychological, to stop the couple or either of them from meeting or being in the company of each other.

A mere endorsement of killings or of harassment by anyone in public is a punishable offence under the bill.<sup>77</sup>

The bill also shifted the burden of proving where any person or persons is or are prosecuted for an offence under the bill, on the person/persons so accused that he or they have not committed the offence or offences.<sup>78</sup>

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<sup>77</sup> Clause 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.

<sup>78</sup> Clause 7

The power to prohibit certain acts under the act is on the Collector or the District Magistrate.  
Clause 8 reads-

(1) Where the Collector or the District Magistrate is of the opinion or has received information that any of the offences under Sections 4, 5 or 6 are likely to be committed, he shall by order prohibit/prevent the commission of such offences and further prohibit the meeting of any persons or body of persons likely to discuss the commission of the said offences.

(2) Whoever contravenes any order made under Sub-Section (1) shall be punishable with imprisonment for a term which shall not be less than six months but may extend to two years and with fine.

3) When an Executive Magistrate receives information that any 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), is likely to commit any wrongful and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such 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), to show cause why he/they should not be ordered to execute a bond with sureties for keeping peace and maintain good conduct for such period, not exceeding one year, as the Magistrate thinks fit. Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.

When a Magistrate acting under this provision, deems it necessary to require any person to show cause under such section he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

The bill interestingly makes a provision for the desirous couple to notify about their intention to marry to government officials.<sup>79</sup> However, the provision falls short of providing any sort of protection to the couples who notify government officials of their intention to marry as there is no mandatory duty cast on such an official so notified to protect the couple. Clause 10 the bill also casts obligation on certain persons to report about commission of the offences under this Bill<sup>80</sup> The provisions of this Bill shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.<sup>81</sup>

The draft bill proposed by NCW was a welcome step trying to curb the growing criminal activities done in the garb of honour, however, as pointed out rightly in the report of the Law commission,<sup>82</sup> it missed the necessity and desirability of the focus on directly dealing with unlawful assemblies and their vicious influences. Thus, the law commission came up with the proposed piece of legislation, the “*Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliance) Bill, 2011*” with major focus on unlawful assemblies which according to the Law commission gathered on caste/community lines assume to themselves the power and authority to declare on and deal with ‘objectionable’ matrimonies and exhibit least regard for life and liberty and are not deterred by the processes of administration of justice. Such assemblies harass and victimize innocent youth and continue to wield unhindered authority and also seem to resist any suggestion of being subjected to any social control.

Law commission also points out how the unlawful assembly as defined in the bill is different from unlawful assembly defined in section 141 of the Indian Penal Code. The proposed law intends to deal with the conduct of local bodies or caste assemblies and to strike at the blind

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<sup>79</sup> Clause 9 of the bill reads- Declaration by a Couple of intention to be together- Any two persons desirous of marrying each other, or associating with each other shall be entitled to declare their age and willingness to be together, in oral or in writing, before any Government official who shall send the said information to the nearest Police Station and no action shall be taken by the Police and or any other authority or at the instance of third party, against the said couple.

<sup>80</sup> Clause 10 of the bill reads— (1) All officers of the Government are hereby required and empowered to assist the police in the execution of the provisions of this Bill or any rule or order made there under.

(2) All village officers and such other officers as may be specified by the Collector or the District Magistrate in relation to any area and the inhabitants of such area shall, if they have reason to believe or have the knowledge that any of the offences mentioned under Sections 4, 5 or 6 is are about to be, or have been committed in the area they shall forthwith report such fact to the nearest police station.

(3) Whoever contravenes the provisions of sub-section (1) or subsection (2) shall be punishable with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

<sup>81</sup> Clause 11.

<sup>82</sup> Report No. 242 on the Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework.

fury of such associations acting in disregard of liberty of persons. A special class of unlawful assembly with a different punishment is, therefore, suggested as a measure of greater efficacy. In any case the provisions of the bill are not in derogation / contrary of IPC but in addition to it.

The Commission rejected the proposal to amend Section 300 of the Indian Penal Code to include 'honour killings' within the definition of murder on the ground that the existing provisions are adequate to take care of the situations leading to overt acts of killing or causing bodily harm to the targeted person who allegedly undermined the honour of the caste or community. The motive behind killing a person does not furnish real justification to introduce a separate provision in section 300. Further, shifting the onus on to the accused facing accusations of involvement in the serious offence of murder etc. or abetment thereof is not desirable. Such a move will be against the cardinal principles of jurisprudence accepted and absorbed into our criminal justice system. If burden of proof has to be shifted in such a case, logically, it will have to be done in a large number of other heinous crimes.

*The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011* proposes by clause 2(1) 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." The *explanation* to the clause includes a proposed or intended marriage within the term 'Marriage.'

Clause 2(2) directs any such gathering or assembly or congregation to be treated as an unlawful assembly and every person convening or organizing such assembly and every member thereof participating to be punished 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.

By virtue of clause 4 of the bill any member of an unlawful assembly who alone or in association with other such members counsels, exhorts or brings pressure upon any person or persons so as to prevent, or disapprove of the marriage which is objected to by the said members of the unlawful assembly, or creates an environment of hostility towards such couple or either of them or their relatives or supporters, shall be deemed to have acted in endangerment of their liberty and such an act of endangerment shall be punishable with imprisonment for a term of not less than one

year but which may extend to two years and shall also be liable to fine up to twenty thousand rupees.

Clause 4 (1) penalises criminal intimidation of the couple or their relatives. The clause reads- “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.”

The explanation to the clause clarifies that Criminal intimidation means the same as section 506, Indian Penal Code 1860.

The bill further tightens the noose on persons participating in the assembly by presuming his intention to commit the act. The clause 6 of the proposed bill reads- “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.”

The Collector or the District Magistrate has been entrusted with the responsibility of ensuring the safety of the persons targeted in case any decision is taken by the khap Panchayat and he/she shall take necessary steps to prohibit the convening of such illegal gatherings.<sup>83</sup> Any violation of any provision of the proposed law will attract imprisonment up to three years and a fine of up to Rs 30,000.

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<sup>83</sup> clause 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.

The cases are to be tried in Special Courts presided over by a Sessions Judge or Additional Sessions Judge.<sup>84</sup> The Special Court would be empowered to *suo motu* cognizance of the cases.<sup>85</sup> All offences under the proposed Act will be cognizable, non-bailable and non-compoundable.<sup>86</sup>

The basic intention behind the proposed piece of legislation is to secure freedom of choice and right to family of the individual and to deal with mischief created by unlawful assemblies that threaten an individuals' freedom of choice to matrimony. The law commissions' endeavor is commendable however, it is not flawless. Any potential act that comes beyond the Khap type for example the family of the victim is left unaddressed. However, since the proposed law is only in addition to the existing criminal law, any homicide or act of criminal intimidation by the members of the family can be easily covered under the IPC.

The root cause of the problem lies in the mindset of people which the bill fails to address completely. The solution offered in the Bill is criminalization and as experiences have shown, criminalization might be not be that successful to bring remedies.

It has been suggested by the NUJS in its analysis of the bill that the word 'marriage' should also be enlarged to include live in relationships and the like, keeping in view the changing mores of the society and in consonance with the Supreme Courts legitimizing live-in relationships in certain cases. Keeping in mind the ground realities of the societies in which khaps function and yield power, such an inclusion of "live-in" relationships within the ambit of "marriage" would only further alienate the rural masses from the law makers and would defeat the whole purpose by inciting anti-law sentiment in the rural heartland, who take pride in sticking to their age old customs. May be once the rural society reaches that point when sagotra marriages or inter caste marriages become acceptable, we can think of including "live-ins" into the ambit of "marriage."

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<sup>84</sup> Clause 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.

<sup>85</sup> Clause 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.

<sup>86</sup> Clause 12. Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be cognizable, non- bailable and non -compoundable.

The prohibited action in section 2 is "gather assemble or congregate at any time with a view or intention ..." This seems to suggest only gathering/assembly/congregation in the physical space. The section should also take into consideration the technological advancement and include virtual participation through social networks and the like. It should cover both direct and indirect participation. The action intended in section 2 may not always be collective action. As mentioned in the general observation above, if intimidation, threat or coercion can occur from within family/or one of the member of the family. Such act need not always be to break marriages but could also be to coerce someone into marriage. Therefore, under the prohibited action in section 2, such acts should also figure in.

Clause 6 uses the word 'participation' which should be defined to mean not only physical presence but also political, financial and other influences. With the increase in occurrence of phenomenon of flash mobs due to increasing mobile phone and internet use, there has to be a room made for virtual participation.

Just like the bill proposed by NCW, the LCI's Bill also does not include punishments for omission on part of the authority, which receives information about the said offenses but fails to take appropriate action. Addition of accountability on the part of responsible office/officers in the section has to be considered to make the law effective and implementable.

A NCW Member, Smt.Shamina Shafiq, who visited the residences of the couple who was lynched by the girls family, spoke to their family members, relatives and friends. The young couple was killed by girls family because they both belonged to same gotra and the same village. While speaking to media persons after visiting boys family, she said "They told me that they have decided not to pursue this case legally, as they fear a social boycott. We will try to speak with women who are not related to this case." She further said.

"A kind of above the law social structure has been created and people are punishing people by killing them. This needs to be strongly condemned. It is the responsibility of the police and other authorities that such an incident is not repeated."

Slamming khap Panchayats justify honour killings on the plea of seeking an amendment in the *Hindu Marriage Act 1955*,<sup>87</sup> "They want to say that an amendment in law will stop such murders? Does this mean that you are trying to scare us that if you marry in the same gotra, we will continue to kill people? This is no justification. When and what kind of amendment will be done in the law, this is a legal issue..."

She took a dig at a recent diktat issued by a Panchayat in Jhajjar district, stating that the girls above the age of 10 cannot wear jeans. "Why don't you ever talk about a dress code for men? If a man is committing a mistake, you will still blame the woman for the kind of clothes she is wearing. This is totally illogical. If a boy wears jeans, why don't you ask him to wear only dhoti and kurta? Why don't you issue a diktat that boys will not roam around with cell phones and get haircuts like film heroes?" But if Panchayats are trying to say that either you bring in an amendment or such same things will continue, this is very sad and a matter of serious concern. I think the police should take it with a lot of seriousness and also increase its vigil at places where such diktats are being issued."<sup>88</sup>

### **3.4 KHAPS RESPONSE TO THE STATE: FROM THE OTHER SIDE OF THE LENS**

The Supreme Courts observations during the hearing of the petition filed by NGO Shakti Vahini have not gone down well with the khaps Panchayats. A senior Khap leader in Muzaffarnagar district has asked the Supreme Court not to interfere in honour killings and discourage marriages within the same clan.<sup>89</sup> "*We have always been opposed to marriages within the same clan and will continue to do so. The Supreme Court has given orders that anyone can*

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<sup>87</sup> The khaps have been asking for amendment in the Hindu Marriage Act, 1956 which by virtue of section 29 permits sagotra marriages.

<sup>88</sup> *NCW slams khap Panchayats for imposing customs on young couples*, Express News Service: Chandigarh Tuesday, 24<sup>th</sup> Sept., 2013

<sup>89</sup> Khap asks SC not to interfere in honour killings, 21<sup>st</sup> February 2014, The Asian Age.

*marry anybody anywhere. We do not challenge the honourable Supreme Court but they should be careful and not get into this mess.”*

The Khap leader issued a veiled threat to couples who marry without the approval of the community or their parents. They said “If some girl or boy goes astray and marries on their own, this will not be acceptable. Their parents will decide who they marry. If the couple defies this rule, then the families of both the boy and the girl will be troubled and then the couple will be killed or they will be beaten up”. Khap Panchayats, which are all-male unelected village bodies, are notorious for issuing extra-judicial diktats and even ordering killings in parts of rural India, especially in northern States, but they enjoy such political influence that local politicians rarely speak out against them.<sup>90</sup> But the Sarv Khap Panchayat, a conglomerate of 67 khaps in Haryana's Rohtak district, nonchalantly told the court that it was the family members who lynched girls and boys who marry outside their caste or within the same gotra, unable to resist social pressure and taunts of relatives. Regulating the khaps would not reduce honour killings.

When NGO Shakti Vahini, filed a petition in the Supreme Court to get the Central Government to pass a law to ban the Khaps and other community based Panchayats on the charge that they are all “extra judicial” bodies, Khaps for a long time were out of the picture as the Khap Panchayats were not made a party in the case. The parties to the case were Union of India, Ministry of Home Affairs, Ministry of Women and Child, States of Haryana, Punjab, UP, Jharkhand, Bihar, Himachal Pradesh and Madhya Pradesh etc.

Realizing this anomaly, the Supreme Court Bench of Justice Aftab Alam and Justice Ranjana Desai indicated that they cannot pass any order in the absence of the affected parties. Since Khap Panchayats were not listed as parties in the case, the Supreme Court could not invite them officially. However, the Apex Court let it be known that they are willing to hear anybody who has anything to say on the subject.

In an affidavit filed on behalf of the *Dalal Khap* in accordance with the Supreme Court’s Order dated 14.01.2013 in the case of *Shakti Vahini v. Union of India*,<sup>91</sup> in Para 5 the khap in unequivocal terms, submitted that the so-called honour killings are heinous crimes that have no

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<sup>90</sup> *Khap asks SC not to interfere in honour killings*, The Asian age 21<sup>st</sup> Feb, 2014.

<sup>91</sup> Writ Petition(Civil) no.231/2010

place in a society based on respect for human values. It follows that no reasonable person can have an objection to steps taken to prevent such heinous crimes or to bring the guilty to justice. However, the severity of a crime can't be an excuse for doing away with the principles of natural justice, particularly the right to a fair hearing.

*Manushi Sanghatan*, another NGO, also filed an affidavit in the Supreme Court in response to the order dated 14.01.2013 and condemned murder or violence of any sort and rejected those who use such violence or coercion based upon the threat of such violence as a means of settling scores or imposing their will or morality on others. Manushi also contended in the affidavit that despite a thorough inquiry and investigation into the functioning of Khaps, Manushi has not found any evidence to support the contention/ proposition that Khap Panchayats are responsible for 'honour killings', or for the increase in violent and brutal crimes committed in the name of "honour"<sup>92</sup>.

The *Dalal* khaps in view of the proceedings of court being conducted without any representation from them, until Court finally asked for representation from the Khaps in the last hearing, the khaps claim to have been put in the dock as accused answerable for a number of wrong doings including honour killings, curiously, without being formally charged for even one of them.<sup>93</sup> The khaps emphasise, the need to guard judicial standards even more fiercely as exaggerated and sensationalist media coverage has prejudiced the perception of rural communities in the eyes of an urban, news-consuming public. In such an atmosphere, where there is wide-spread prejudice against a section of people, it is easy to develop false beliefs about their culpability and herein lays a great risk of a miscarriage of justice.<sup>94</sup>

Manushi also pointed out in its affidavit the functioning of a Khap. While everyone born in a gotra can claim to be a member of that Khap, every gathering of one or more gotras cannot be termed a Khap meeting. There is a due process involved in convening a Khap meeting, including a written "niyota" (invitation) by select community representatives. The petitioner has not provided

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<sup>92</sup> Para 3

<sup>93</sup> Para 6

<sup>94</sup> Para 7

any evidence what so ever that any Khap meeting was indeed convened before the honour killings attributed to Khaps.<sup>95</sup>

The khaps contended that the petitioner's case is based on dubious research that seeks of confirmation bias. The methodology is suspicious, the evidence are sketchy and the logic is absurd. In a nutshell, the narrative seems to be that honour killings predominantly happen in Punjab, Haryana and UP and the presence of Khaps has a key role to play in this menace. It follows that if action is taken against Khaps, then the killings will stop. Interestingly, the Petitioner seems to have missed the small point that Khaps are not prevalent in Punjab, but its research shows highest number of honour killings in Punjab, providing no explanation for this contradiction.<sup>96</sup>

The khaps also complained of the prejudiced slant of mind of the petitioner organization by pointing to its zeal to use any argument, howsoever irrelevant or incoherent, to show Khaps in bad light. The word 'feudal,' the khaps point out that has been used with gay abandon without any context or perspective. Mere ownership of agricultural land doesn't make a farmer feudal. The bias is self evident in the deliberate choice of the language by the Petitioner. Khaps are described as "regressive institutions that refuse to embrace modernity". The gotra customs are described in unflattering light as "outmoded system of beliefs" and Khaps as the "self-styled guardians of medieval morality". The subtext, therefore, is that the rural communities should try to fit with "modern" ways by abandoning their traditions and customs.<sup>97</sup>

Khaps also pointed out the contrasting stand of senior police officers of UP & Haryana who informed this Hon'ble Court in the last hearing that they were not aware of any case of violation of law by the Khaps. Similarly, a Haryana resident, Sh. Suresh Deswal has received information from the Government in response to an RTI application that Khaps in Haryana were not involved in any honour killing incident during the period 2001 to 2011. It is submitted that under such circumstances, the petitioner cannot be allowed to continue to make baseless and unsubstantiated allegations against Khaps and paint them in such evil light.<sup>98</sup>

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<sup>95</sup> Para 6

<sup>96</sup> Para 8.

<sup>97</sup> Para 9.

<sup>98</sup> Para 11.

The khaps elaborate that there is a different context and reason behind each crime perpetrated in the name of honour. Some of these reasons are inter-caste, inter-religion, and gotra restrictions. The percentage of honour killings related to gotra restrictions as a percentage of all honour killings across India is miniscule. They pointed out that even the petitioner’s research inadvertently provides supporting information for this assertion. It is important to note that Khaps have been vocal only on the gotra issue, where they have been deliberately misrepresented. But even if one wishes to assume the worst about them on the gotra issue, it doesn’t explain why they are being implicated for honour killings related to inter-caste or inter-religion marriages, where they have conveyed no objections and indeed in some cases, expressed support.<sup>99</sup> *Manushi, in fact rubbished NCWs report as being based on preconceived notions where the factual findings of report are completely at variance from the conclusion.*<sup>100</sup>

The khaps with a great stress, emphasised on the involvement of families in all the crimes that take place in the name of honour. They contend that irrespective of the reason for the crime—whether caste, religion, gotra, etc.—most honour killings are perpetrated by the victims’ immediate families. It is indeed disturbing why families feel compelled to act in a ghastly manner against their own kin in the name of honour. But it happens, unfortunately, across the length and breadth of this country, across urban and rural classes, across castes and communities. That there is a cultural context behind it is undeniable—the concept of “honour”, especially with respect to females, is a deeply entrenched belief amongst all sections of Indian society. Even the media that is perennially on a “modernization” over-drive is not able to shed such notions. This is self-evident in the reporting of rapes where the focus is mostly on the shame brought to the victim, accompanied by graphical representation of feminine images that convey a sense of lost honour. It is in such a backdrop that heinous crimes in the name of honour take place.<sup>101</sup>

The khaps express sadness over the negative media coverage against them as a draconian community mocking on gotra customs of Jaats and other rural communities, they believe the petitioner and the report of Law Commission of India on this issue have been influenced by the negative media coverage. In the affidavit they briefly described the importance of these customs, hence they are necessary. At a basic level, gotra *bhaichara* denotes a system of brotherhood. The

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<sup>99</sup> Para 12

<sup>100</sup> Para 5.

<sup>101</sup> Para 13.

communities following these customs, such as Jaats, consider marriages in same gotra as incestuous. In the same way as the society at large may consider a marriage between siblings born of same set of parents as incestuous. At this point, it is to be said that even incest can't be an excuse for murder. If a murder is committed in the name of any custom, the guilty should be brought to justice. But it also needs to be said that such crimes can't be a stick to beat the people for their cultural beliefs. Contrary to the myth propagated by the media that these customs are "talibani" rules imposed by the Khaps on the people, these customs, like any other cultural traditions, have their own historical context. The voluntary adherence of these customs amongst communities such as Jaats is very high, even when they become urbanized. Khaps provide autonomous, non-governmental platforms where the community can meet and discuss various issues affecting it. There are several instances where the interpretation of customs has been relaxed in such Panchayats keeping in mind the new ground realities.<sup>102</sup>

That another serious issue of concern is the portrayal of these customs as superstitions or, worse, as evil practices like Sati that need to be rooted out. A system of brotherhood provides multiple benefits in a rural setting bereft of the State apparatus and enables cooperation based peaceful coexistence. Nevertheless, suffice is to say that it is a matter of faith for these communities. Article 29 (1) of the Constitution<sup>103</sup> guarantee any section of citizens a right to conserve their culture. The gotra customs themselves don't violate any fundamental human rights. A support for gotra customs is not the same as support for honour killings– the continuous propaganda in the media equating the two has led to defamation of communities like Jaats or more generally, the people of Haryana and western UP.<sup>104</sup>

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<sup>102</sup> Para 14

<sup>103</sup> The Constitution of India, 1950. Article 29. Protection of interests of minorities(1) *Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same* (2) *No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them*

<sup>46</sup> Para 15.

## CHAPTER - 4

### OBSERVATION AND ANALYSIS OF THE EMPIRICAL STUDY CONDUCTED IN THE STATES OF HARYANA, U.P. (WEST), WEST BENGAL & RAJASTHAN (INCLUDING DATA AND EMPIRICAL INFORMATION).

#### FINDINGS FROM FIELD VISIT REGARDING DISCRIMINATION AND DEROGATION AGAINST WOMEN BY KHAP AND SOCIETY

##### 1. STATE OF HARYANA.

The field investigators during the period of study, i.e., April-June, 2014, visited six districts of Haryana- Sonapat/Panipat/Mewat/Rohtak/Hisar and Karnal, out of which district Mewat is muslim populatd and rest of the districts are predominantly dominated by Jaats and are governed by the rules/diktats of the khap panchayats. In each district we have chosen three villages on the basis of *purposive sampling*. The methodology used was FGD i.e., Focussed Group Discussion.

##### GENERAL OBSERVATIONS

Among these districts, Mewat thickly Muslim populated area where ,

- Girls generally don't go to schools, the reason being that there are no schools



in the vicinity. And the parents don't allow them to go to schools in the town area since there is no mode of transport available for commutation.

- Female foeticide does not exist in this area due to Sharia reasons.
- Same Gotra marriages are absolutely prohibited in this area irrespective of religion. This custom being endorsed by everyone including women, community people, Panchayat representatives, as they firmly assert that how can there be marriage between brother and sister as everyone living in the same village are brothers and sisters and even the next village there can be no marriage due to *bhaichara*.
- Inter-caste marriages are also not allowed, which indicates that prohibition of sagotra marriages in Muslims is same as in Hindus, which is ironic as there is no concept of caste or gotra in Islam. This also proves the extra ordinary influence of khap Panchayats in the geographical area irrespective of religion.

In rest of the districts *i.e.* Sonapat, Panipat, Rohtak, Hisar and Karnal which are basically Hindu Jaat populated districts, it was observed that,

- As compared to Mewat, girls go to schools if available in the village or sometimes in the near-by towns.
- Female foeticide is rampant. In each family I personally noticed 2-3 boys.
- With respect to same gotra marriages, the same strict prohibition rule applies amongst Hindus and Muslims. Inter-caste marriages are also not allowed. However, as per the recent news reporting, the Satrol Khap has allowed Inter-caste weddings and marriages between the families within a radius of 42 villages. Inter-caste marriages have been a major reason for so called "honour killings" in the recent past. However, marriages within same village and same gotra are still barred.<sup>105</sup>

A common practice amongst all the people in the area cutting across religious/caste differences is the not giving share in property to women. Upon being asked by the researchers especially to the women of the localities about the awareness of their share in

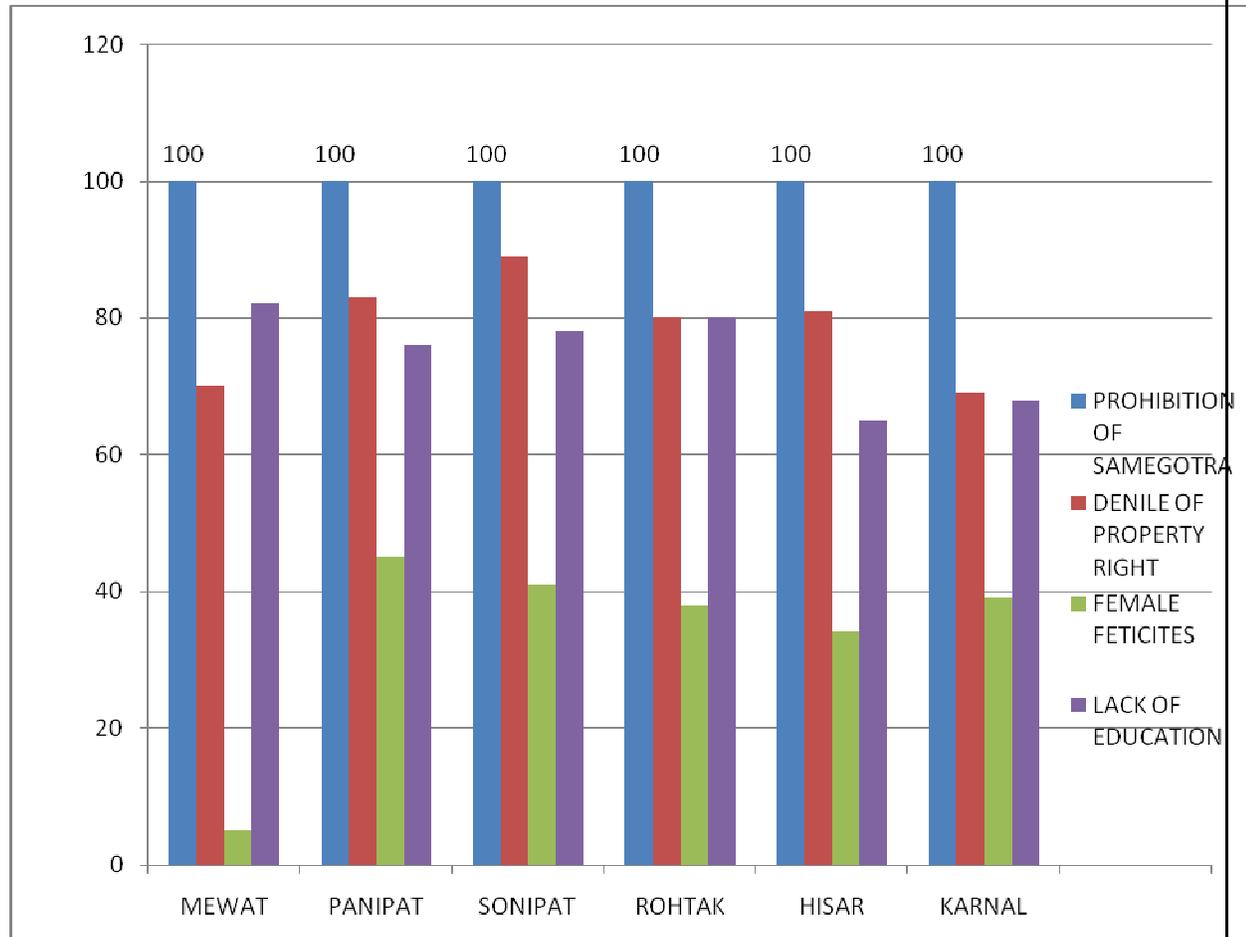
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<sup>105</sup> Manveer Saini, "Khap Panchayat Okays Marriages between Castes," The Times of India, dated April 21, 2014.

property whether under personal or statutory law, it was found out that most of the women are aware of their right and share. However, when asked whether they are given their share or do they claim their share, at first they did not reply but on insistence, they replied that if they discuss such things, the relationship between family members would sour, “*rishtey kharab ho jayenge*” being the standard statement. Amongst Muslims, the relinquishment of property rights is almost implied and never discussed. Amongst Hindus, the women are made to transfer the property to their brothers before they get married. When men/khap Panchayat members were asked about the property rights of women they openly say they don’t give property to women because of the burden of various obligation a male member of the family has to bear in the form of *dahez, bhaat and chuchak* as well as every time the sister visits or when they visit their sister/daughter’s matrimonial home, they have to give gifts. In fact during the discussion it was revealed that now a days most of the parents gets there their daughters share transferred in the name of male member. The reason cited was that after the daughters marriage it may be complicated by her in laws family and they may interfere property right.

- As regard to the role of the authorities (DC, Police officials and other authorities) upon being asked, they stated that their role is Nil as this being the Khaps and villagers/locals personal issues which are not being reported to them so they have no authority to intervene or take any action. Also authorities confided in us on the condition of anonymity that they also believe in such customs and practice because they are the son of this state and their values are same.





From the original approximately data profiled by the study.

## FINDINGS

### 1. MEWAT ( HARYANA)

- The khaps in Mewat area are known as Pal Panchayat. The Pal under investigation is the Dedhgadh Pal. The head of a Pal, also known as the Sarpanch in these Pal Panchayats is known as the Choudary. The Current Choudary of the Pal being investigated is Choudary Zakir Hussain. The centre for the administration of this pal is Gwalda in Rajasthan and the ambit of its jurisdiction extends to all the regions where a population of persons belonging to the Dedhgadh Pal reside. In effect, the jurisdiction of the Dedhgadh Pal extends over 90 districts (Zilla). A Pal is not divided on religious basis.

- There is a division of the village of the region under 12 Pals.

They are,

1. Dedhgadh Pal
2. Chirakhloth (the biggest)
3. Gorwal
4. Dedhwal
5. Bagodia
6. Punloth
7. Duloth
8. Baloth
9. Sringal
10. Debroth
11. Mangarian
12. Goumal



- A Pal, as classified above further has branches. It has been noted that a Pal does not allow for any marriages within their gotra. If some boy or girl marries against this norm, the possible repercussions are,
  1. Forced dissolution of marriage.
  2. Banishment
  3. Criminal charges being pressed against the male dissenter.
- Membership to a Pal is not on the basis of geographical distribution; rather, it is on the basis of influence. No person from the village under investigation is a member of the Pal. Decision of the Pal is taken on the basis of the consensus of the parties. Once there is an agreement to submit to the jurisdiction of a Pal then the decision of the Pal shall be binding upon such parties.

- There has been a transition in the attitude whereby the Muslims have realized that their laws allow for marriage even in the first relation whereby the long riding regional customs do not apply to them. Despite that they concede that such an act of marriage is not preferred. In a village, the Villagers claim that it is for 30-40 years since such acts have taken place.
- It has been noted that earlier punishments included possible banishment from the village, corporal punishment and the banning of the harvest of the agricultural fields belonging to the family of the dissenters.
- There has been a transition in the attitude towards the girl child and her education. It has been put forth that the Villagers try to educate the girl child based upon her ability and wishes.
- There is an acceptance of the fact that an agricultural income could not have been achieved without the contribution of women in this region.

#### **A. REVASAN (MEWAT, HARYANA)**

The Field Investigator met around 30-40 the affected persons ie , their family members and Panchayat members.

- Village Rewasan also has people belonging to the Dedhgadh Pal and their sub-division is Ghasedia. In Village Rewasan it can be noted that some villagers claim that there is still much Pal activity in the area and there is much respect for its functions.
- Prohibition of same gotra marriage is very strictly followed
- In addition to the same, some people in village Rewasan conceded that only 5% of the population in this area educate the girl child. Most of the girls want to study but they are not allowed and they have to perform household work.
- Commuting to college/school is a major problem especially in this time when the girls safety is emerging as one of the important issues. Girls have to go too far for school as no educational institution is available in village. Girls go to mosque for studying Quran. Women are involved in household work and field work. If they would study further, who would work in the field. Also, the chances of marriage of a



girl is decreased as she is educated as it would be difficult to find a suitable match for her.

- There is no preferential treatment given to boys over girls and both are treated equally.
- In Muslim community no sex selection or female foeticide is permitted as abortion is considered to be a sin under Islamic law. Large number of children in absence of family planning leads to poverty.
- Property rights are never discussed in open as the women fear straining of relationships if they demand their share in property.

#### **B. ADBAR (MEWAT)**

- Women who want their girls to study are dominated by men. They are afraid of social stigma attached to education as the girls who study are considered to become rebellious who get out of control.
- The youth have different thinking pattern and they want to change the society and provide education to their kids.
- Early marriage is a common phenomenon.
- Men do not work and show cruelty towards women who earn money by working in fields.



- Most of the authorities including police belong to the same community and their only concern is their job.
- In view of the elders the youth is not concerned about social norms. They do not need to or have any fear of the Pal. However, the effect of disregard for the decision of the\_Khap is changing. Earlier,

the community used to get together in support of the Person in whose favour the Pal decides but now the Community has been noted to support the person against the decision of the Khap.

- In case of dissent, there is more pressure on the family of the boy. In case the men do not agree to solution through Pal, it is most likely that reports of abduction and rape be charged against them.
- In marriages, dowry is highly prevalent and there is a unilateral flow of spouses, for example, if someone marries a woman from village X, he shall not marry his sister or any other female member of his family to a man in village X.

## **2. SONEPAT (Kakroi, Badkhalsa, Tihadakalan) /PANIPAT (Ujha/Ugrakhedi/Seewah)<sup>106</sup> / ROHTAK (Mokhra, Madina, Sampla)/ HISAR/KARNAL**

The journey towards this research began in our taxi from Delhi to Sonipath, where we were accompanied with researcher Ms. Shabeena and Kaushal who had previously visited various research destinations. For generation of an atmosphere where people can freely speak their mind we had chosen a facilitator, who was acquainted with culture, people, and mind-set so that we could interview without any hassles. The MLA was the first person who gave us the background of existence of Khap Panchayat. Khap means any caste and khap Panchayat means Panchayat constituting reputed members of that caste of society which, decides on various social issues. It's an advisory body according to his survey Khap's has

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<sup>106</sup> See Interviews annexed.

never given any orders of honour killing it's the people who have done this especially in the cases of same gotra marriages.

### **GENERAL OBSERVATION**

- Each caste has its own Khap elected by hereditary order, but only male member can be chosen as Khap. 12 villages together form the Sarva khap. In Tihad Kala village 36 cast Panchayats exist.
- Khap interfere in issues related to social norms and values and the judgment is based on consent of all Khap members. They do not interfere in personnel issues of people.
- Khap Panchayat has political support from local MLA and from community member as well. No one has dared to voice against the Khap.<sup>107</sup>
- Political power is confined in male, women must vote but can not decide to whom they should cast their vote, it is decided by male member of family. The reason was given that male has links to other people and they engage in meeting the home needs so they will decide to whom the relation be built. It means to researcher that in the name of work and outdoor activities male wants to dominate female member and snatch political rights of women.
- In house mostly decision related to power play are taken by male and women have no say in that. In the same way male member decides about marriage of daughter, and she does not have any saying in the matter. But it was negated by Mr Jai Tirat, he is an MLA and might be that his family is well educated so they demand their rights forcefully.
- In marriage gotra system is followed very strictly, gotra is recognized in 3 peedhi.

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<sup>107</sup> Interview of the political leader Mr Jai Teerath can be referred to in the annexure.

- Property is divided as per the social customs of society. The custom is based on maintaining relation by giving up property by female to her parents or brothers. Some people stated that if a female takes her share from parents or brothers that mean she is losing her relation from parents and brother. It reflected that their social and even blood relation will remain until and unless the girls give up her property in favour of her parents and brothers. They justified it saying that we give more than that property as gift to women but it was not reasonable as no one wish to give more in exchange of less, some people justified it as social norms. Sex selection in Hindu family is practiced, not in Hindu. In most cases, if two girls are born then after, medical checks-up take place and sex selection is practiced.
- In education, boys are motivated while girls are not. It is done in expenditure and facilities given to both sexes. Boys are given more pocket money than girls.
- It was observed that people do not wish to let researcher meet female member of community. The reason, to the field investigators understanding could only be the fear dwelling in the men's hearts about the women speaking against the male dominance. Whatever control they put on girls and women they call it as preserving the cultural heritage of society, they do it in fact but at some extent they cross the line such as barring girls from mobile and individual liberty.
- It is considered that till three generation the gotra should not be same. It shall also not be same to mother, neither to grandmother ie., *nani gotra*. According to them belonging to same gotra makes them brothers and sisters and makes marriage unacceptable in society.
- the main crimes against women faced in Haryana are:
  - Female foeticide
  - Gender discrimination as a girl child.
  - Property Rights

## CONCLUSION

The exploratory research in district Sonapat/ Panipat/Karnal/Hisar/Rohtak in the state of Haryana, reveals many realities of the position of women and the attitude of Khaps towards the issue. By



analysis of unstructured questions and answers many inferences can be drawn. Firstly, the society is primarily male dominant, women do not have much political right as her right of adult suffrage is subjected to the wish of male member of his family. Secondly, she has a very complicated property rights which is unique feature of state as she gets share in property, but there is a social obligation to relinquish the share failing to which she loses her family ties, which ultimately makes the relation with parents and brother strained. So, in sum and substance that right is subjected to many negative conditions.

As far as sex ratio of women is concerned, in each village we saw many children varying from 5yrs to 15 yrs most of them were boys, which clearly indicates poor child sex ratio. People clearly say having a son is boon and certainly they go to any extent of wrongful things, to have a son. In the interview one of the person who was husband of lady sarpanch, also member of Khap said if somebody doesn't has son he shall adopt the same. This clearly shows importance of male gender in the state. In all the families we visited we saw, son in the family serving tea, which was really appreciable, but the common things in all families was all of them were having two sons and no daughter, which clearly shows gender selective approach.

## **2. WESTERN UTTAR PRADESH**

**MUZAFFARNAGER (Mohalla Mallupura, Villages Kakroi, Shahpur, Lisad, Sisoli, Fugana) MEERUT (Ajrara, Bhopgarh, Harra) And BAGHPAT (Asara, Bauud, Dhikoli).**

### **GENERAL OBSERVATION**

#### **Muzaffarnagar town**

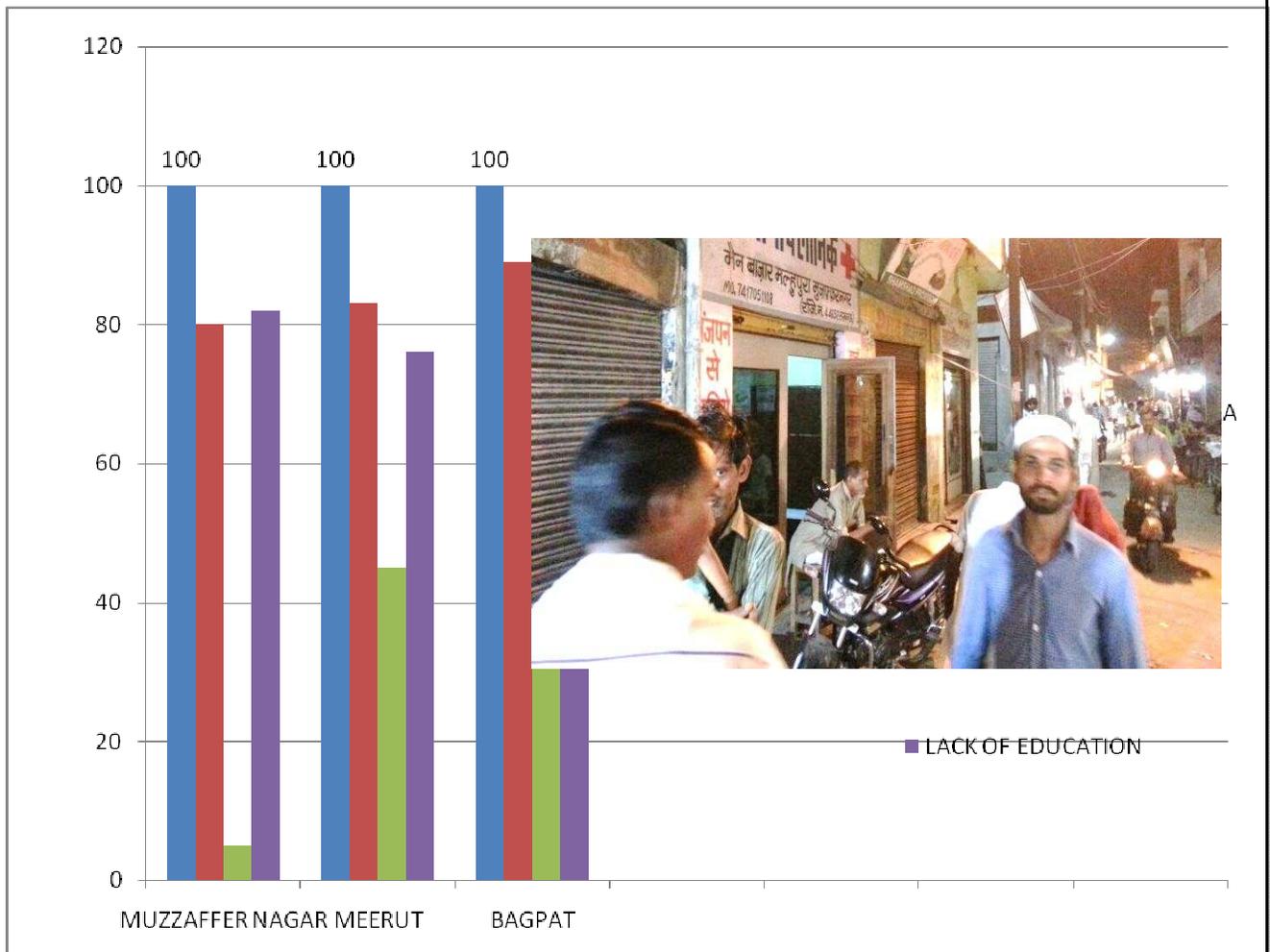
During the interview with a leading advocate<sup>108</sup> who has been involved in successful prosecution of accused of honour crimes the researcher got an impression that-

- Khap do not exist in the urban society generally but wherever it is applicable, it is restricted mainly to the lower class people. The well educated higher class people to a large extent do not abide by its diktats as strictly as the lower class people.

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<sup>108</sup> Interview annexed

- Mainly due to their financial incapacity to influence others and lack of ability to shift anywhere the lower class people are forced to abide by its diktats strictly which is not simply the case with the upper class people.
- In previous 5-10 years there have been barely 5-7 cases which can be categorized under KHAP excesses. Though there are a few other cases but there can't truly be described as Khap cases of honor killings for there has been number of reasons and circumstances explaining the same.



From the original approximate data profiled by the study.

The views of the lawyer can be substantiated with further enquiry with different respondents.

## A. VILLAGE LISAD (MUZAFFARANAGAR)

- Khap's is an age old tradition continuing since forefathers of the respondents in the area and all the village people follow it with their heart & soul.
- The designation of choudhary is the supreme in any Khap. The post is a hereditary one and the decisions of choudhary are final and binding on all villages/villagers coming under that Khap.
- Baba Harkishan Singh is choudhary<sup>109</sup> for nearly 30+ years and his Khap (Gatwara) comprises 52 villages under it. Though it is not a fixed number and different Khaps happen to have different number of villages viz. 32, 52,82 etc.
- Earlier (nearly 15-20 years ago) Khap Panchayat were very prominent and widely known for committing honor killings. However over the time this trend has slowed down and number of cases reduced significantly with intensity of Khaps decreasing sharply due to migration & many others factors.
- A common views of the Khap Panchayat members as well as of the local people regarding same Gotra marriage and the Khap's rule is that no girl & boy out of there 52 villages can marry with each other for they belongs to the same Gotra. If done so they will be boycotted by the society as well as their families. If either of their families continues to support them, then that family will also be boycotted by the entire society.
- There is nothing like honor killing and the social boycott serves the purposes of Khap. 5-10 such cases of social boycott has been witnessed in previous 5-10 year. However such instances have significantly reduced now and the young boys & girls have become respectful of the Khap's rule.
- Khap has no impact on gender inequality rather it has facilitated gender equality many a times. Girls and women feel safer due to Khap and its diktats and are promoted to complete higher education viz. B.A, M.A, Ph.D etc.No specific dress code for women and they are free to wear whatever they chose.

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<sup>109</sup> See interview annexed.

## CONCLUSION

It appeared to the researcher that the Khap's rules have been internalized by the villagers as a matter of deeper socialization and hence there are lesser cases of violation. However, with increase of migration in urban areas and change in life style due to the impact of globalization, a change is being witnessed in the approach of youngsters. It was also observed by the investigator that there are good facilities viz. high schools, colleges, etc. for girl's education and people are pro- girl's education in the area. Even in terms of dressing and free movement outside four walls of houses, the girls and women were found roaming freely.

Despite all the modernization that has seeped into the village life, Khap continues to be a reality for all the villages & people coming under it. However, with the passage of time & social change the Khaps as well seem to have adapted to continue being relevant to for the younger generations.

### B. VILLAGE SISOLI (MUZAFFRANAGAR)

- In village Sisoli, the Balyan Khap exist which comprises of 82 villages within it. As per choudhary there has been nearly 100 cases of honor killing in the past 10-20 years. The rigidity and strictness of Balyan Khap is well known across in the near about villages.
- If girls and boys of the same Gotra i.e. same Khap commit marriage their only punishment used to be was death. However, over the time this trend has softened a bit and social boycott



of the guilty persons and their families have become a popular culture. At present there are two families facing social boycott in the village. Recently, the daughter of a Pandit's Family married with a Jat Boy. Now the Pandit's family has run away from the village but the Jat's family continue to reside in the village however, they face widespread boycott by all village the members

- According to the khap members the Supreme Court of India has resulted in constituting few useless rules like allowing the same gotra marriages. But these continue to be irrelevant in their Khaps.
- Despite being bit harsher towards Khap rules Balyan Khap too is almost equally liberal and open to girl's education at all levels. No dress code for girls being followed.

### **CONCLUSION**

There are degrees of variations in the functioning pattern of various Khaps. However their mandates continue to be the same i.e preventing same Gotra marriage and gender discrimination is subtle but deep in the veins of their traditional societies. The researcher noticed that the middle aged choudhary were very rude & stubborn to Jat rules. Girls and women were observed being free & doing their normal activities without any perceptible fear of this khap as well.

### **C. VILLAGE ASARA (BAGHPAT)**

#### **GENERAL OBSERVATIONS**

Based on widespread media reports and surveying secondary literature like Jagran Post news dated 13<sup>th</sup> July 2012 which loudly establishes Asara Village as a place of Vehement Khap Diktat the investigator visited the said village community to witness the ground reality and collect empirical evidence in support of the same, and observed,

- Any woman below 40 years of age is not allowed to go for shopping nor can she use mobile phone as per the diktat of local village Panchayat.

- Any sort of love marriage is strictly prohibited and no member of the village community can be allowed to choose his/her life partner which is exclusively a prerogative and domain of the elders.
- However, there is no restriction to the education of girls and women. They are allowed to complete their education freely till they get married by their parents.
- Women and girls have to follow dress code as set by the village Panchyat and they can't wear jeans or any western looking clothes in public or in front of elders. Muslim Women observed on roads were mostly in Burqa
- Not all people were comfortable in sharing with an outsider about the diktat of their Panchayat and the majority seemed hesitant to let an outsider encroach and ask questions about their village Panchayat.
- The investigator tried to approach to a woman respondent, but the lady shied away and further villagers came in order to avoid any interaction between the two.
- People Shared proudly about their village culture saying-

**“ Sanskar bachage to pariwar bachega,  
Pariwar bachage to samaj bachega,  
Samaj bachega to Desh bachega”**

#### **D. VILAGE FUGANA (MUZAFFARNAGAR)**

Fugana was one of the worst affected villages of the Muzzaffarnagar riots of August, 2013. After the riots a police team of UP police came to arrest the local men who were all named in the FIRs against them but then the women of the village jammed road and thus saved their sons and husband from getting arrested.

#### **GENERAL OBSERVATION**

- One of the village man shared with the investigator in solitude that there are frequent rape cases in the village mainly by the upper class like the Pradhan's son himself. It was also shared that there are 4-5 gang rape victims which still are living under great stigma and social boycott inside the village for a minor mistake of opposing the interests of upper class or getting into love marriages.

- There is no specific restriction on women's education and all the villagers appeared equivocal about women being provided equal opportunity for education.
- There is no dress code specified for the women and again all the villagers nearly unanimously supported that women are allowed to wear clothes as per their wish.
- Women were seen on roads wearing normal (so called) clothes and not observing burqa or Prada strictly. There was wide number of girls seen on roads returning from schools.
- About prevalent gang rape cases, most of the villagers seemed closed to talk, only a few people were found having deep anger about these shameful incidents. Women are playing central role in this society but patriarchy indirectly or directly use them for their petty interests, be it protecting them from police arrests or being subjected to gang rapes. In a nutshell, the discrimination continues being subtle and deep.

### **3. STATE OF WEST BENGAL**

#### **I. BIRBHUM**

##### **A. SHANTI NIKETAN (BOLPUR)**

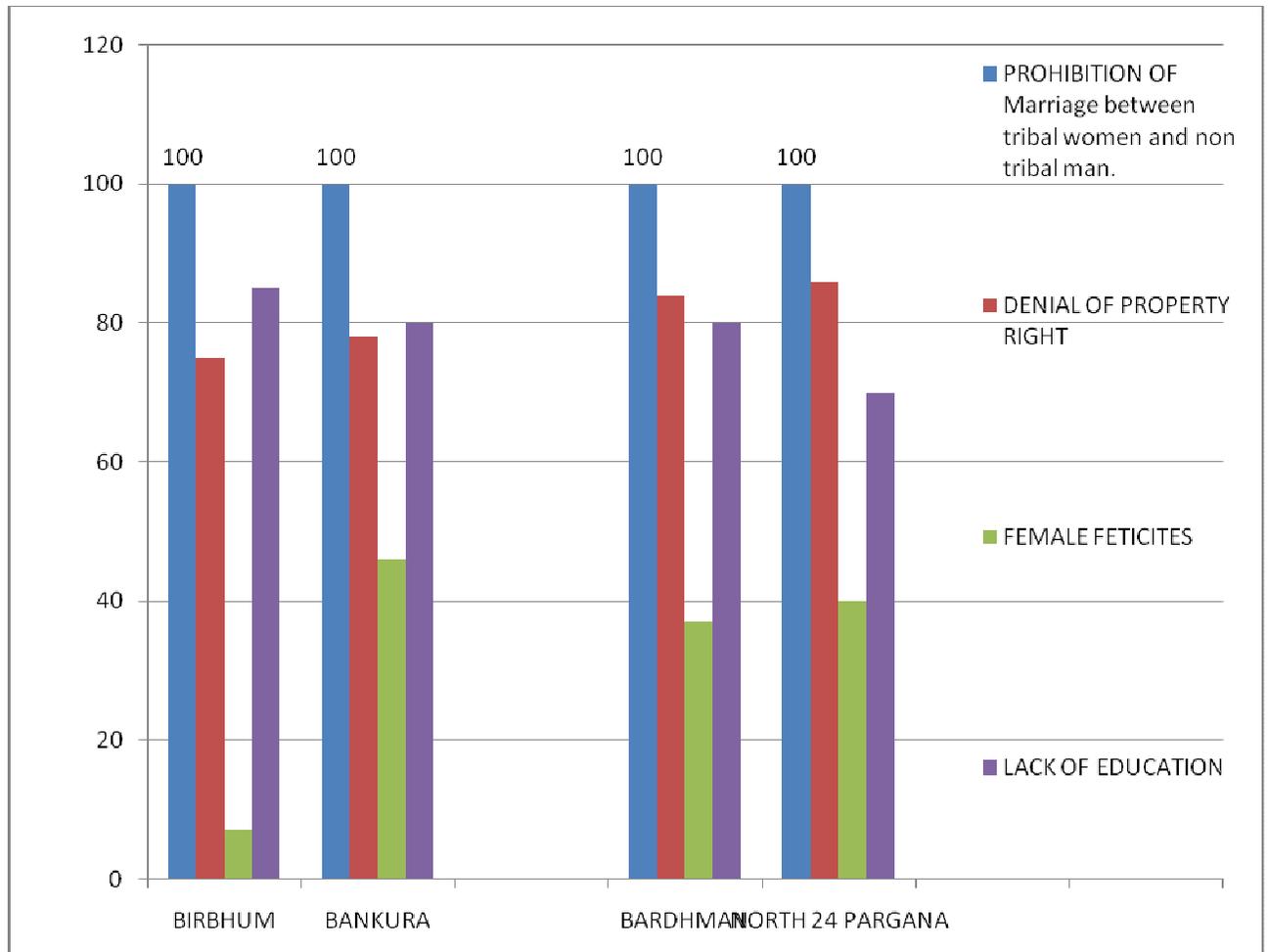
Shalishi is a form of informal village community which comprises all the residents of village as its members. Shalishi is headed by an elected representative of all the male adult members of a village. There is no participation either in its election or in its functioning pattern. Shalishi looks after and aims to resolve and issue arising with or among village members. It is an extra judicial institution and its existence is neither approved nor recognized by formal law. Shalishi generally dictate on marital issues. It allows its male members to marry any non-tribal women/girl, however, it strictly prohibits a tribal woman/female to marry a non-tribal man. In case she marries a non-tribal man she can stay away outside the village territories but not allowed to integrate with her tribal roots. It to be seen here that the Infamous Birbhum gang rape case involved a woman eloping with a non tribal male. The women is generally punished by fine or rape.

#### **GENERAL OBSERVATIONS**

- The organisation visited by the investigator is working well for near about 30 years and has significant achievements to share in the field of social well being of vulnerable sections particularly women. Their achievements are fine but why overall situation is not changing or improving?

- According to the shanti nicketan officials, the organisation has succeeded in stopping child marriage which is a common practice in the said locality (Birbhum).
- The institution of Salishi allows its married girls (within tribal community to inherit their parents property equally) as their brothers. Though in most case as per popular trends the married women don't claim for their parent's property for it guarantees them a loving relation with their parent's family and also avoids to their husbands family.

The visit was meaningful and informative. The institution of Shalishi is similar to Khap in its composition and functioning pattern. However, in terms of rigidity and political affiliations Salishi appears far more neutral and flexible. But the attitude of keeping women aloof from its composition and regulating their personal and marital behavior forces to recognize its patriarchal traditions and oppressive practices.



From the original approximate data profiled by the study.

### B. PURENDRAPUR,

Salishi is considered to be a pro people institution among the local people of these villages. It is said to help the poor and needy. People find it to be more accessible and quick in dispensation of dispute resolutions and thus prefer to go to sailishi adalats instead of going to the state for dispute resolution. It plays active role in organisation of community functions viz. marriages etc of villagers.

- It doesn't allow inter-caste (outside tribe) marriages. However unlike Khap if marriage is completed, the villagers are of the opinion that no extreme radical step like honor killing takes place.
- If a man marries a non-tribal woman he can stay in the villages but if a woman does so she has to necessarily leave the village forever and live as an outcast.
- As far as the land transfer/holding to married women is concerned, they are allowed to take parts in the inherited property of their parents; however in most of the cases they don't claim so due to social norms and popular practices.
- Most of the villagers support the institution of Salishi for its pro people and less rigid approach.
- It appears that media reports quite exaggerated and Salishi is a more reputed and credible institution among villagers.
- It is difficult to have the final word about an age old institution after a few days visit. However the preliminary findings are encouraging and put a positive impression about the institution as the local people support it with all might.



## 2. BANKURA(Barikul, Purnapusma)

- Girls are not encouraged to be taught more, for it creates further problem in them getting married to a suitable groom. In a particular caste called ‘Sabar’ on record there is only one girl who is 10<sup>th</sup> passed in a population of 10,000 comprising nearly 50% women.
- Child marriage is still a very dominant practice among tribals in this region. Especially among girls who are married before 17.
- Women are granted with property rights however they don’t claim any such rights for the sake of their husband’s honour and for maintaining good relations with the parental family.
- In case tribal girl marries a non-tribe man her family is literally forced by the village community and Sailshi in particular to commit the post death rituals of their happily married & alive daughter/sister.
- Status of girls is very poor in this locality and is even worse among tribals. No particular dress code or restriction was either told or observed by the investigator.



Among the localities visited so far Bankura seems to be most oppressive in terms of gender discriminations. The oppressions are age old and inherent to the extents that have been accepted as natural by the villagers in general. The women were not allowed to interact with the field investigator as they practice purdah system.

## 3. BARDHAMAN/NORTH 24 PARGANA

- No major role of Salishi in the village/community manners.
- Women enjoy comparatively better position than their counterparts in other tribal localities.
- Child marriage cases are rarely heard.
- Education status is better and in sync with the non tribal villages of West Bengal.

Dowry is a practice and is accepted across the zone.

- Crime against women is negligible (on record at least) and cases of domestic violence are rarely recorded.
- Married women are granted with the property rights and it has been found in various instances that they are well about it. However, the instances of honour and societal norms play a decisive role, here again and it has been widely observed that they don't make claims in the inherited property of their parents.
- The residents appear happier and wealthier in their outlook. The locality is greener and full of people.
- As shared by the respondents, the locality appears better in terms of infrastructure viz. roads, schools & hospitals.
- Unlike previous three localities more women and girls are visible on road. No particular dress code is being observed by the young girls and women.
- Much information was not gathered from the women because of language problem also they were shy to interact with outsiders.

Visiting the selected localities in south West Bengal zone, has been an informative experience. The social sphere has been varying in terms of intensity and gravity of differences in gender and caste relations. Salishi is a ground reality and age old institution accepted widely. However, the gender inequality has been more than evident and women suffer a member of restrictions at both psychological and physical level. Marital laws norms are strict and are observed across communities, though they are more rigid and oppressive for women than that of men of these communities. Apart from keeping women away from composition and election process of the Salishi they are completely at the receiving end of its marital diktats. Women observe purdah system and are either naturally shy or not allowed to interact with outside people. As there was language problem also, it was a difficult to get their point of view by means of personal interview.

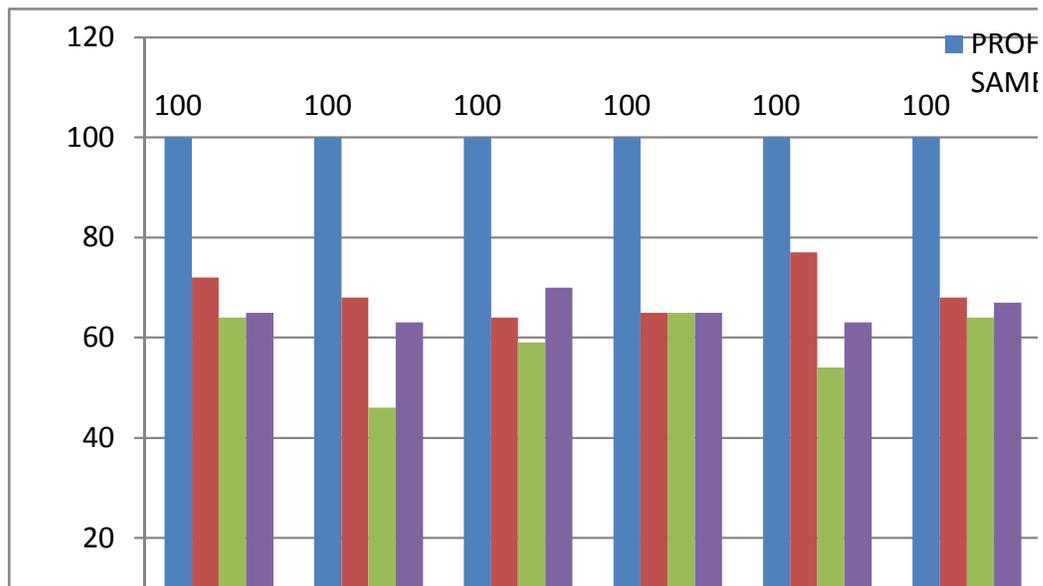
Nonetheless, it is not to forget that Salishi has major social acceptance at its credit and has contributed in making the lives of villagers easier through more than one ways viz. easy resolution of disputes etc. However, there is a lot of scope to women in their localities and increasing their claim to property ownerships as a popular practice can be one of the immediate steps to begin with.

## 4. STATE OF RAJASTHAN

### 1. BIKANER

#### A. Naikon ka mohalla in Bikaner City (*Nai (barber): a scheduled caste community*)

There are certain instance but no violence took place, rather a different practice is seen where if a boy from the community marries then it is accepted but if a girl marries she is being out-casted for life time under which she then have no relationship with any of the family members as well as the community.



From the original approximate data profiled by the study

## **B. UDRAMSAR**

Udramsar is a big interior bit interior, with a population of more than 6000 people living with majority caste-Yadav (Ahir)

- According to the Sarpanch<sup>110</sup> of the area, no inter-caste marriage has taken place in the recent past in the village. But he has heard of some instances where highly opposed by the respective families of the couple, but no violence is reported. And he cites the reason for this is fear of going to jail else according to him they should be shot dead and this only is the solution to stop this nonsense. He says there is no Panchayat as such to decide on matters like this rather they are solved or dealt with on personal planes.
- It is noted during the conversation with the people that community people are reluctant to inter-caste marriages because these “rules” are followed since long time and this forms a custom and these customs cannot be deviated with, moreover their elders were not fools that they made these rules, rather they were more knowledgeable and smarter than them and all these rules have a definite logic behind them.
- In view of the local people, when children get educated and then they don’t respect their customs and culture which forbids them to marry a person of some other caste. They are sent to study and not to love somebody. By getting into all these things they break out the trust and in addition hurt their parents to the extent that parent’s reputation among the society is damaged.
- The advancement in IT sector has led to chatting and web calling etc. this in turn corrupts the mind of children leading them to get involved in craps like love marriages.

## **C. UDASAR,**

Udasar is a roadside village, with a population of around 5000 comprising a mixture of people consisting of Rajputs, Brahmins, Jats and some Scheduled Castes.

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<sup>110</sup> Not of Panchayati Raj Institution

- According to them there aren't any cases concerning honour killing. But inter-caste marriages should be discouraged according to them.
- The people from the Udasar village were reluctant to talk over the issue and did not pay much heed to it. But the opinions and the response of the people and khap Panchayat from the Udramsar village gives an insight into the causes and reasons for the opposition towards inter-caste marriages. The Bikaner region doesn't witness violence or evidence any community court which decides on the concerned matter rather it is the elders of the family that reacts over the issues. The girls are not educated as education leads to love marriages and inter-caste marriages.
- According to the police officials, no inter-caste marriage conflicts are being reported. According to the officer concerned only minor issues come up, that is being settled at the family level. He said reluctance to inter-caste marriages are largely seen in villages and couples normally leave their families to reside separately.



## 2. JHUNJHUNU (DHOJASAR)

- People of the area are of the view that there are no Khap Panchayat like issues involved and everything is fine in his village. According to him people are ready to accept the inter-caste marriages these days, thus there are no victims to such marriages.
- According to the interaction with the local people, there have been certain instances of honour killings in the village where either both the girl and the boy concerned are killed or sometimes if the boy is outsider (belongs to some other village) then he is killed and the girl is taken away from the village and married to some other person. They also said that this is right as a girl carries the reputation of the family and a

person isn't a person without reputation and this reputation corresponds to pride attached to the females of the family.

- A five year old Instance as narrated by a resident of the village- a boy belonging to Jangid caste and a girl belonging to Jaat community were trying to run away from the village to marry, but they were caught and killed, thereafter thrown into the well. The police was bribed and it was reported as a suicide case. Recently no such case has come up in this village.

### 3. JODHPUR

- According to an Advocate<sup>111</sup> of the Jodhpur High Court a few instances of violence pertaining to inter-caste marriages are seen in Bharatpur (a District in eastern Rajasthan) area where unrecognized panchayats (probably Khap Panchayats) order the community members to outcaste the couples or the female and certain fine to be imposed if anybody talks to them. Even the family members have to disown them else they shall also face the same. In Urban areas otherwise only the family members react to such issues and in few cases violence is seen, most of them are accepted after some time.
- The role of police remains neutral as they don't interfere in the village affairs. Without any complaint being filed they avoid taking any suo moto actions.

#### A. HIMMATPURA (Rajput Majority Village)

- According to the local people a girl represents the reputation of the community and she marrying to a boy of another caste is like making fun of the community (slang



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<sup>111</sup> See interview annexed

used). Killing them brings nothing back but at least creates a sense of fear among the others to not to dare sell out the reputation of their caste/community in the world.

- The caste system is very much prevalent, and even the educated follow the rigidity of the caste system. They feel that the authorities should understand the relevance of caste system and customs should be given prevalence over anything and it is the law of the nature and should not be deviated with.
- It is because of the rigidity of the caste system that the honour killings take place.
- Women are generally kept away from public affairs as they are not educated.
- Female foeticide is very much prevalent.

#### **B. GUMANPURA (Rajput Majority Village)**

The village people refused to talk much on the matter and said there are no such Panchayats that sit on these matters and family these days accept their children as they don't have much of a choice to make. According to the women, local people, no more caste Panchayats exist in the area. It is the elderly who decide on the family related issues such as same caste marriages, love marriages or dealing with the women related issues.



#### **4. A. Siker (Kaasli, Bheenchri)**

##### **B Hanumangarh(Bhaddi, Munsa)**

##### **C. Churu(Rajpura, Modavasi)**

#### **General observations**

- Caste/khap Panchayats exists but their existence is denied to the field investigators.
- Quiet often honour killings cases occur but they are kept secret and no report is being filed.

- Education of the girls is not encouraged. At times, education of the girls is less due to the non availability of schools in near vicinity.
- Purdah system is followed
- Female foeticide is rampant because nobody wants to bar the responsibility of girl child.
- No property rights are given to the females. Most of the time they are not aware and even if they are aware, they don't claim it for the fear of straining relationship with the family.

Gender discrimination is particularly evident in education in Rajasthan where boys are more likely to attend school. The traditional place of the woman is in the home and so many parents and children consider education for girls to be a waste of time, especially when the child can instead be working or performing domestic chores. The main purpose of parents to marry their son is to get a daughter in law who can manage house hold work. The status of a daughter in law is not more than that of an unpaid servant.

Child Marriage is another way in which girls are disadvantaged. In addition to limiting educational possibilities and stunting personal development, early marriages carry grave health risks. A girl under 15 is five times more likely to die during pregnancy than a woman in her twenties; her child is also more likely to die. The custom of ghongat is very much prevalent in Rajasthan and widely followed. Women have no authority in decision making of house. They are not even allowed to talk or come in front of in laws who are males.

Girls also carry the liability of dowry and leave the family home after marriage, parents thus prefer to have male offspring. This is the major cause of rampant female feticide.

## CHAPTER -5

### SUGGESTIONS AND RECOMMENDATIONS

With extreme demonization in the media of khap panchayats, shalishi adalats and other kangaroo style courts as being extremely sinister institutions, retrogressive to the core, the research team began the quest for truth. The result of the study reinforces the patriarchal nature of the rural Indian society which follows discriminatory practices against women in general.

Before coming onto any conclusion, it becomes very important for us to understand, that khap Panchayat is an age old institutions with deep seated roots in the society where it exists. It is a different form of Panchayat. Second type of Panchayat is which is elected and constituted under the Panchayati Raj Act. Third, when a group of persons in the village assemble and discuss about relevant issues, although not elected, it is also called a Panchayat. Khap is a different unit altogether. Khap is not made of one gotra but when more than three or four gotras assemble together and discuss some issue that is called a khap Panchayat.

The Panchayati Raj Institutions as the highest form of democratic decentralisation had been constitutionally recognized fairly recently as compared to the Khap Panchayats which have been in existence. Before the Constitutional (73rd amendment act, 1992) when the Panchayati Raj Institutions got constitutional recognition, it was the Khap Panchayats that looked after the welfare of the masses, and this is the reason why khaps have so much of power on the masses. **Quick resolution of disputes, distrust of the judicial system where cases can take years to dispose off, are two major reasons why the rural masses put their trust in the kangaroo style courts which are approachable, quick and efficient and trustworthy as being one of them.** In the area of study the PI visited along with the research team, the constitutionally established Panchayati Raj Institution seems to be a failure for two reasons. Firstly, the 33% reservation provided for women is practically ineffective means of women empowerment as the women Pradhan is always a dummy representative in the highly Patriarchal society and it is the husband or any other male member of the family who is the *de facto* pradhan. **A woman pradhan only and strictly works on the aid and advice of the male members of her family who happen to be the members of the Khap Panchayat or otherwise yield high social influence.**

**Since the khaps yield control on a large number of villagers and vote en bloc shifting entire voting trends, there is very much politicization of Khap Panchayats by local politicians to sustain themselves in the political mainstream.** Politicians justify the activities of khaps/kangaroo courts by terming them as cultural institutions rooted in the past, thereby giving them a new lease of life. The institution which could have died a natural death by the concretization of the constitutionally recognized Panchayati Raj Institutions, has been revived and given some legitimacy by vote bank politics and enabled it to emerge in a retrograde avatar. Khaps as has been observed in the study are quintessentially patriarchal in nature and when it comes to substantial issues of women's rights, or to supporting the case of an oppressed woman against her husband and family members, khap Panchayats almost always take the patriarchal view. So **when it comes to crimes committed in the name of "honour," a term the onus of preserving which is exclusively rested on the shoulders of the women in society, the khaps demonstrate a typical patriarchal mind set.**

The right to love and live with a person of one's choice is a fundamental right that is enshrined in the Constitution. Each murder, therefore, signifies the victory of primitive customs over a modern, liberal and democratic society. The killings also strengthen the hand of a sinister agency, which has demonized concepts as natural as love and affection. Killing in the name of honour is a fairly common and even accepted phenomenon in the areas which have been a part of the study. **A very consistent response about such killings is the categorical denial of the involvement of khap in any honour killing. It is the family which is involved in killings done in the name of honour. The fact that if the family doesn't itself kill for honour, it would face social ostracization is a different issue altogether.**

As far the role and responsibilities of authorities, throughout the study/survey one most important aspect which was highlighted strikingly, was **the police officials defence that unless somebody complains or informs them, they are not authorized to take *suo moto* action.** In this regard, it is suggested that the role and responsibilities of the officials which are ambiguous should be made more clear and special police team/unit should be designated to take action in such type of cases where no complain has been made and the occurrence of any such type of case is brought to notice of officials by media reports or otherwise. **One reason for the inaction on the part of the police officials could very well be the political protection afforded to the khaps. As long**

as the khaps are politically protected, the police officials would continue to function in the shadow of fear of social and political implications.

During the interviews and discussion with the field investigators (In the state of Haryana, U.P.(West) and Rajasthan) most of the police officials on the promise of confidentiality of their identity, justified the suppression of girls and honour killings. They said they are also the members of the same society and before being the officials they are first the son of that family, so they have the same value system. **Such an attitude reflects the impact of culture that has conditioned the minds of these men to accept the superiority of men over womens' bodies and the suppression of womens' liberty as a matter of right.**

*What can be done to bring about change is a major challenge we face as a society on a whole. The change cannot be sudden but it has to be gradual* which is happening as can be inferred by interacting with the youth. Most of the youth especially boys who are pursuing higher education and are witnessing the outside world, such boys who are going to be the heads of the families tomorrow. **During discussion with these boys, the observation and inference of the researcher is that they will defy such derogatory and discriminatory practices. Most of them believe, having less children, is the key to such a change. They want their children to be highly and professionally educated, even if it is a daughter.** For them it doesn't make them any difference whether it's a girl or boy.<sup>112</sup>

However, the moment, you ask them about the derogatory practicing happening in their surroundings with their sisters, mothers, wives, they keep quiet as they are not in a position to change anything and out of respect they cannot speak anything against their elders even if they don't agree with them. Thus we see the change has started to begin which is very slow and gradual especially. Such a change has to be promoted by further education of the youth.

Education is also the cure for declining sex ratio. If girls are educated, self-sufficient and not a burden either on parents or on in laws; the issue of female feticide will gradually disappear. With the passage of time, the trend of having not more than two children and making them highly

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<sup>112</sup> Further gender sensitisation at primary level can further bring about major changes in overall situation of the women in the society.

educated, later both the children making their own destiny, for parents it will become immaterial whether the child is a girl or a boy.

Another stark reality that was highlighted during the study was the patriarchal mindset for boys as the successor of property. The son is the real “*waaris*” or inheritor and the daughter is ‘*paraya dhan.*’ The men justify not giving any share in property to their womenfolk, as being the custodians/guardians they have to bear all the customary expenses of the daughter/sister, namely *dahej, bhaath, chuchak* etc. Also, women do not see any point in claiming their share in the property because they know they won’t get anything and relationships would be soured unnecessarily within the family leading to a certain kind of social ostracism (the fear of being labelled a “*dayan*” or a witch who eats her brothers’ property).

Property it appears is the root cause of discrimination faced by women. The demand to ban marriages within the same sub-caste, and within the same village, or not allowing the women to choose their own partners isn’t only about preserving some part of tradition, it is also about seeking to control bodies and curbing basic human and individual freedom and liberty and most importantly seeking control of the property that might go out of reach if the woman dare to choose her partner of own choice. The men in the family feel that if women are given their due share, they will become a threat to their power.

**While talking about the role and responsibilities of the authorities, a question that naturally comes to one’s mind is State Women Commissions role. Despite the fact that a state women’s commission exists in each state, still there is so no upliftment in the status of woman, it is also a matter of further research.**

Combating such discrimination, cannot be solely about implementing the law. The political class, as part of the project of enabling that social transformation must also seek to engage these caste formations and their defenders. That all tradition isn’t good or even that it can’t remain ossified and has to evolve and absorb the rights and laws of a democratic age, is a concept that must be embedded in society at large. But solely banking on the political class for bringing about change would be rather unrealistic keeping in mind the caste and vote bank politics played in the rural and semi urban areas. What is required is mass education campaign on the part of the state

machinery, educating the masses of human rights and inculcation of values which help in doing away with the discrimination against women and encourage equality at all levels.

***A caste Panchayat has no legitimacy in the eyes of the law. It is not an inclusive agency and hence cannot have a role to play in an egalitarian society. But discarding it completely without bringing about social transformation would pose dangerous results. What is the need of the hour is creation of mass awareness through education. Mandatory education on gender issues, gender sensitization through mass education campaign by the state is what is required to combat the evils of gender discrimination.*** The patriarchal mindset that revels in unnecessary hype of “honour” residing in womens’ bodies can only be changed through the light of education. Education is the most potent tool for socio-economic mobility and a key instrument for building an equitable and just society and is the only means of bridging the gap between gender inequality.

Since the solution to all the problems leads to one solution- education, it becomes important for us to ask that why despite the constitutional guarantee of free and compulsorily education as fundamental right there is such dearth of education and schools. As it was observed in Mewat (Haryana), where girls don’t go to school because of the non-availability of the same.

Before 1976, education was the exclusive responsibility of the States, it was the Constitutional Amendment of 1976, which included education in the concurrent List. The substantive, financial and administrative implication required a new sharing of responsibility between the Union Government and the States. While the role and responsibility of the States in education remained largely unchanged, the Union Government accepted a larger responsibility of reinforcing the national and integrated character of education, maintaining quality and standard including those of the teaching profession at all levels, and the study and monitoring of the educational requirements of the country. The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. Article 21-A and the RTE Act came into effect on April 1, 2010.

In order to achieve UEE (Universalisation of Elementary Education), the Government of India has initiated a number of programmes and projects. The following Centrally sponsored programmes<sup>113</sup> are being implemented in the Education Sector under Ministry of Human Resource Development:-

- Sarva Shiksha Abhiyan(SSA)
- Kasturba Gandhi Balika Vidyalaya
- National Programme for Education of Girls at Elementary Level (NPEGEL)
- Mid Day Meal Scheme(MDMS)
- Mahila Samakhya
- Rashtriya Madhyamik Shiksha Abhiyan(RMSA)
- Scheme for setting up of 6000 Model Schools at Block level as Benchmark of Excellence
- Scheme for construction and running of Girls Hostel for Secondary and Higher Secondary Schools
- Adult Education and Skill Development Scheme
- Scheme for Providing a Quality Education in Madarsas (SPQEM)
- Scheme for Infrastructure Development in Minority Institutions (IDMI)
- National Scheme for Incentive to the Girl Child for Secondary Education.

Thousands of Crores of rupees have been allocated for the implementation of these schemes by the Central Government. Provisions of Right to Education Act are being implemented through *Sarva Shiksha Abhiyan*. Accordingly, norms have been revised / modified to align them with the requirement of Right to Education Act, 2009.

Kasturba Gandhi Balika Vidyalaya are residential upper primary schools for girls from SC, ST, OBC and Muslim communities. KGBVs are set up in areas of scattered habitations where schools are at great distances and are a challenge to the security of girls. This often compels girls to discontinue their education. KGBV addresses this through setting up residential schools, in the block itself. KGBVs provide for a minimum reservation of 75 per cent seats for girls from SC/ST/OBC and minorities communities and 25 per cent to girls from families that live below the

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<sup>113</sup> Reference Note no 17/ RN/ Ref./ August/2013, Lok Sabha Secretariat, Parliament Library And Reference, Research, Documentation And Information Service (LARRDIS) available at <http://164.100.47.134/intranet/FinalGovernmentSchemesforSchoolEducation.pdf>.

poverty line. Till 2009-10 there were 2570 KGBVs in the country. After the RTE Act came into operation, an additional 1030 KGBVs were sanctioned. How successfully these Vidyalayas have worked to reach is to be seen.

**With thousands of crores sanctioned to so many educational schemes, it is a matter of further research as to why despite the constitutional guarantee of free and compulsory education and so many attempts on the part of the State to promote education why even primary education is missing in many parts of the country also where existing the level of education in India is not up to the mark.**

However, having highlighted the importance of education in bringing about changes in the mindset of the masses, it is submitted that since change through mass education program cannot be brought overnight, we need a law to at least put a leash on the crimes which are committed against women in the name of honour. It is being strongly felt that there should be a strict and deterrent law to deal with honour killings/honour crimes. For effective implementation, the law is required to be supplemented by social mobilization to deal with such crimes.

The honour killing should be specifically and separately defined for proper action. Presently, there is no separate data on honour killing cases. If honour killing is made a separate offence it will bring clarity for the law enforcement agencies

Also it is proposed that the *Indian Evidence Act, 1872* should be amended so as to shift burden of proof to the accused in honour killing cases. The new law should provide a mandate for special police cell in each district to provide protection to couples and institutional machinery is also required for co-ordination of all stake holders. Special fast track courts should be constituted for handling cases of honour killings. There should be a joint liability principle i.e., the Khap Panchayat or any group ordering honour killing and the person who carries out the killing would be jointly liable for punishment. As highlighted by the study, it is the family that kills for honour, imposition of joint liability on the khaps even when they don't order any killing, should work to ensure that the khaps to avoid any criminal prosecution prevents any such killing or crime committed in the name of honour.

## ANNEXURE

### STATE OF HARYANA

#### **Case study 1.**

#### **Mr. Jaitirathdhaiya (MLA, sonipat)**

Gender: male

Age: around 60

As we further moved in our journey we entered Sonpath at (Rai), where we met Mr. Jaiteerath presently (MLA). Whereby Dr. Nuzhat Parveen Khan had a discussion with him regarding various issues, following are the questions and answers recorded:

Question 1. Is there any formal method of electing khaps?

Answer 1. No, there is no particular way of electing khap. When a panchayat is of particular caste and reputed members of that caste come together to discuss and decide on particular issue it's called khap. eg. dhaiyakhap, kashyapkhap Malik khap etc to name a few.

Question 2. Why khap system is famous?

Answer 2. He told khap is a famous system since ancient time, and even today people of Haryana believe in it, they believe it's a body which always guides about social issues in right manner. Members are hereditary. There are many customs developed gradually through this body which are beneficial for society, like

- Taking minimum members in gathering (barat) in marriage from boy's side.
- Not taking Dowry more than Rs.1.
- No marriage in same gotra.

Question 3. Do Panchayat have authority to order honour killing?

Answer 3: Certainly not, panchayat is merely an advisory body, it only tells what is right religiously. Whatever honour killing instances has taken place, always it's the family member who have taken this step, khap never orders such things.

Question 4: Are women members of khap?

Answer 4. Women are never members of khaps, in fact in Haryana women even cast their vote during election on advice of male member of family, because it's the male who have to go out and deal with people, so he is the better judge of who shall form government.

Question 5. What is the status of children born out of wedlock?

Answer 5. Firstly such wedlock's are not permitted, but if the marriage takes place they face boycott from family as well as community, but children born out of wedlock are called legitimate.

Questions 6. What are the property rights of women?

Answer 6. Women get equal share in property which they generally relinquish at time of their marriage.

Question 7. If they want to take it?

Answer 7. Usually it does not happen, but if some greedy girl\_wants to take it then she loses love, affection and support from her parents and brother.

Finally this session with Mr Jaiteerath finished on this note.

## **1. SONIPAT (KAKROI)**

### Case study- 2

Mahender Singh (progressive farmer and social activist)

Gender: male

Age: 76

Now we moved to *Kakroi* village where we were going to meet Mr Mahendrasingh who had given property to her daughter, and taken a lot of effort to educate his daughter, she lives in New Zealand. Again he was interviewed by Dr. Nuzhat Parveen Khan on various women related issues, and role of khap in society.

Question 1. Do you educate girls?

Answer 1. Yes, certainly we send our daughters to school. But over all education system has deteriorated in India. The whole system is corrupt. Families send daughters for mid day meal, and many a times don't provide education resources to daughters.

He told an instance that once a group of girls came to him, with a problem that the auto riksha fare has increased from Rs.7 to Rs.12 and it was becoming difficult for them to go school. As they are girls and very limited pocket money is given to them where as boys don't face such problem. This shows the motivation level of parents to educate daughters.

Question 2. Is there problem of female foeticide in village?

Answer 2. Because everyone adopt wrongful means to get feotes sex tested, if its girl they get it aborted.

Question 3. Then why girl child ratio is so low in your state?

Answer 3. Because its old believe that girl has to finally go to other family, there are many responsibilities attached. Even every mother's first desire is to have son.

Question 4. Why such kind of feeling, don't you think it's wrong?

Answer 4. Yes, such feelings should change, girls are equally valuable. In fact boys many a times mistreat parents but girls never do that, even when they get married they try to maintain balance.

Question 5. Do you have a daughter?

Answer 5. Yes. I have one daughter and two sons. Among all, my daughter is most educated. She always wanted to pursue higher studies, for which I had sent her to Russia to study medicine, but as the climate of that place didn't suit to her she had to return early, and then she studied medicine from India. Now she lives in New Zealand, she visits us each year and contributes in development of our family.

Question 6. Have you given her share of property?

Answer 6. Yes, I have given property to her. Even after her marriage it is in her name.

Question 7. Do you think decisions given by khap are correct?

Answer 8. If we see our culture, certainly decision given by khaps is good, as they are for social stability.

#### OUTCOME OF THE INTERVIEW

Those who are in powerful position act normally, their rules are run only on the people who can be suppressed and subordinated.

Further we interviewed daughter in Law of Mr Mahender Singh, she was sitting with her teenager son. Generating a discussion with young boy the researcher asked him, what is he studying, what does he want to become, how many brothers and sisters does he have, Again in this family only two boys. Though we wanted to talk to her and her son but Mr Mahender Singh came and sat there only. Following are some questions which I asked her

Question 1. Are girls sent to school and colleges?

Answer1. Yes, girls are sent to school and colleges.

Question 2. Do you support khaps?

Answer 2. Yes, khaps constitute reputed member of society and they decide rightly on some important aspects of life.

Question 3. Why is female foeticide so prevalent in Haryana?

Answer 3. No Answer

Question 4. What is the position of women in Haryana?

Answer 4. It is fine.

## OBSERVATION OF THE INTERVIEW

Women are generally suppressed and not allowed to speak.

Later we moved to village Tihada, where we generated FGD with a group of women varying from age group of 20 to 70 years.

### **2. SONIPAT (TIHADA)**

#### Case study- 3

Person in FGD (focussed group discussion): all females of various age groups

Question 1. They were asked how khap panchayat respond to their problems.

Answer 1. They told khap panchayat address social problems based on custom practiced from long time.

Question 2. Do girls go to school and later to college?

Answer 2. Very few girls go to the schools and colleges, as they have to help in household chores as mothers go to the field.

QUESTION 4 Do you want your daughter should go to school

Question 3. Why there is more female foeticide?

Answer 4. Girls are seen as a burden on the family therefore, nobody wants them.

Question 4. Do you get right in property?

Answer 4. As such girls are given rights in property. But we have to relinquish it at time of marriage.

Question 5. If you don't relinquish it what happens?

Answer 5. If girl takes her property, her parents as well as siblings boycott her as they believe that she has gone against society norms.

Question 6. Do you get your husband's property in name?

Answer 6. No, husband gives monetary support but doesn't give property in name of the wife.

Question 7. Do you think you should get the share in property?

Answer 7. Certainly our share shall be given in our name. Otherwise we would not get any mental peace and would always be worried about our economic condition. There is nothing in our name and we remain dependent on our husband, even after working.

Question 8. What type of work you do?

Answer 8. We manages whole agriculture, animal rearing and house hold as well. Many men here simply play cards, drink alcohol and are living on the work of female.

Question 9. Do you earn out of your work, if not, who keeps it?

Answer 9. Yes, we earn out of our work but generally husband takes that money as a right, they always want to make us financially dependent on them.

Question 10. Do these Panch work for your welfare?

Answer 10. Some time they certainly work for the welfare, but many times very important problems are not addressed by them, like we have asked them to provide a doctor in the village, as there is no doctor over here and especially in time of delivery we face grave problems. At least a trained nurse should be present here.

Question 11. Do you vote?

Answer 11. Yes, we vote.

Question 12. How you decide whom to vote?

Answer 12. We vote to those whom our husband says.

After this discussion we moved to Panipath our next destination. There firstly we went to village UJHAA

### **3. PANIPAT (UJHAA)**

Here our interview was scheduled with sarpanch of Village who was a lady. As we went to their house, husband of that lady came; he said his wife is busy in some household work so he will talk of her behalf. Dr. Nuzhat Parveen asked certain questions to....

#### Case study 4

Research methodology: interview method

Question1. What are khaps?

Answer 1. Khaps are caste based panchayat, which decides on various social issues for people welfare.

Question 2. What is condition of female in society?

Answer 2. It's good

Question 3. Why is problem of female foeticide so rampant in Haryana?

Answer 3. No, there is no female foeticide.

Question 4. What is gotra?

Answer 4. It's like belonging to same family, in which yours, your mother's, your grandmother's gotra marriage is prohibited.

Question 5. If someone does that marriage, what is the attitude of khap?

Answer5. Khaps are merely advisory body, moreover the family of the married couple, for their honour *suo moto* decides the punishment.

- Which is sometimes boycott?
- Sometimes honour killings.

Question 6. What are the property rights of female?

Answer 6. Girls get an equal share in the property which she generally relinquishes before her marriage.

Question 7. If she wishes to take the share in the property?

Answer 7. She can take it, but she will lose love and affection from her parents and brothers.

Question 8. If there are only daughters, then what happens.

Answer 8. Then parents shall adopt son.

Question 9. If they don't adopt a son?

Answer 9. At the wish and will of parents it can be given to girls. If she wants to keep good relation with family of chachaetc she can give it to her cousin male men.

#### **4. Adbar (Mewat)**

Females in the village were all generally of the view that girls can work at home as ladies have to go to the fields.

#### INTERVIEW WITH VILLEGE GIRL

##### Respondent 1

NAME: SHAMIMA

AGE: 17

QUESTION 1. Till which class you have gone to school.

ANSWER 1. I left school in class X.

QUESTION 2. Why?

ANSWER 2. I had to do house hold work and my parents didn't wanted me to study further.

QUESTION 3. You also wanted to leave study?

ANSWER 3. No, I wanted to continue study, but I have no support of family.

Respondent 2

NAME: Shaheen

QUESTION1. Till which class have you studied?

ANSWER 2. Class VIII

QUESTION 2. Why have you left studying?

ANSWER 2. Parents didn't want me to continue, I still want to study more.

Respondent 3

NAME: Mufeeda

QUESTION 1. Till which class have you studied?

ANSWER1. I am doing my B.A from college.

QUESTION 2. Do you like to study?

ANSWER 2. Yes.

QUESTION 3. What is your favourite subject?

ANSWER 3. English I like to study that.

Most of the girls in this village were keen on studying further and were highly vocal in pointing out the family's non willingness in sending them to school sometimes for personal reasons or because of societal pressure.

**5. Revasan (Mewat)**

TARGET GROUP: WOMEN

Respondent 1

NAME: Anjum

QUESTION 1. Do you face difficulty in studying?

ANSWER 1. Yes, we face much difficulty in studying.

QUESTION 2. Do you want to study?

ANSWER 2. No, I don't want to study as I am much busy in household work.

QUESTION 3. Is this the only reason you don't want to study?

ANSWER 3. No, the village doesn't have sufficient schools and colleges. So, event if we want we face lot of difficulty.

Respondent 2

NAME: Ruksar

QUESTION1. Do you want to study?

ANSWER1. Yes, I want to study further.

QUESTION 2. What you want to become.

ANSWER 2. I don't know.

## **WESTERN UTTAR PRADESH**

### **1. MUZZAFFARNAGAR**

Respondent – Mr. Dusyant Singh Thakur

Age – 60 Years

Class - Upper

Profession – Lawyer ,Muzaffarnagar Court.

Enquired Topic – Relevance and significance of Khap in changing scenario.

QUESTION1. Does khap exist in society?

ANSWER 1. Khap does exist in the society here but is applicable and restricted mainly to the lower class people.

QUESTION 2. Do higher class people abide by diktats.

ANSWER 2. The well educated higher class people to a large extent do not abide by its diktats as strictly as the lower class people.

QUESTION 3. Why do lower class people abide?

ANSWER 3. Mainly due to their financial incapacity to influence others and lack of ability to shift anywhere the lower class people are forced to abide by its diktats strictly which is not simply the case with the upper class people.

QUESTION 4. In previous decade how many cases have been there?

ANSWER 4. In previous 5-10 years there have been barely 5-7 cases which can be categorized under Khap excesses.

## **2. LISAD VILLAGE.**

Place/Area – Lisad Village, Western U.P, Muzaffarnagar.

Respondent – A total of 5

Main Respondent – Baba Harkishan Singh, Age- 75, Designation – ChoudharyKhap

Khap Panchayat name – Gatwara (comprises 52 village)

QUESTION1: Why do you follow khap?

ANSWER 1. It's an age old tradition continuing since our forefathers hence all of us follow it with all our heart & soul.

QUESTION 2. What does choudhary signify?

ANSWER 2. The designation of choudhary is the supreme in any Khap. The post is a hereditary one and the decisions of choudhary are final and binding on all villages/villagers coming under that Khap.

QUESTION 3. How many villages does a khap consist?

ANSWER 3. Baba Harkishan Singh is choudhary for nearly 30+ years and his Khap (Gatwara) comprises 52 villages under it. Though it is not a fixed number and different Khaps happen to have different number of villages viz. 32,52,82 etc.

QUESTION 4. Why khap recommend honour killing?

ANSWER 4. Earlier (nearly 15-20 years ago) Khap Panchayat were very prominent and widely known for committing honor killings. However over the time this trend has slowed down and number of cases reduced significantly with intensity of Khaps decreasing sharply due to migration & many others factors.

QUESTION 5. What is impact of khap on status of women?

ANSWER 5. Khap promotes gender equality; it safeguards the status of women. Girls and women feel safe due to existence of khap and diktats.

QUESTION 6. Is there any dress code for women?

ANSWER 6. No, there is no specific dress code for women.

QUESTION 7. What rules are followed in same gotra marriage?

ANSWER 7. No girl & boy out of there 52 villages can marry with each other for they belongs to the same Gotra. If done so they will be boycotted by the society as well as their families. If either of their families continues to support them, then that family will also be boycotted by the entire society. There is nothing like honour killing and the social boycott serves the purposes of Khap. 5-10 such cases of social boycott has been witnessed in previous 5-10 years.

(i) Khap's History –

- a. It's an age old tradition continuing since our forefathers hence all of us follow it with all our heart & soul.

- b. The designation of choudhary is the supreme in any Khap. The post is a hereditary one and the decisions of choudhary are final and binding on all villages/villagers coming under that Khap.
  - c. Baba Harkishan Singh is choudhary for nearly 30+ years and his Khap (Gatwara) comprises 52 villages under it. Though it is not a fixed number and different Khaps happen to have different number of villages viz. 32,52,82 etc.
  - d. Earlier (nearly 15-20 years ago) Khap Panchayat were very prominent and widely known for committing honor killings. However over the time this trend has slowed down and number of cases reduced significantly with intensity of Khaps decreasing sharply due to migration & many others factors.
- (ii) Khap's impact on status of women in their village –
- a. Khap has no impact on gender inequality rather it has facilitated gender equality many a times.
  - b. Girls and women feel safer due to Khap and its diktats and are promoted to complete higher education viz. B.A, M.A, Ph.D etc.
  - c. No specific dress code for women and they are free to wear whatever they chose.
- (iii) Same Gotra marriage and the Khap's rule –
- a. No girl & boy out of there 52 villages can marry with each other for they belongs to the same Gotra.
  - b. If done so they will be boycotted by the society as well as their families.
  - c. If either of their families continues to support them, then that family will also be boycotted by the entire society.
  - d. There is nothing like honor killing and the social boycott serves the purposes of Khap.

- e. 5-10 such cases of social boycott has been witnessed in previous 5-10 years. However such instances have significantly reduced now and the young boys & girls have become respectful of the Khap's rule.

### **3. SISOLI VILLAGE**

Date – 26/04/14

Place – Village Sisoli, Muzzaffarnagar U.P

Duration of Visit - 1.5 to 2hour.

Respondent - Shri NareshTikait , Age- 55 years (Choudhary of Balyan Khap)

QUESTION 1. How many khaps are comprised in khap?

ANSWER 2. BalyanKhap comprises of 82 villages within it.

QUESTION 3. How many cases of honour killing has been there in past 10-20 years?

ANSWER 3. As per choudhary there has been nearly 100 cases of honor killing in the past 10-20 years.

QUESTION 4. Is balyan khap very harsh?

ANSWER 4. The rigidity and strictness of BalyanKhap is well known across in the near about villages.

QUESTION 5. What kind of punishment is inflicted on those who violate the rule of khap.

ANSWER 5. If girls and boys of the same Gotra i.e. same Khap commit marriage their only punishment used to be was death. However, over the time this trend has softened a bit and social boycott of the guilty persons and their families have become a popular culture.

QUESTION 6. At present how many families are facing problem?

ANSWER 6. At present there are two families facing social boycott in the village.

QUESTION 7. What validity do you give to the decision of court?

ANSWER 7. As per cohudhary the Supreme Court of India has resulted in constituting few useless rules like same gotra marriages allowed. But these continue to be irrelevant in their Khaps.

### Recent Case

The daughter of a Pandit's Family married with a Jat Boy. Now the Pandit's family has run away from the village but the Jat's family continue to reside in the village however, they face widespread boycott by all village the members.

#### **4. ASARA VILLAGE.**

Date 26/04/14

Place – Asara Village, Bagpat District U.P

Duration of interaction – 1.30 P.M to 3.15 P.M

Respondent – Village Men

Composition – Muslim 80%, Hindu 25%

#### Background

Based on widespread media reports and surveying secondary literature like Jagran Post news dated 13<sup>th</sup> July 2012 which loudly establishes Asara Village as a place of Vehement Khap Diktat the investigator visited the said village community to witness the ground reality and collect empirical evidence in support of the same.

Question 1. What freedom do women enjoy in every day activity?

Answer 1. Any woman below 40 years of age is not allowed to go for shopping nor can she use mobile phone as per the diktat of local village Panchyat.

Question 2. What reactions are there in cases of love amrriages?

Answer 2. Any sort of love marriage is strictly prohibited and no member of the village community can be allowed to choose his/her life partner which is exclusively a prerogative and domain of the elders.

Question 3. What is the view on education of girls?

Answer 3. There is no restriction to the education of girls and women. They are allowed to complete their education freely till they get married by their parents.

Question 4. Any particular dress code women has to follow?

Answer 4. Women and girls have to follow dress code as set by the village Panchyat and they can't wear jeans or any western looking clothes in public or in front of elders.

## STATE OF WEST BENGAL

### **1. SHANTI NIKETAN BOLPUR, BIRBHUM**

Date- 07/05/14

Duration- 09:00am to 05:00pm

Respondent- Mr. J.K. Baisya (Director, Elmhirst Institute of community studies, Shantiniketan, Birbhum West Bengal. India.)

Question 1. What is the role and function of salishi?

Answer 1. Salishi is a form of informal village community which comprise all the residents of village as its members. Salishi is headed by an elected representative of all the male adult members of a village. There is no participation either in its election or in its functioning pattern. Salishi looks after and aims to resolve and issue arising with or among village members. It is an extra judicial institution and, its existence is neither approved nor recognized by formal law.

Question 2. What are the shalishi dictates on marital issue?

Answer 2. i. It allows its male members to marry any non-tribal women/girl.

ii. It strictly prohibits a tribal woman/ female to marry a non-tribal man. In case she marries a non-tribal man she can stay away outside the village territories but not allowed to integrate with her tribal roots.

### **2.PURENDRAPUR, BIRBHUM**

Date:- 08/05/14

Duration:- 09:00am to 05:00pm

Respondent:- Mr. GopalTuddu (Retd. School teacher, Purendrapur)

Question 1. What is the role and function of shalishi?

Answer 1. Salishy is a pro people institution of their villages. It helps the poor and needy.

Helps in easy resolution of village conflicts & issues. Plays active role in organisation of community functions viz. marriages etc of villagers. It doesn't promote/allows inter-caste (outside tribe) marriages. However unlike Khap if marriage is completed, it doesn't take radical extreme steps.

If a man marries a non-tribal woman he can stay in the villages but if a woman

### **3. BANKURA**

Date :- 09/05/14

Duration:- 09:00am to 05:00pm

Major Respondent :- Mr. Hirak Mukherjee (Electronic Media Reporter 24hour)

Major Findings:-Salishy on Gender

QUESTION 1. Why are girls not encouraged to taught?

Answer 1. Girls are not encouraged to be taught more for it creates further problem in them getting married to a suitable groom.

Question 2. Does child marriage exist?

Answer 2. Child marriage is still a very dominant practice among tribals in this region. Specially among girls who are married before 17.

Question 3. What about property rights of women?

Answer 3. Women are granted with property rights however they don't rights however they don't claim it for the sake of their husband's honour.

### **4. WARDHMAN**

Date:- 10/05/14.

Duration:- 09:00am to 06:00pm

Major Responndent: Mr.Chandan Gosh, Resident, Wardhman District.

Question 1. What is the role of shailshi?

Answer 1. No major role of Salishi in the village/community manners.

Question 2. What is the position of women?

Answer 2. Women enjoy comparatively better position than their counterparts in other tribal localities.

Question 3. Do you have child marriage?

Answer 3. Child marriage cases are rarely heard.

Question 4. What is educational status of women?

Answer 4. Educational status is better and in sync with non tribal villages of West Bengal.

Question 5. What about dowry system?

Answer 5. Dowry is a practice and is accepted across zone.

Question 6. What is the position of crime against women?

Answer 6. Crime against women is negligible (on record at least) and cases of domestic violence are rarely recorded.

Question 7. What is the property rights of women?

Answer 7. Married women are granted with the property rights and it has been found in various instances that they are well about it. However, the instances of honour and societal norms play a decisive role, here again and it has been widely observed that they don't make claims in the inherited property of their parents.

## STATE OF RAJASTHAN

### 1. **UDRAMSAR, BIKANER** (majority caste-Yadav (Ahir))

Case study 5

Sarpanch

HemantYadav

Question1. What is the response of inter caste marriage in your society?

Answer 1. Till now I have not witnessed any inter caste marriage but I have heard some highly opposed inter-caste marriage in past. Although even in those cases violence are not reported.

Question 2. What is your view on inter-caste marriage?

Answer 2. It shall never be encouraged, in fact the people shall be shot dead so that an example is created.

Question 3. Do you have any panchayat to solve such issues?

Answer 3. No, there is no panchayat to solve such issues, they are solved on personal level by family members.

Question 4. What do you think are the major reasons inter caste marriage have took place?

Answer 4. I think development of education and more use of technology has encouraged more inter-caste marriage. Children get educated and then they don't respect their customs and culture which forbids them to marry a person of some other caste. They are sent to study and not to love somebody. By getting into all these things they break out the trust and in addition hurt their parents to the extent that parent's reputation among the society is damaged. The advancement in IT sector has led to chatting and web calling etc. this in turn corrupts the mind of children leading them to get involved in craps like love marriages.

Question 5. Why are you so against the inter-caste marriages? What is the harm in marrying inter-caste?

Answer 5. People are reluctant to inter-caste marriages because these "rules" are followed since long time and this forms a custom and these customs cannot be deviated with, moreover our elders were not fools that they made these rules, rather they were more knowledgeable and smarter than us and all these rules have a definite logic behind them.

## **2. UDASAR, BIKANER**

### Case study 6

Sarpanch (Pana Devi): Not Available/ answered by Husband on her behalf.

Question 1. What is your view on inter-caste marriage?

Answer 1. No response.

Question 2. What is the reaction of people on inter caste marriage?

Answer 2. People want to follow what elder have taught. And our elders don't encourage inter-caste marriage.

Question 3. Are there any Honour killings in the area?

Answer 3: There aren't any cases concerning honour killing.

### 3. DHOJASAR, JHUNJHUNU (Majority Jaat)

#### Case study 7

**Respondent no. 1:** Hanuman Prasad

Question 1. Is there any khap panchayat?

Answer 1. No there is no khap panchayat that exists.

Question 2. What is your view on inter-caste marriage?

Answer 2. These days people have started accepting inter-caste marriages.

**Respondent no. 2.** Local people

Question 1. What is meant by honour killings?

Answer 1. In case of inter-caste marriages the honour killings are witnessed. There are many instances in which honour killings has taken place.

Question 2. What is the role of police in these instances?

Answer 2. Police sometimes work genuinely but mostly police worker are such that they support such killings.

### 4. JODHPUR

#### Case study 8

**Respondent:** Dinesh Godara (Advocate Jodhpur High Court)

Question 1. What is your view on inter-caste marriage?

Answer 1. There are few instances of violence pertaining to inter-caste marriages are seen in Bharatpur (a District in eastern Rajasthan) area where unrecognized Panchayats (probably Khap Panchayats) order the community members to outcaste the couples or the female and certain fine to be imposed if anybody talks to them. Even the family members have to disown them else they shall also face the same. In Urban areas otherwise only the family

members react to such issues and in few cases violence is seen, most of them are accepted after some time.

## **5. HIMMATPURA, JODHPUR**

(Rajput Majority Village)

Sarpanch: Unavailable

Respondent: Chain Singh(educated elder member of society)

Question1. Why there is so violent and bad response to inter-caste marriage?

Answer 1. The girl represents the reputation of the community and she marrying to a boy of another caste is like making fun of the community (slang used). Killing them brings nothing back but at least creates a sense of fear among the others to not to dare sell out the reputation of their caste/community in the world. According to him killing is the least punishment one can have as it gives them moksha, they are supposed to be treated as animals (slang used) because their act is no less than an animal act. According to him this is kalyug (the last phase of the world-as per Hindu mythology) and there is going to be no rebirth and everybody has to pay for their sins in this yug (phase) only and such marriages are no less than a sin. Lastly he said people like me who have got educated should try to make the authorities understand the relevance of caste system and customs should be given prevalence over anything and it is the law of the nature and should not be deviated with.

## **6. GUMANPURA, JODHPUR**

(Rajput Majority Village)

Respondent 1.

Sarpanch

Question1. What is your view on inter- caste marriage?

Answer 1. Nowadays parents mostly accept inter-caste marriage, there is no punchayat much required.

Respondent 2.

School teacher (science)

Question 1. What is your view on inter-caste marriage?

Answer 1. First of all the word inter caste in itself doesn't exist. She believes that all humans are same. Caste system started on the basis of karma (work) but latter transformed its basis being by birth which is wrong. Inter caste marriages are good for the growth of society, and nations. Love marriages are mostly inter-caste marriages. If there is complete harmony, faith, sustenance power, patience and understanding between the couple, there is no harm in this kind of marriage. They should be ready to face the opposition of family and society and independent too. Such marriages are good for their offspring. Heredity illness becomes lesser in them. By this dowry system can be finished, lesser cases for dowry harassments. Castiesm will be affected too; people will be more human and global. This is how humans get wider paths and not being narrow minded. This is how society grows up and then the nation.