

Khap Laws, Cultural Violence and the Challenges to Individual Liberty

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Abstract

For the past many years honour killings have grabbed national headlines. The raging debates on what is first degree have exposed the uncivil nature of the Indian 'civil' society. The statement made by the paternal uncle of Shubha (a victim of honour killing in Ashok Vihar, Delhi), Mr. Dharmaveer Nagar "apneap me khoongalathosaktahai, par samajkeliyeyeh murder zarooritha.... is kaam se in larkon ne saahi me ek achcha udaharan pesh kiya hain (you may consider killing of an individual is wrong, but for society, it was necessary. These youngsters have set a good example)"¹ (TOI, 2010) epitomizes the clash between the constitutionally ordained rule of law, citizenship and civil liberties and the chains of tradition and customary law. What is more appalling is that the political class has bent before the violators of the constitution in order to retain their traditional vote banks. This paper attempts to reflect on cultural violence and its implications for gender justice and individual rights in India.

Key Words: Khap, Custom, Community, Individual, Constitutionalism

1.Introduction:

The erosion of the socialist economy has catapulted the Indian state into the vortex of a swiftly globalizing world wherein the only deity worth worshipping is the free market which promises untold prosperity. The state and the ruling oligarchy quickly latched on to the neo-liberal policies of corporatizing vast segments of the economy while scant attention has been paid to inclusive growth. The lopsided development is evident in the social disequilibrium prevalent in the society. The regressive social traditions are not keeping pace with the rapidly changing consumerist society. The trends are evident in the increasing violence against women and other marginalized sections of the population. On the one hand, the state passes liberal and progressive laws to safeguard the rights of the citizens while on the other hand, the very institutions whose duty is to uphold the law-the police, the civil administration and the judiciary fail in their constitutional mandate, peopled as they are with the same regressive ideology.

The contemporary Indian society is not growing as fast as the economy is. This clash of ideologies is very evident in the state of Haryana which enjoys all the parameters of conventional

¹ The Times of India, Thursday 24th June, 2010, Delhi

growth but where young people meet a gory end when they exercise their individual choice. The state is second in the per capita income in the country but it also enjoys a low sex ratio (820 in the 0-6 age group (Census India, 2011)².

The shortage of females has led to a paradoxical situation wherein the people have to 'shop' in other parts of the country for eligible brides. One would imagine that a low sex ratio would enhance the status of girls but on the contrary, the manacles of a patriarchal society have tightened. The only silver lining is the increasing reportage in the print and electronic media about such 'killings for honour' which come as a rude shock for a 'civil' society not used to murders invading their drawing rooms. As long as such honour killings which are a euphemism for cold blooded murder were relegated to some back of beyond village, not much attention was paid. Only when the killings came closer to the national capital, occurring in middle class homes to 'people like us' that society woke up to the chilling reality about the everyday violence in its underbelly.

2. Theorising Violence

Violence is an act of illegitimate, unauthorized or immoral use of force against the will or desire of others which causes injuries or destruction etc. Hannah Arendt³ (Arendt, 1999) rightly matched violence with power which is obviously in the khap ruled villages. The powerful dominant group uses violence as a means against the inferior caste in the name of custom and tradition for enforcing their socio-political supremacy. In this sense, custom is also used as an instrument of violence. Customs are the long established social habits and usages accepted by the people to do the things collectively in personal contact and co-operation. As Maclver and Page stated that the "groups, institution or associations sustain their formal order by means of an intricate complex of usages or practices"⁴ (Rao, 2001) of customs. All customs are not irrational, non-utilitarian and unethical in character. But still some customs are found illogical, undemocratic and inhuman practices which create violence and violate human rights, dignity and choice. In the contemporary times, khap killings or honour killings by the khap panchayats falls under such a category of inhuman practice

2.1 Conceptualising Customary Violence

Both tradition and modernity in India have been carriers of brahmanical patriarchal ideologies. The fundamental principal of the Hindu social organization is the creation of a closed structure to preserve land, women and ritual quality within it (NurYalman, 1962)⁵. These three are structurally linked and it is impossible to maintain all three without stringently controlling

² http://censusindia.gov.in/Data_Products/Library/Provisional_Population_Total_link/PDF_Links/chapter6.pdf

³ Arendt Hannah, *Excerpt from on violence, in the edition of Steger, B. Manfred and Lind, S. Nancy, Violence and Its Alternatives: An Interdisciplinary Reader, Macmillan, London, 1999, pp.9*

⁴ Shankar Rao, C.N, *Sociology: Primary Principles, S. Chand and Company Ltd, New Delhi, 2001, pp 452*

⁵ NurYalman, 'On the Purity of Women in the Castes of Ceylon and Malabar', *Journal of the Royal Anthropological Institute of Great Britain and Ireland*, 93, 1962, pp.25-28

female sexuality. Neither land nor ritual quality, that is, the purity of caste, can be ensured without closely guarding women who form the pivot of the entire structure. The upper caste woman is the object of 'moral panic'. There are repeated invocations of the need of the lower castes and women to conform to brahmanical injunctions, which was sought to be institutionalized in the texts and enforced by state power. The upper caste women are literally points of entrance into the caste system⁶ (Charavarty, 2006).

No wonder that an effective system of surveillance prevents the association of lower caste men with upper caste women, thereby institutionally safeguarding the purity of upper caste men. Despite the modern discourse of rights and legal entitlements, every attempt is made to prevent the subversion of this ritual quality. To cite but one illustration, Babu Bajrangi in Ahmadabad, has made it his life's mission to 'restore' forcibly the girls of his community (Patel community) back to their family if they have the temerity to marry outside their caste (Bunsha, 2006)⁷.

Thus the essential nature of women came to be identified by their sexuality. Not surprisingly, for Manu, 'the wife' constituted the most important category. "By carefully guarding his wife, a man preserves his family, his lineage, the purity of his offspring and his means of acquiring merit." (Chakravarty, 2006)⁸ Hence, surveillance of women is the corner stone of brahmanical patriarchy, which has allowed the principle of inequality to become embedded in Hindu culture. Such gendered stereotypes propagate the belief that women are not only inferior but also their sexuality has to be patrolled, so that it is legitimately accessible to some men and inaccessible to others. These notions of female sexuality were reinforced by colonial modernity. By its very functioning, colonial rule created a disjunction between the public and the private realm, the latter left outside the purview of the colonial state. This was especially in the case of law, wherein each community was left to abide by its traditions of marriage, inheritance and divorce. This enabled the state to manage dissent in the public sphere for the men of the subject population were given the family sphere to rule. The control over women's bodies (witness the heated debates over the age of consent) was substituted for control over other aspects of daily life (Sarkar, 2003)⁹. The self respect that was eroded in the daily encounter with the racial hierarchy of the outer world could be built up again by the experience of secure kingly rule in the family sphere.

No wonder that women still are subjected to customary violence to protect the 'purity' of the clan and lineage. If women strictly follow their 'stridharma', they will enjoy the rewards not only in this world but also in heaven. If the 'stridharma' is not upheld by the women, retribution is swift and brutal. The mother of one of the victims of honour killing in Delhi, Shubha, observed that her brother gifted her with a mobile worth Rs. 7000. But when she eloped with her lover, the humiliation was too great. There is no remorse at the death of a daughter but relief that the 'bad

⁶ Uma Chakravarty, *Gendering Caste Through a Feminist Lens*, Stree, 2006, p.67

⁷ Dionne Bunsha, 'The Serial Kidnapper and his Mission', *Frontline*, 25, December 16-29, 2006

⁸ Uma Chakravarty, *Opp Cited*, p.67

⁹ Tanika Sarkar, *Hindu Wife, Hindu Nation Community, Religion and Cultural Nationalism*, *Permanent Black*, 2003, pp. 226-249

influence' is contained (TOI, 2010)¹⁰ Thus dishonourable conduct on the part of a daughter which ruins the family forever, leaving the parents unfit to show their faces to the 'biradari'(community), justifies in their eyes the extreme step of even killing her. This concept of honour is explained by sociologist Veena Das, to operate at the expense of human sentiments and values. According to her, it demands a sacrifice of the natural ties created by biology, and kinship morality stresses their transcendence (Das, 1994)¹¹.

As society is modernizing and urbanizing at a rapid pace, many traditional practices are being challenged. One of the most visible manifestations is the increasing attempt of the younger generation to choose their life partners. As marriage provides the structural link-up between kinship and caste, a closer surveillance is accorded to the marital alliances. Kinship linkages provided by marriage, and relations established through marriage, give a caste group its strength, recognition and leverage in wider society and polity. Any breach in these caste linkages brings down the status of not only the immediate family but also the clan and finally the entire caste group. This factor was and remains a most potent consideration behind the enforcement of strict caste and sexual codes (Choudhury, 1997)¹². For the people of India the law of exogamy is a positive injunction even today. Indian society still savours the clan system, even though there are no clans; and this can be easily seen from the law of matrimony which centers round the principle of exogamy, for it is not that sapindas (Blood-kins) cannot marry, but a marriage even between sagotras (of the same class) is regarded as a sacrilege (Ambedkar, 1989)¹³. Those marriages or associations which activate this interconnection between 'honour' and violence relate not merely to inter-caste factor but also to intra-caste which infringe certain traditional prohibitory taboos. They essentially breach customary rules which are subject to the 'gotra' or 'got' (as it is known in rural north India) rule of exogamy (gotra is an exogamous patrilineal clan whose members are thought to share patrilineal descent from a common ancestor). For purposes of marriage certain prohibited degrees of kinship have to be avoided. As a rule three or four got exogamy is followed by most caste groups, upper or lower (Chaudhury, 1997).

3. Understanding Khaps

Khap is the conglomeration of clans and caste communities of villages in a geographical territory for the purpose of social administration. The origins of such social organizations can be traced to the Vedic times in the present day regions of Haryana, Rajasthan and Uttar Pradesh. The system of government was constituted with the council of five which was called a panchayat during this time. The parallel term of the khap is "Pal, Ganasangha, Janapada or Republic" (www.wikipedia.org). The sarvakhap (all khap) panchayat represented all the Khaps. Each khap sends

¹⁰ The Times of India, 24th June, 2010, New Delhi

¹¹ Veena Das, 'Masks and Faces: An Essay on Punjabi Kinship' in Patricia Uberoi (ed), Family, Kinship and Marriage in India, Oxford University Press, Delhi, 1994, pp 198-224

¹² Prem Choudhary, "Enforcing Cultural Codes: Gender and Violence in Northern India, EPW, Vol 32, No.19, May 10-16, 1997, p.1019

¹³ Ambedkar, B.R, 'Castes in India', in 'Dr Babasaheb Ambedkar Writings and Speeches Vol-1', Compiled and edited

by Vasant Moon, Education Department, Government of Maharashtra, 1989, Bombay, pp-9

their delegates to the sarva khap sammelan where they represent their own khap on different issues. “It was a political organization, composed of all the clans, communities and castes in the region. The republics of the 'Yaudheyas' who dominated this region from 600 B.C.E (conventional dating) to 400 B.C. preceded it. They had there a similar system of governance and their coins and seals are found in this whole region. Rohtak of Haryana was one such capital” (YuadheyounKaIthihasa, <http://en.wikipedia.org>).

The Khap panchayat was utilized by the land owning Jats in the 14th century to consolidate their domination. The main rule of the khap is that all boys and girls within the periphery of a khap are considered 'siblings'. Ideally a man is the guardian of honour of any woman who is related to him as 'sister' whether real or classificatory and therefore both sex and marriage are taboo between them. All men and women of the same clan, same localised clan and same village are talked of as being bound by the morality of brother-sister and therefore both sex and marriage are prohibited between members of any of these units (Hershman, 1981)¹⁴.

Love marriage, same gotra marriage or even in any gotra from the same village are considered taboo in the areas administered by the khap panchayat. “The women in our village are treated as sisters. How can there ever be a marriage between a man and his sister? If my daughter follows in Monica’s footsteps (a victim of honour killing in Delhi) I will kill her. I will not let her defy tradition” (TOI, 2010)¹⁵. To abide by the khap rules, the villagers try to keep their young children apart from each other as per the biological division. Even some schools are forced to arrange separate timings for the boys and girls. Most of the parents marry their daughters at an early age fearing that they will go astray. Social ostracizing and excommunication are the weapons used to coerce people to follow the khap diktaks. In a predominantly land owning society, people had no alternative but to surrender before such undemocratic organizations as it was a matter of life and livelihood for them.

Women form the edifice on which the entire notion of honour is structured. Undoubtedly, if she exercises her free choice in matters of heart or livelihood the custodians of this structure feel extremely threatened. The violence unleashed on such women is proportional to the threat perception. The entire baggage of siblinghood is carried by the girls. Sometimes rules and punishment of the khap panchayat bend down for the boys but in the case of girls the reprisal is rapid. If a couple elopes then their entire family would face the social boycott and hefty fines running to lakhs of rupees. Many a time, other women members of the family also become a victim of violence. According to S. Viswanathan, "In the Haryana-Rajasthan- New Delhi region, an estimated 100 young men and women are killed every year on the orders of Khap panchayat" (The Hindu, 2010)¹⁶ for not adhering to traditional norms and more than twenty cases are filed in the courts everyday relating to these brutal activities. This is also evident from the increase in petitions, almost fifty per day that are filed by the couples in the Punjab and Haryana High Court seeking protection and legal intervention (TOI, 2010)¹⁷. Recently, the khap maha samelan

¹⁴ Paul Hershman, Punjabi Kinship and Marriage, Hindustan Publishing Corporation, Delhi, 1981, pp 133-34

¹⁵ Times of India, 24th June, 2010, New Delhi

¹⁶ Vishwanathan, S., ‘Honour killings’: What needs to be done, The Hindu, April 26, 2010, New Delhi

¹⁷ The Times of India, 22nd June, New Delhi, 2010

demanding a ban on same 'gotra' marriage (TOI, 2010)¹⁸ by the amendment of the Hindu Marriage Act 1955 and strongly came out to provide legal support to the convicted killers of Manoj-Babli honour killing case (ibid) with a stiff objection to the judgment of the court. In order to enforce its version of custom and honour, the khaps have issued an ultimatum to the elected representatives to support its decisions. In the Manoj-Babli honour killing case, when state institutions failed to uphold the rule of law, the only support to the lone crusader fighting for justice, Manoj's mother, was provided by civil society organizations.

All these demands, decisions and practices of khap panchayats are undemocratic, unlawful, and patently against the "basic structure" of the Indian constitution. Interestingly, a male cousin of one of the accused in the honour killing of his sister preferred to have the British back. "The foreigners never tried to play with our traditions. This government has scant regard for our indigenous culture" (TOI, 2010)¹⁹.

Customary violence blends religion, morality and customs into a deadly cocktail where individual liberty has no space to exist. The only exit for the victims of such violence is either to surrender or pay with life. In a patriarchal society, women are considered expendable since they do not enjoy any rights over and above what is conferred upon them as a surety for their 'good behaviour'. What is paradoxical is that if the protagonists can afford to ignore the khap diktats either due to their social status or wealth, they can lead their individual life. The victims belong to families who are marginal land owners, own petty shops in the village, daily wage earners etc who are unable to opt for alternative sources of livelihood due to their socio-economic conditions.

Such feudal social organizations like the khaps obviously disregard the rule of law. This inhuman practice comprises of the following elements. These are rejuvenating the regressive caste system under the ploy of custom and tradition, intermesh caste gender relations to downsize women's rights under the clout of gotra marriage, gain the prevalence of class power domination through the structures of custom, coercion and medieval feudal justice to bulldoze the young people in the name of ensuring brotherhood who may be a threat to their hegemonic power structure, domination of class within the caste and undermine the individual rights and liberty to enforce the community rights.

4. Class Configuration of the Khaps

The nature of the existence of khap panchayat is a class within caste. The traditional feudal leaders of the rural society from the landowning castes, having hegemony over the socio-political power structure of the area, found it difficult to accept the increasing political and economic clout of the marginalized groups. They perceived it as a menace to their political authority and socio-economic supremacy. As a consequence, these traditional and neo-feudalist elites uphold their authority over the whole caste in the name of social customs and caste honour. The socio-economic capital of the Jat people divided them into dominant and dependant class. This

¹⁸ The Times of India, April 14, 2010, New Delhi.

¹⁹ The Times of India, 24th June, 2010, New Delhi

influential, affluent and capitalist class unilaterally intervenes in the privacy, personal life and liberty of the young people for their vested interests.

The lower class, middle class and lower middle class people ranked lower than the Jat caste hierarchy in terms of socio-economic status are the subjects of khap panchayat over which their diktats thrive. Their structures of domination are based on the compulsory consent of the hitherto deprived communities which legitimized their supremacy. This monolithic hegemonic power structure of the Khaps is under increasing threat by the newly emerging conscientized groups.

Such threats are met with increasing violence against the dalit communities. The incident of burning alive a physically challenged girl and her father and torching over a dozen of dalit houses of Mirchpur village in Hisar district is the outcome of class conspiracy for reasserting socio-political supremacy. This violence was also an outcome of a khap decision. The khap comprises of educated and professional people like army officers, police officials, lawyers and local party leaders. This class configuration can be treated as a class-in-itself. It means a social group whose members share the same relationship to the forces of social and economic means of production. It is significant to note down that these class men of the khap panchayat are silent about their khap rules. Same gotra marriage is a common practice in the patriarchal village of Om Prakash Chautala (HT, 2010)²⁰ who firmly stands with the cause of khap for the political gains. In the same tune, Ashok Tanwar (ibid), an influential dalit congress leader had married an upper caste Brahmin girl and the khap had nothing to say so far. No one makes an issue of Chander Mohan, former deputy chief minister of Haryana, who was able to marry and divorce at whim. Similarly, many youngsters of Haryana who have achieved success in the glamour world never have to bother about khaps. Their economic gains insulate them from the murky world of honour killings. To illustrate, the popular actress, Mallika Sherawat is a subject for the glossy magazines but no khap will dare to pass judgement against her. In short, there exists a premeditated power alliance among the politicians, police, corporatists, and the bureaucracy to protect the Jat dominated caste and clan hierarchies in Haryana and controls the young who challenge and unsettle it. No wonder that the Haryana state chief minister Mr. Bhupinder Singh Hooda reiterated that the 'Khaps were more akin to non-governmental organizations which had been doing social work for centuries and people were by and large happy with their functioning'. Further he stated that 'in his personal view it was wrong to blame the khap panchayats for inciting Honour Killings' (The Hindu, 2010)²¹. One of the rising stars of the Congress party, businessman-politico Naveen Jindal (currently Congress Member of Parliament) justified the acts of khap panchayats in the name of local traditions. Later, under public ire, he retracted his statement.

²⁰ Hindustan Times, May 9, 2010, New Delhi, pp13

²¹ The Hindu, 21st June, 2010, New Delhi.

5. Confronting Constitutional Law

The words, 'we the people' is testimony to the fact that the Constitution of India is promulgated in the name of the people. It asserts the principle of popular sovereignty which is founded on the authority of the people 'who hold the power to conduct the government through their representatives'. The constitutional provisions have a primacy over all other rules, customs or laws within a community.

All rules and laws repugnant to the constitution are null and void to the extent of their repugnancy to the constitution. The constitutional law i.e. rule of law as A.V. Dicey (Dicey, 1986) observed stands for 'equality before the law' which implies the equal rights of all the citizens before the law.

The khap panchayat's challenge to the Karnal court verdict is a violation of the principle of the rule of law. The latest demand of the khaps is to change the Hindu Marriage Act 1955 to suit their ruling is entirely invalid as they do not represent all the various communities of Haryana. In a significant move, the Punjab and Haryana High Court expressed anguish over the honour killings while hearing a PIL on prohibition of intra-gotra marriages. The same-gotra marriages were affirmed valid and legal way back in 1945 by the Bombay High Court much before Hindu personal law was codified. The two judge Bench that gave the notable judgment comprised Justices Harilal Kania and P.B. Gajendragadkar, who both rose to occupy the highest post of the Chief Justice of India.

Khap's claim of legitimacy is a false notion of arbitrariness. Legitimacy does not mean forcefully propelling people to carry forward the despotic principles with compulsory consent underlined with the subtle menace of violence and atrocities. The legitimate power or authority comes from the permission of the constitution and free and informed consent of the people. The legitimate use of coercion based on law in a democratic state is derived from the constitution to express the sovereignty of the people and guarantees the legality of the law. The unilateral imposition of undemocratic rules, writ and verdict of khap panchayat reveals the blatant violation of the rule of law.

6. Challenges to the 'Basic Structure' of the Constitution

Under Article 368, the basic structure of the Indian Constitution cannot be amended. Since the observations in the case of the Golak Nath case, culminating with the Keshavananda Bharati case, the Supreme Court has clarified that there are certain 'basic' features of the constitution which were immune from the power of amendment under Article 368²². On the basis of verdicts, concerning different cases, the Supreme Court has reemphasised the 'basic features' of the constitution. These are threatened by the oppressive laws of the khaps which mete out vigilante justice.

These include the supremacy of the constitution, rule of law, objectives specified in the preamble, the sovereign democratic structure of the republic, freedom and dignity of the individual, principles of equality, fundamental rights, social and economic justice, judicial autonomy, citizen's access to the judiciary, and secularism. As P.M. Bakshi observed, "the theory of the 'basic structure' is the very heart of the constitution as noted by the Supreme Court

²² Dicey, A.V., Introduction to the study of the Law of the Constitution, Liberty Fund, Indiana, 2010.

in the case of State of Bihar V. Balmukund Sah, 2000 (Bakshi, 2010)²³. The criminal acts of the khaps challenge the constitutional legality of the rule of law. It is possible to contextualize the constitutional infringements of the khaps.

7. Formation, Existence and Continuance of the Khap Panchayat

Article 19(1) (c) ensures the right to form associations or unions for a lawful purpose. The right to continue the association are subject to reasonable restrictions in the interest of "sovereignty or integrity of India, public order and morality". The khap made rules directly thwart this article as it is an undemocratic organization, contrary to the constitutionally formed democratic republican state. The Supreme Court of India has very clearly stated the essence of registration of any organization, association, union or society in case of Uttar Pradesh V.C.O.D. Chheoke Employees Co-operative Society Ltd, 1997 (C/m, Management, D.C.BANK Ltd. Thru' Its Chairman & Others. vs. State Of U.P Thru' Secretary (cooperative) & Others. - WRIT - C No. 23736 of 2004 [2004] RD-AH 344 (22 July 2004) High Court of Judicature at Allahabad). The khap panchayat has not been recognized as per the Registration Act or Co-Operative Societies Act. It is an unregistered organization. Their aims, objectives, executive body, rules or principles have not been enshrined anywhere as a written document. So, illegal authorization of any undemocratic and illegitimate rules, writs, law verdict is a crime according to the provisions of Indian Penal Code.

7.1 Pronouncements of Death Penalty

The separation of power between the legislature, executive and the judiciary is the corner stone of democracy. It is essential for the smooth functioning of democracy that there is no encroachment of the powers of any authority. Only the judiciary has the power to authorize death penalty and the final court of appeal is the executive. The khap's ruling in this regard is a gross violation of Article 21 of the Fundamental Rights. It is the breach of Article 20 and 21 which establishes that "no person shall be deprived of his life or personal liberty except according to the procedure established by law". Killing is the last stage of the criminal act against any living organism. The khap men do it in the name of brotherhood and honour which tarnish the human rights of the individual.

7.2 Congregation and Conference

The congregation of khap panchayats at the khap maha sammelan on 13th April 2010 in Jat Bhawan (TOI, 2010) in Kurukhetra was the breach of article 19(1) (b) which provides the right to assemble peacefully and without arms, while ensuring the sovereignty and integrity of India and public order, including the maintenance of traffic in the area. Though the leaders and delegates of khaps were not dressed up with instrumental arms, they were fully prepared with moral arms to execute khap decisions and to fight against the state's legal machinery. The khap maha sammelan was a clear infringement of the constitution.

²³ Bakshi, P.M, The Constitution of India, Universal, 9th edition, Delhi, 2009, pp 1

7.3 Contempt of Court

The public demonstration against the Karnal court verdict is a contempt of court of a court of law whose guidelines are clearly suggested by the Supreme Court in the case of Mulgaonkar 1978. Taking account of the severe threat of violence which hovers like a Damocles sword on young couples exercising their individual autonomy and liberty, Shakti Vahini, a non-governmental organization filed a Public Interest Litigation before the Supreme Court on June 21st 2010. The apex court took cognizance of the matter and issued notices to both the Union government and eight other states i.e., Haryana, Uttar Pradesh, Punjab, Rajasthan, Jharkhand, Bihar, Himachal Pradesh and Madhya Pradesh seeking their response on the steps taken to protect young couples from the deadly wrath of khap panchayats. The Public Interest Litigation also categorized the crimes that are inflicted by the khap panchayats against the married couples which includes physical assault, torture, mutilation, rape, forced marriage, imprisonment within the home and murder to protect the honour of the families (TOI, 2010).

7.4 'Sexist' Attitudes and Negative Discrimination

The sexist attitude of the khap leaders violates all established norms of gender justice. It is a clear violation of Article 15(1), 15(2), 16(1) and 16(2) which ensures the removal of negative discrimination, that is, discrimination against a person on the basis of race, religion, sex and place of birth, or any of them. The arbitrary acts of the khaps also violate Article 15(3) that empowers the state to make any special permission for woman and children.

7.5 Threatening the Pluralistic Culture, Religion and Secularism

Indian secularism is based on the principles of 'composite culture' and 'sarav dharma sambhava'. The pluralistic nature of the Indian culture reflects variations across regions and communities. The khap demands to ban same gotra marriage and amend the Hindu Marriage Act is a threat to the pluralistic culture and secularism of India. As a belief system, the heterogeneity of Hinduism leads to a catholicity of practices. The attempt to homogenize any cultural practice and norms is at the cost of individual autonomy and liberties. Consanguinous and same gotra marriage is a wide practice among many communities of South India and some parts of the Eastern India too. No fundamentalist organization like the khaps can make a unilateral decision amend the Hindu Marriage Act. What is clearly evident is all constitutional norms are flouted by the khap panchayats and yet the perpetrators of such cold blooded murders go scot free. The state institutions are unable or rather unwilling to prosecute these criminals as per the rule of law. The conspiracy of vote bank politics is a fertile breeding ground for such bigoted organizations. Instead of the lofty ideals of the Preamble, "we the people", it is the terrorizing rule of a miniscule minority which holds state institutions to ransom. The defiance of khap diktats shows their inflexible stand against the sovereignty, unity, dignity and democratic nature of the Indian republic. The principles of natural justice are non-existent and only the norms of a patriarchal brotherhood reigns supreme.

7.6 Discourse on Rights and Community

Rights denote 'ones due' as being a member of a community. The basic rights and freedom i.e. right to life and liberty, freedom of individual choice, thought and expression, individual privacy

must be guaranteed by the community, society and the state. The imposition of khap panchayat's decision over individual choice raises a serious academic debate over the supremacy of individual and community rights. The khap diktats impose their verdict and writ over the community which they claim to be the legitimately ordained by the consent of the entire community members. The possibility of obtaining consent through fraudulent means, coercion and compulsion always exists as is evident from the threats of boycott, excommunication and imposition of hefty monetary fines on the young couples, exercising their individual rights and their families who fail to comply with the khap verdicts. There is no possibility of 'informed consent'. Individual choice forms the basic tenets of any discourse on liberty.

The khap panchayats ruling on same gotra marriages are nothing but an incitement of murder in the name of safeguarding community interests. The communitarian theorists note that the individual is a unit of the community. They emphasize the liberty, equality, justice and universalism of the individual but within the ambit of the community. For them, the individual is not an abstract category but is deeply embedded with his/her culture and community. "Once we recognize the dependence of human beings on society, our obligations to sustain the common good of society are as weighty as our rights to individual liberty" (Kymlicka 2002:212)²⁴. In totality, communitarian theorists insist that each of us as an individual develops an identity, talents and pursuits in life only as a member of the community. MacIntyre, a communitarian theorist argues that individuals flourish only within an atmosphere of socially established co-operative human activity (MacIntyre, 1980)²⁵. The community must promote and protect this activity and thereby encourage the development of human excellence. Hence, individuals can realize their good only through co-operation in the pursuit of the 'common good'. Community must understand the value of social goods. A community is just if it acts in accordance with the 'shared understanding' of its members. Hence, in community an individual has the choice of option to exercise his rights, liberty and consent.

The khap panchayats 'understanding of community' is based on hierarchical patriarchal social norms which deny any value to women and other marginalized groups. A community which remains a mute spectator to the killing of unborn female foetuses and has to 'shop' for brides elsewhere to make up for the shortfall in the sex ratio cannot be expected to champion individual rights.

This begs the question as to what would be the 'caste' or 'gotra' of the children born of such relationships between Jat men and women from other regions across the country. The khaps will have to look for solutions to such questions of 'identity' and 'community honour' once this generation grows into adulthood.

Human rights are the international axioms which aspire to protect the life, liberty and dignity in short to safeguard every aspect of human life from any kind of discrimination. Similarly, the Indian constitution is also fully committed to defending personal liberties under Articles 14, 15 (1), 16, 17, 19 (1), 20, 21, 22, 23, 24 and 32. The Articles from 25 to 30 guarantees the rights of communities and groups. The fundamental rights are justifiable and any violation can be challenged in the court of law

²⁴ Kymlicka, Will, *Contemporary political Philosophy: An Introduction*, OUP, Delhi, 2002.

²⁵ MacIntyre, A, *After Virtue*, University of Notre Dame Press, London, 1980.

8. Conclusion

The defiance of the khap panchayats against every procedure established by law has led to a clamour for a new law to deal with customary violence. What is horrifying is that the incidents of honour killings have increased, breaching even the insularity of the national capital. Such killings are regularly hogging media headlines. The National Commission for Women had to request the media to stop glorifying such honour killings and instead to label them as cold blooded murders (TOI, 2010)²⁶. The scholars are divided over the issue as Indian government has proposed to amend the Indian Penal Code to include honour killings a “distinct offence”. This proposed amendment has sparked a row among the intellectuals and lawyers. The people who supported Veerappa Moiley say it will attract everyone’s attention to this social evil and obscurantist mentality committed to killing people to save the honour of the community, caste or family.

However, there is no requirement of a separate law and the menace could be fought if the existing laws are effectively implemented. The existing laws for criminal conspiracy under section 120(b) of the Indian Penal Code, to kill with a common intention, Section 34 and 36 of the Indian Penal Code are strong enough to prosecute and bring to trial the khap panchayat members as conspirators. What is essential is to cultivate the political will to look beyond vote banks and generate a social momentum which will ensure rights not only to the elites but also the marginalized groups. As B.R Ambedkar observed, political democracy is ineffective unless it is accompanied by social and economic democracy and for this he relied heavily on the state and its duly constituted agencies which will ensure the safeguarding of the individual’s life, liberty and pursuit of happiness. Though, absolute liberty for the individual in the society, the state exists to create the conditions conducive for the expansion of individual liberty. The state institutions do not operate in a vacuum but constitute an inseparable part of the social milieu. If the law enforcement agencies and the judiciary give primacy to obscurantist laws over their constitutional duties and what is more reprehensible enjoy state support at the taxpayers’ expense, justice will remain blindfolded. The former DGP of Haryana, Mahender Singh Malik is a self-styled defender of khap diktats and “went on record threatening khap critics” (The Hindu, 2010)²⁷.

But it is unfortunate that he is getting support from the state through “hefty perks and pension out of the public exchequer” (ibid). Apart from enforcing a zero tolerance policy against such murderers of innocents whose only crime is to exercise their individual choice, the societal voices struggling for justice need to be supported and strengthened. When young couples elope, their families are left with no alternative but to submit to humiliation-both social and economic. The state should step in to fulfil its constitutional obligations and help such families to cope with the societal crisis. The need of the hour calls for some solemn introspection on the dichotomy

²⁶ The Times of India, June 25th 2010

²⁷ Jagmati, Sangwan, Khap Panchayat: Signs of Desperation? The Hindu, May 8, 2010, New Delhi

between the glitter of consumerism and the violence in our homes. As long as society turns a blind eye to the demands of individual autonomy, honour killings will continue to be a festering sore on our social fabric.

References

1. Chesler, Phyllis, Are Honour Killings Simply Domestic Violence? *The Middle East Quarterly*, Spring 2009, Vol. xvi: Number 2, pp. 61-69.
2. Mora, Necla, Violence as a Communicative Action: Customary and Honour Killings, *International Journal of Human Science*, Vol-6, Issue-2, 2009.
3. Dabas, Balkishan, *The Poland Social History of the Jats*, Sanjay Prakashan, New Delhi, 2001
4. Singh, Natthan, *Jat Itihas*, Jat Samaj Kalyan Parishad , F-13, Dr Rajendra Prasad Colony, Tansen Marg ,Gwalior, M.P, 474002, 2004
5. Kymlicka, Will, *Liberalism, Community and Culture*, OUP, Oxford, 1989.
6. Waldron, J. (Ed), *Theories of Rights*, OUP, Oxford, 1984.
7. Basu, D.D, *Introduction to the Constitution of India*, PHI, 18th edition, Delhi, 1999.
8. Vanaik, Achin, *India's Paradigmatic Communal Violence*, (ed) Leo Panitch and Colin Leys, *Socialist Register 2009*, Left Word, Delhi, 2008, pp.-140-162.
9. Steger, B. Manfred and Lind, S. Nancy, *Violence and Its Alternatives: An Interdisciplinary Reader*, Macmillan, London, 1999.