

## KHAP PANCHAYAT AND INTER-CASTE MARRIAGE

**PRATIK MAITRA**

Symbiosis Law School Hyderabad

### ABSTRACT

Marriage binds a man and women in a relationship and an obligation to fulfill during a lifetime, but the whole plot changes when it comes to inter-caste marriages in India, an inter-caste marriage at a village level would mean a boy and girl marrying each other with a difference in their castes, which thus is against the moral right as against the moral mindset of a certain section of our society. khap panchayats have a gray area within themselves when it comes to inter-caste marriage, we shall analyze all the aspects as discussed above in our research paper.

### INTRODUCTION

Khap panchayats could also be called illegitimate courts, these courts have no constitutional approval, yet khap panchayat is the self-proclaimed courts that enjoy full authority among the segments of the castes as the custodian of honor. In a khap panchayat, all the members of the panchayat take quick, unilateral decisions on various issues like marriage, property rights, offenses, or any such issues threatening tranquility in villages. They mandate strict rules to follow and penalize the transgressors with severe punishments. Khap panchayats primarily impose self-created norms baked by sanction in the name of preserving norms, values, and morals in the society, the khap panchayats consist of powerful elements of the dominant society the members of the panchayat are generally the senior citizens of the village who consider them as the upholder of the village norms, guardians of public morality and custodians of rural culture. In our research paper we shall focus primarily on what is khap panchayats stance on inter-caste marriage, how this affects our society as a whole and because of this how are individuals affected at the personal level. When a majority of Indians are going across a metamorphic process of changing the old odd orthodox beliefs and customs

and getting accustomed to the modern approach, a section of the society is still bound by the age-old practices.

KEY WORDS – Khap Panchayat, Inter- caste marriages, Culture

## RESEARCH QUESTIONS

1. What are the steps that we as a young generation should take into consideration to accept the system of inter-caste marriage.?
2. What is the judiciary's stance on inter-caste marriage?
3. What are the pitfalls of not accepting inter-caste marriages.?

## STATEMENT OF PROBLEMS

Understanding khap panchayat, what are its ideology, how does it affect people's lives, and what could be the steps to tackle the issue.

## OBJECTIVES OF THE STUDY

1. Understand the history of khap panchayats.
2. The reformatory practices undertaken to curb the issues and provide for a healthy inter-caste marriage.
3. The various steps that will contribute to the reformation
4. The judicial trends or the judicial developments that took place to curb the unlawful activities done by the khap panchayats.

## SIGNIFICANCE OF STUDY

India is a fast-growing country with the largest democracy in the world. The largest democracy in the world meant accommodating a wide variety of diversity and ensuring no one is discriminated. It's hard to believe that in a country where people use 4G network and

has been outbreaking all the records leading its way to success,our country still holds such grey areas like khap panchayat where people still rely on old customs and decide upon things unconstitutionally, and commenting on a topic like inter-caste marriage, saying two people can't marry just because they have different castes is a blunt ideology in our society. Thus being the new generation of our country it becomes our duty to curb this issue if it exists near us, our achievement counts but in the long run, only the development of our country will help us in the long run, thus to curb this issue we need to understand the history of the aforesaid topics i.e. khap panchayat and inter-caste marriage, how fast could this reform process take place with us as the new generation, inculcated in the matter.

## **SCOPE AND LIMITATION OF THE STUDY**

Our topic that is khap panchayat and inter-caste marriage is vast and requires attention because in a country like ours where we expect the development to happen at a fast pace, we remain tangled in a situation created by ourselves. A topic like inter-caste marriage which is not even available in many developed countries, somewhat presents a bad image of us. The situation is such that around 70% of the population avoids inter-caste marriage and around 62% said they would react strongly if an inter-caste marriage takes place in their family. Thus understanding the gravity of the issue, such issues should be prioritized and solved first, if a change is not made now the national unity would be put to on a toss, however, strict judicial acts should also not be taken immediately, because a norm which is being followed for centuries now would take time to be eliminated, if the strict actions are taken immediately it may lead to fatal accidents around the country, thus being steady in course of action to eliminate such issues is ideal, considering the best interest of the country.

## **RESEARCH METHODOLOGY**

In the present study doctrinal method is found to be suitable since the study involves theoretical analysis. We shall be using secondary resources, going across articles and books to carry out our study and thus reach to a conclusion. We shall also come across historical research methodology to collect historical data regarding the topics of khap panchayat and intercaste marriages.

## **SOURCES OF DATA**

The researcher for current research relies on primary data and secondary data the primary data includes judicial decisions, national policies, for having an unbiased opinion and wider information the secondary data has been used which involves going across journals, books, articles by prominent commentaries, and authors available on various databases on the internet.

## REVIEW OF LITERATURE

1. Khap panchayat in India: reality and reforms published under the international journal of allied practices research and review,

By: Suminder Kaur

Describes the khap panchayat in detail, about the history of khap panchayats and various other aspects like honor killing, caste panchayat, undemocratic setup, dictates unwritten law. Thus, giving us in-depth knowledge on our topic.

2. Inter-caste Marriages along with an Introduction to Khap Panchayat published under the journal of family and adoption law,

By: Shubham Phophalia, Sushil Goswami

Primarily gives us a detailed study on inter-caste marriage. The history of inter-caste marriages, types of inter-caste marriage, also gives us a brief insight into the judicial proceeding related to the issue of inter-caste marriages.

3. Khap Panchayats in Transition with Contemporary Times: An Anthropological Evaluation

By: Ratika Thakur, A. K. Sinha, R. K. Pathak

Gives us an insight into the socio-cultural approach in inter-caste marriage, the examples have inductively been included in our research paper.

4. Khap Panchayat: Women and Honour Killing

By: Deepa Awasthi

This knowledge-based edited book titled 'Khap Panchayat, Women and Honour Killing' is a collection of 20 chapters categorized into 4 sections A) Understanding the Khap Panchayats,

B) Khap Panchayats and Discrimination against Women, C) Khap Panchayats, Honour Crime, and Laws, D) Khap and other Non-State Agencies. The chapters included in the book has been written by eminent scholars after extensive research, to provide complete information to its readers about the khaps.

5. Khap Panchayats have no authority to order honour killings; Their activities are to be stopped in their entirety: SC

By Prachi Bhardwaj

This blog emphasizes case laws on honour killings, it suggests a way to tackle the issue in our country suggesting remedial, punitive steps on honour killings that are done by the khap panchayats.

## PART - II

### HISTORY OF KHAP PANCHAYATS

Khaps are really old organizations that have their origins in the fourteenth or fifteenth centuries. They probably grounded in the Jat people community ruled regions during this period, which structure the present-day Rajasthan, Haryana, Western Uttar Pradesh (Sangwan, 2008). It is accepted that in the eleventh century, the Jats arrived at the position between the Sutlej and Yamuna waterways, after they had been rooted out of Sindh. From the beginning, the community was peaceful they settled down as farmers for growth. Various Jats gotras settled round the channel framing their khap-based party. In the 1500s, the Jats became settled farmers and their social foundations centered on tribes converged with the current primitive social system that still exists today. Information on the historical history of the khap panchayat is also discovered from an unidentified, transcribed archive generally known as "pothi". The 'pothi' argues that the khap panchayats met to fight against the various middle-age rulers' monstrosities. In any event, no facts on the side of the validity of the pothii could be followed. But the main problem that arises is that the Khap panchayats as established governed people's lives, they were keen on the caste of the people. Thus inter-caste marriage has always remained a subject for the members of the khap panchayat to frown at, they didn't tolerate inter-caste marriage the ideology which governed most of the decision was status or reputation, the inter-caste marriage was opposed because they felt with such marriage the

reputation of the family will be lost, and the children born between the couple will not be perfect, such vague is the idea of these khap panchayats that still exists.

## **ILL EFFECTS OF NOT APPROVING INTER-CASTE MARRIAGES**

In search of jobs people tend to travel to places with opportunities, youth is left with no option but to proceed to make his or her career, and possibilities are high that youth may fall into a relationship with some person working there, and so if their relationship is not accepted by the society at large just because of different castes, the society won't be able to nurture newborns and continuously will destroy the coming society. This hampers the growth of the society and poses a threat to national unity as a consequence of which various couples either end their life or are killed.

## **STEPS TO BE TAKEN TO ACCEPT THIS SYSTEM**

The younger generation's job is to make their elders understand that the rigid caste system is morbid and has a bleak future ahead of them. To demolish this structure, young people should take different actions on their part:

1. As a friend in the family, the girl or boy should be introduced and encouraged to receive their love and respect.
2. In front of family members, the characteristics of the person you love should be emphasized.
3. Try to learn the customs of the caste of each other, which will allow the individual to gain respect for members of his/her family.
4. Try to show the representatives of the family how this kind of family arrangement hinders the nation's advancement.

## **STEPS THAT HAVE ALREADY BEEN TAKEN**

1. Different laws have been made by the government of India to promote inter-caste marriages.
2. Social activists and organizations are actively helping to raise awareness among individuals of the dangers of not recognizing inter-caste marriages.
3. Movies, street plays, protests, etc., have been used to prove that in our culture such marriages need to be permitted.



## JUDICIAL PRONOUNCEMENTS

On the lines of the judgment of the Delhi High Court in the case of Ravi Kumar v. State<sup>1</sup>, wherein it was held that a girl aged above 15 and below 18 marries at her own will, then a case will be registered against her husband with the order of custody of the girl.

1. The Supreme Court of India recently in a landmark judgment of *Lata Singh v. State of Uttar Pradesh*<sup>2</sup> ruled that in cases of inter-caste or inter-religion marriages there is no bar on it under “the Hindu Marriage Act, 1955, anyone who harasses, threatens or subjects such a couple to acts of violence will be prosecuted for the same.”<sup>3</sup>

For instance: It is a 2006 judgment wherein a major girl named Lata Singh who was a major at her own will got married to Brahmanand Gupta of a different caste as of her. They married at the Arya Samaj Mandir in Delhi. In reaction to the marriage, the brothers of Lata Singh went furious that she married a boy of another caste and had an inter-caste marriage. In revenge of the marriage, her brothers took the step of violence against the husband and his family; they took possession of the agricultural land as well as the shop of the husband by illegal means. They even lodged a false FIR regarding kidnapping and wrongful concealment or confinement of Lata at SarojiniNagar police station in Lucknow. The muscle power and the ugly caste system again showed their face when the police instead of arresting the brothers, imprisoned the family of Brahmanand (husband) with a refusal of bail.

Referring to the above judgment of *Ravi Kumar v. State*<sup>4</sup>, Supreme Court concluded that Lata was a major at the time of the marriage. The court said, “she was free to marry anyone she likes or live with anyone she likes”. Most importantly the court stated that there was no bar to an inter-caste marriage under the Hindu Marriage Act, 1955. The court found Lata and her family innocent and quashed all the charges against them. The whole act was a misuse of both the court's procedure and the administrative machinery. All this was based on the brothers' vengeance for the inter-caste union.

---

<sup>1</sup>Ravi Kumar v. State, S-262-SB

<sup>2</sup>Lata Singh v. State of Uttar Pradesh, Writ Petition (crl.) 208 of 2004

<sup>3</sup>Diwan, P. (1957). The Hindu Marriage Act, 1955. *The International and Comparative Law Quarterly*, 6(2), 263-272. January 19, 2021, from <http://www.jstor.org/stable/755668>

<sup>4</sup>See note 1

The court even stated that “*this is a free and democratic country, and once a person becomes a major, he or she can marry whomsoever he/she likes*”.<sup>5</sup>

A well-established precedent was set, and an order was passed to the administration along with the police authorities that in case of an inter-caste or inter-religious marriage if both the parties are major, the police must take care of them and give security to them. They should make sure that no act of violence is committed against them and if so, a criminal proceeding should be immediately instituted against the person indulged in the act of violence or harassment.

2. A few years back on April 20, 2011, the Supreme Court through a Bench consisting of Hon'ble Justice Markandeya Katju and Gyan Sudha Misra held in a judgment of an allure recorded by an Arumugam Servai of Tamil Nadu on account of *Arumugam Servai v. Province of Tamil Nadu*<sup>6</sup>, who was blamed for making casteist comments during a squabble,

The court criticized the caste system as it plays a crucial role in promoting families to indulge in “honor killings”. They reminded that India is a democratic country where after reaching the age of majority a person can marry “whosoever he/she likes”. Justice Katju quoted that “There is nothing honorable in honor killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder”<sup>7</sup>

3. In *Shakti Vahini v. Association of India and Ors* (2010)<sup>8</sup>, the court held that “till such time legislation regulating such bodies is enacted, we will issue whatever direction which is legal and proper, and suggested that the guidelines could be implemented as a pilot project in few of the worst-affected districts where Khap dictated violence against matrimonial alliances had been recurring. Even criticizing the Khap panchayats and comparing them to “kangaroo courts”<sup>9</sup>

they said that in Khap panchayats instant justice is meted out without any reference to the judicial process of the country. The court said that the couple who performs inter-caste or

<sup>5</sup> Gupta, J. (2012). KHAP: CULTURE ABOVE LEGISLATURE? Proceedings of the Indian History Congress, 73, 1445-1445. January 19, 2021, <http://elibrary.slsh.edu.in:2120/stable/44156378>

<sup>6</sup> *Arumugam Servai v. Province of Tamil Nadu*, (2011) 6 SCC 405

<sup>7</sup> SCC online, <https://www.sconline.com/>, Jan.18,2021

<sup>8</sup> *Shakti Vahini v. Association of India and Ors* (2010), 231 of 2010

<sup>9</sup> Phophalia, S. (2019). Inter-caste Marriages along with an Introduction to Khap Panchayat. *Journal Of Family And Adoption Law*, 1(1), 7-17. Jan.19,2021, <http://lawjournals.stmjournals.in/index.php/jfal/article/view/110>



interreligious marriage falls victim to their institutionalized “atrocities”. The court said that “We have in recent years heard of ‘Khap panchayats’ which often decree or encourage honor killings or other atrocities in an institutionalized way on boys and girls of different castes and religions, 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.”<sup>10</sup>

The court cited the previously mentioned judgment of Lata Singh case and stated, steps to be taken to implement this judgment, they guided the public authority to quickly suspend any “District Magistrate or Collector and SSP/SPs”<sup>11</sup>, charge sheet them

Proceed departmentally against them if, despite knowing about it in advance, they have failed to act against any incident of casteist violence or if they fail to “promptly” arrest the culprits and institute criminal proceedings against them.

An order was also passed to circulate “copies of the said judgment to the state High Courts and chief secretaries, home secretaries and director generals of police in all states and union territories.”<sup>12</sup>

4. Recently in March 2018, a Supreme Court bench consisting of Dipak Mishra CJ, Justice DY Chandrachud, and Justice AM Khanwilkar reserved the judgment on a petition by NGO Shakti Vahini seeking directions to curb honor killings and interference of Khap panchayats in inter-caste marriages.

The bench reaffirmed, “Where two consenting adults agree to enter into matrimony, regardless of caste, creed or religion or background, no third party shall interfere therein or harass the couple.”<sup>13</sup>

---

<sup>10</sup> Khaps, Castes and Violence. (2010). Economic and Political Weekly, 45(18), 7-7. January 19, 2021, from <http://elibrary.slsh.edu.in:2120/stable/25664399>

<sup>11</sup> An officer who is in charge of a district, the basic administration unit, in India, is a District Magistrate and Collector. In some Indian states, they are also recognised as District Collector or Deputy Commissioner.

Soon after their occurrence, the SP has to call for information, supervise in person and visit the crime scenes. This is a significant traditional feature and after heading to the SP as aggrieved parties in appeal, the victims involved in these crimes

<sup>12</sup> TELTUMBDE, A. (2011). India's (Jati) Panchayati Raj. Economic and Political Weekly, 46(36), 10-11. January 19, 2021, from <http://elibrary.slsh.edu.in:2120/stable/41719926>

<sup>13</sup> Phophalia, S. (2019). Inter-caste Marriages along with an Introduction to Khap Panchayat. *Journal Of Family And Adoption Law*, 1(1), 7-17. Jan.19,2021, <http://lawjournals.stmjournals.in/index.php/jfal/article/view/110>

## PART - III

### CONCLUSION AND SUGGESTIONS

Marrying an individual of various rank was impermissible in the Indian culture on prior occasions. But with modernization now the idea of inter-caste marriages is being appreciated, with the advent of time number of inter-caste marriages has increased and this shows people are ready to break the social barriers, this also reflected the success of the judiciary, that people are able to marry breaking the old ideology. However, in the villages the idea of avoiding inter-caste marriage still remains fresh and to avoid such circumstances certain suggestion has been given, to avoid crimes and look up for a better future ahead

1. Districts, sub-divisions, and/or villages where instances of honor killing or assembly of Khap Panchayats have been registered in the recent past, such as in the last five years, should be identified by the State Governments.
2. If any police officer or officer of the District Administration becomes aware of any details concerning any proposed collection of Khap Panchayat, he shall notify his immediate superior officer and, at the same time, the Deputy Superintendent of Police and the Superintendent of Police of the jurisdiction.
3. The Deputy Superintendent of Police shall then immediately communicate with and impress upon the representatives of the Khap Panchayat that such a meeting/gathering is being convened.
4. Despite taking such steps, if the meeting is held, the Deputy Police Superintendent shall remain personally present during the meeting and warn the assembly that no decision can be made to cause any harm to the couple or the members of the family of the couple, failing which each participating in the meeting will be personally liable for criminal prosecution in addition to the organizers.
5. If the Deputy Superintendent of Police has reason to believe that the meeting can not be prevented and/or is likely to cause harm to the couple or members of their family after contact

with the members of the Khap Panchayat, he shall immediately send a proposal to the District Magistrate

6. States shall take disciplinary measures against the officials concerned if it is found that I such official(s) have not prevented the incident, despite having advance knowledge of the incident, or (ii) if the incident has already taken place, such official(s) have not apprehended the incident promptly and have initiated criminal proceedings against the perpetrators.

7. In each district consisting of the Superintendent of Police, the District Social Welfare Officer, and the District Adi-Dravidar Welfare Officer, the State Governments shall create Special Cells to receive petitions/complaints of harassment and danger to inter-caste marriage couples.

## BIBLIOGRAPHY

### Journal papers

1. AHLAWAT, N. (2012). The Political Economy of Haryana's "Khaps". *Economic and Political Weekly*, 47(47/48), 15-17, January 19, 2021, <http://elibrary.slsh.edu.in:2120>
2. SHARMA, K. (2012). Is there Today Caste System or there is only Caste in India? *Polish Sociological Review*, (178), 245-263. January 19, 2021, <http://elibrary.slsh.edu.in>
3. Chapman, J. (2014). Violence against Women in Democratic India: Let's Talk Misogyny. *Social Scientist*, 42(9/10), 49-61. January 19, 2021, <http://elibrary.slsh.edu.in:2120/stable/24372976>
4. KAUR, R. (2010). Khap Panchayats, Sex Ratio and Female Agency. *Economic and Political Weekly*, 45(23), 14-16. January 19, 2021, <http://elibrary.slsh.edu.in:2120/stable/27807097>
5. Khaps, Castes and Violence. (2010). *Economic and Political Weekly*, 45(18), 7-7. January 19, 2021, <http://elibrary.slsh.edu.in:2120/stable/25664399>
6. Kumar, S. (2013). Historicising the Khap Panchayat. *Economic and Political Weekly*, 48(6), 5-5. January 19, 2021, <http://elibrary.slsh.edu.in:2120/stable/23391378>

### Book

Deepa Awasthi, Khap Panchayat, Women and Honour Killing, Kalpaz Publications; 1st edition (1 January 2016)