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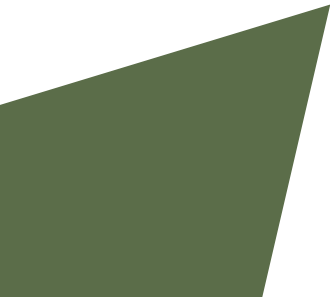
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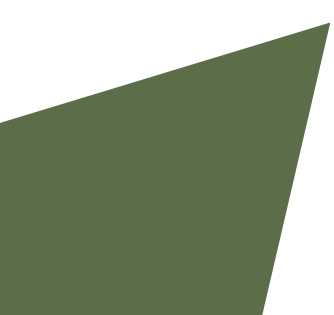
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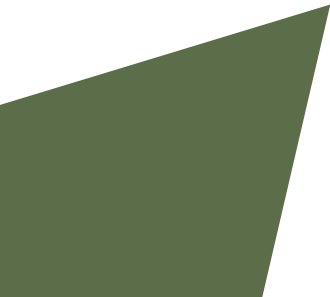
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Khap Panchayat: Informal Justice vs. Formal Justice

Samarth Pathak

ABSTRACT

The Indian justice system has been proving its importance right from the beginning. Even before the formation of a formal judicial system, giving justice to needy once was the top priority. The theory of giving justice can be traced from the time of Lord Rama, and it is prevalent till today's time. In the modern era, some people claim that justice is lost and the judicial system is completely destroyed, but still in case of dispute judicial system works as an important dispute resolution system. One of the dispute resolution systems which were present even before the establishment of the formal judicial system was Khap Panchayat. Khap panchayat has been acting as an informal judicial system from a long time and is still prevalent in today's time. With the passage of time, questions have been raised on the working of Khap panchayat and on its decision-making system. In this article, we will discuss the legality of Khap panchayat and its requirement in the present era.

KEYWORDS: Khap, Gotras, Panchayats, Honor killings, Patriarchal, Indian judicial system, Hindu marriage act, Formal justice, Informal justice, Freedom of expression, Human rights, Social Group, Social Boycott.

Liberty and Dignity are two important aspects when it comes to the Assertion of choice. Based on which the French philosopher and thinker, Simone Weil, has said: “Liberty, taking the word in its concrete sense consists in the ability to choose”¹. Everyone should be given the right to take up decisions for himself and with utmost Dignity. When a person’s ability to choose or his dignity is crushed in the name of society’s honor and customs, it does not affect that person only rather it affects the whole society.

WHAT IS FORMAL AND INFORMAL JUSTICE?

To understand this topic, it is essential to get a sense of what is formal justice and what is informal justice. Formal justice is a type of justice that emphasis on legal misconduct. They are generally governed by rules and regulations laid down by the state for the welfare of the public. These laws are indiscriminatory in nature, which means it is same for each and everyone present in the society. Violation of rights laid down by state does not lead to violation of fundamental rights of the person who has violated it. More importantly, these rights are enforced and regulated by courts or anybody who has received legal authority from the courts. At the same time, informal justice is a type of justice which emphasis on moral misbehavior of any of the citizen. Decisions given in the informal justice system are by an individual or an organization that does not have any authority to give decisions. Supreme Court of India often refers to the informal justice system as Kangaroo courts². There are recent cases of a lot of discriminatory acts in informal justice. Punishments under the informal justice system are generally violative of fundamental rights of citizens³.

WHAT IS KHAP PANCHAYAT

Khap Panchayat is a form of the informal justice system, whose essence can be traced back from the time of rig Veda. Khap Panchayat can be understood as a political-social group consisting of elderly people of a particular community generally upper cast. Khap does not have any legal status. Khap governs their dominance by consolidating their power over an area consisting of a cluster of villages. They form rules and regulations to govern a cluster of villages in the name of traditions and customs. Khap Panchayat administers khap formed under the same gotra in the villages it covers. According to Khap a girl and boy cannot marry in the same gotra as they are brother and sister as per traditions and sentiments. They still consider love marriage as a great sin and have declared it a taboo in the village. This was just an example, there are more such issues which are

¹ <https://indiankanoon.org/doc/92846055/>

² <https://www.news18.com/news/india/alerts-197-366687.html>

³ <https://www.chegg.com/homework-help/describe-differences-formal-informal-justice-systems-fair-tr-chapter-16-problem-1ctq-solution-9781133714446-exc>

taken by Khap panchayat. Mostly Khap exists in the Haryana, Punjab, Uttar Pradesh and some parts of Rajasthan and Madhya Pradesh.

HISTORY OF KHAP PANCHAYAT

How Khap Panchayat got such importance is a question that generally triggers in our mind. The biggest reason for the rise of an informal organization is the failure of the Indian judicial system in providing adequate justice or justice well in time. It is becoming difficult for common people to obtain justice from courts. Hence, they prefer obtaining justice from the informal justice system like Khap Panchayat. Khaps are present in the village area, where incomes of residents are comparatively low. Here comes another reason why village people prefer to go to Khap Panchayat instead of Courts. It takes a lot of investment in fighting a case which becomes difficult for village people to bear. Khap provides justice to them at minimal or no cost. The government has provided for free legal aid to the citizen, but the proficiency of legal advisor or an advocate is significantly less than other advocates. Another reason because of which villagers prefer to approach Khap instead of court is the time taken by the court in delivering justice. In general, it takes nearly 5 to 10 years in getting any decision, sometimes it went up to the whole life of the aggrieved. Time plays an important role in getting justice as Professor Walter Savage Landor once said "Delay of justice is injustice". At the same time, Khap takes 1-2 hearing in giving decisions. Therefore, villagers prefer to approach Khap instead of approaching courts.

Generally, courts are located very far from the villages, which make it difficult for villagers to reach court regularly for hearing. It adds to the agony of the villagers as they had to bear travel expenses for routine up-downs to the court and also leaving all their work to attend the court hearing. Khaps are present in their village only, so they do not have to travel much, which reduces the cost of traveling and time spent in the court. Other than that courts have a fixed hearing time, and you have to be present at that time, but time factors do not apply to the Khap. As the Khap are local people, they conduct a meeting in the evening or when both parties are available. Evidence plays another important role in the selection between Khap and courts. More often lack of evidence leads to discharge to the person who has committed any wrong. But in case of khap more than evidence, the statement of both the parties plays a more important role. Similarly, clever advocates always find a loophole in the law and try to mislead the court. It is difficult for the villagers to either find loopholes or to counter the argument of an advocate. They neither can appoint an advocate to represent them because of monetary constraints. Khap does not work on rules mentioned in any statutes it works on common consciousness of the members of khap, their traditions, customs, values, etc. therefore according to Khap statements of both the parties are

important more than any law. Hence no one can linger upon loophole to avoid consequences. As Khaps are the resident of the same village, they have a better understanding of the situation and they can give judgments which are appropriate according to the traditions of the village. Also as the Khap consist of senior members of the same village, every person tries to abide by their decision and tries to follow it. According to local residents of the village, all these reasons collectively result in the rise of informal organizations like Khap Panchayat which provides quick justice effectively and appropriately.

REALITY OF KHAP PANCHAYAT

If khap panchayat is doing such a wonderful act, then the question arises that why Khap Panchayat is in so much limelight? Why there are so many allegations on the working of Khap Panchayat. Reality is different from what can be seen. In recent times dirty forms of Khap are easily visible. There are so many cases in which khap Panchayat has given honor killing punishment to the wrongdoer and sometimes even to the victims. In the recent case *Shakti Vahini vs. Union of India*⁴ issue was raised in the court that whether honor killings undertaken by Khap panchayat are legal⁵? It was found out that honor killing by Khaps is given in cases dealing with 1) Infidelity 2) Asking for divorce 3) Loss of virginity outside marriage 4) Falling victim of rape 5) Refusing arranged marriage 6) Leaving marital home without permission 7) Causing scandal or gossip in the community 8) Premarital pregnancy 9) Demanding custody of children after divorce 10) Having unapproved relationship⁶.

Punishments other than honor killing given by Khap Panchayats Are Female Feticide, forced marriage, murder, brutal treatment like beating, shaving head, or putting the victim on fire in the full public gaze, social boycott, etc. the basis of decision making of Khap panchayat is old religious beliefs. Sometimes these orthodox believes does not stand with the modernization of the current era.

On the 5th august, 2015 petition was filed in the highest court of India i.e. Supreme court of India by a 23-year-old resident of Baghpat district of Uttar Pradesh named Meenakshi Kumari. Brother of Meenakshi married to the girl of Jaat community and ran away with her as their parents were against this marriage. As a result, Meenakshi and her 15 years old sister had to run away from the house because of fearing violence resulted because of the act of her brother. On 30th July Khap ordered and burned their house. On the same day khap formed by the all-male village, the council

⁴ *Shakti Vahini vs. Union of India* (2018) 7 SSC 192

⁵ <https://lawtimesjournal.in/shakti-vahini-vs-union-of-india/>

⁶ <https://indiankanoon.org/doc/92846055/>

ordered punishment to rape Meenakshi and her sister and to make them wake naked in the village with black ink on their face. This punishment was given because their brother ran away and married a Jaat girl.

Another brother of Meenakshi named Sumit Kumar told that “people take the decision of khap very seriously and now no one is ready to listen to them, even police is not helping them. Village people are even more aggressive now after they went to the Supreme Court for protection⁷.

Another case that shows the atrocities of khap in the village is the Ved pal and Sonia case. Ved pal used to run the clinic in Haryana. His clinic was in front of the house of Sonia. Eventually, they both fell in love with each other. Sonia’s parents rejected the idea of getting both married to each other. They both decided and performed wedding rituals after running from their respective houses. They belonged to the same caste and different gotra, so they didn’t find any reason not to get married. According to beliefs marriage should be in the same cast and in different gotra. Sonia’s village was adjacent to the village of Ved’s village. Both were unaware of the fact that according to the age-old believes people from the adjacent village were considered as the people of the same tribe and were treated as brothers and sisters. Khap considered it as a serious disrespect to the traditions and ordered capital punishment to both. They both ran away to save their lives. After some time Sonia’s parents took her home for few days. When Sonia didn’t return for the weeks, Ved approached her and got to know that she was harassed in the house and was kept locked in one room. Ved approached the court, the court ordered him to bring Sonia back. He went to her house with 4 policemen, as soon as they reached her house they saw a mob running towards them. Seeing that policemen ran away leaving Ved alone in the house of Sonia. Mob attacked Ved dragged him to the center of the village and hanged him to death⁸. The court punished the head of khap on the basis that, khap does not carry any right to take away someone’s life. They have no legal authority to do so and any act of taking away the life of someone whether in the name of providing social justice will constitute the offense of murder. After a few years of the judgment given by the court in this matter, the mother of Ved told the suffering that their family is still facing. She said even though Judgment provided some justice to the death of her son but has not changed the way village works. Their family is still the victim of the social and economical boycott⁹. These kinds of things arise fear in the minds of youth; they have a complete authority to take a decision regarding things which affects their life. Constitution has provided fundamental rights to each and every citizen of the country; everyone has a right to live a life with respect and dignity.

⁷ <https://time.com/4014444/india-khap-panchayat-two-sisters-rape-ordered-uttar-pradesh/>

⁸ <https://www.lawteacher.net/free-law-essays/constitutional-law/khap-panchayat-law-essays.php>

⁹ <https://www.thehindu.com/news/national/Villages-still-in-trauma-after-lsquothonour-killing-verdict/article16343210.ece>

Even punishment like social boycott is against the fundamental right of the aggrieved. No one can ask society to boycott individual. In the case of *Lata Singh Vs State of Uttar Pradesh*¹⁰ court held that there are no limitations for inter-caste marriages as per the Hindu marriage act. Court also held that once a person becomes major they have a right to marry whosoever they want without any restrictions. Their family also cannot stop them from marriage or threatens to do marriage, maximum they can do is restricting their social relationship with a boy or a girl. In this case, the court talked about khap Panchayat, they said: “These barbaric and shameful acts performed to protect the honor have nothing honorable about them but just represent the brutal and feudal mentality.” In the case of *Asha Ranjan Vs. state of Bihar*¹¹ Supreme Court clearly mentioned that right of girls in choosing their life partner is a legitimate constitutional right. This right is formed based on an individual’s choice under Article 19 of the constitution of India. This right cannot become void because of the concept of class honor or group thinking.

DOES INDIA STILL NEED KHAP PANCHAYAT

There are many debates regarding this topic, some say we do not need Khap Panchayat anymore and it should be banned at the same time there are some people with the view that Khap should not be banned and infect there is no legal basis on which it should be banned. The contention of the people who say it should be ban is that age-old law cannot govern the present society. Khaps compels to follow laws that are of no sense in today’s world. The majority of cases of Khaps are related to marriage. Fundamental rights are given in the constitution of India grants for freedom of expression. But what about the rights of the girl who cannot marry the person she wishes to marry. She cannot argue with anyone in this matter. More importantly, nobody gives power to Khap Panchayat to grant Judgment. Khap is not a legal authority. They do not have any right to grant punishments like capital punishment or social boycott to anyone. All these punishments infringe the fundamental rights of the sufferer. At the same time contention of people who says Khap should not be ban are that khap is not an illegal group of people, it is just a group of people deciding matter related to a problem faced in the villages. Based on which law you will ban them? According to them, the decision given by Khap is not mandatory on anyone and even one can choose between different Khap organizations. There are so many cases in which Khap deals on day to day basis that if they are diverted to the courts, it will increase the burden on courts. Even people in the village do not have both time and money to invest in court cases. Khaps do not have

¹⁰ *Lata Singh Vs State of Uttar Pradesh and ors.* ((2006) 5 SSC 475)

¹¹ *Asha Ranjan Vs State of Bihar and ors.* (2017) 4 SSC 397

the power to grant capital punishment to anyone, and if any head grants capital punishment to anyone separate case can be filled in the court on the account of the murder. “There are plenty of tyrannical police officials, plenty of incompetent and corrupt judges in India who pass very retrogressive judgments,” said Madhu Purnima Kishwar, a professor at the Center for the Study of Developing Societies in Delhi. “But no one says ban the police and the law courts. By what right do they demand a ban on khaps, simply because some members have undemocratic views?¹²” Allowing everyone to do what they like sometimes damages the traditions which are the basis of society. As philosopher Isaiah Berlin said, “Freedom for the wolves has often meant death to the sheep”.

CONCLUSION

According to me, khap performs the work of great importance. In the present scenario when a lot of focus is on outside case resolution, khap can be a place where cases can be resolved easily and in time. Not all Khap Panchayats are the same, some work for the benefit of the state, for example, Sarpanch or elected village council head, in Bibipur village in Haryana, understood and took up the issue of female feticide in Haryana and launched a campaign against it. Therefore, to reduce the burden from the shoulder of court Khap is a great organization, but at the same time, it has to maintain the type of decision and should ensure that decision given by the court is not violative of any right of both the party to the case. No one should be made to follow one’s tradition or beliefs forcefully against their will. As Justice Joseph J Ellis has rightly said that “We don’t live in a world in which there exists a single definition of honor anymore, and it’s a fool that hangs on to the traditional standards and hopes that the world will come around him.”

¹² <https://india.blogs.nytimes.com/2012/10/23/does-india-still-need-khap-panchayats/>