

## KHAP PANCHAYAT- TRADITION V/S MODERNITY

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### **Abstract:**

A Khap is a community organisation representing a clan or a group of related clans. They are found mostly in northern India, particularly among the Jat people of Western Uttar Pradesh and Haryana, although historically the term has also been used among other communities. A Khap Panchayat is an assembly of Khap elders, and a Sarv Khap is an assembly of many Khap Panchayats. Khaps are not affiliated with the formally elected government bodies and is instead concerned with the affairs of the Khap it represents. It is not affiliated with the democratically elected local assemblies that are also termed Panchayat. A Khap Panchayat has no official government recognition or authority, but can exert significant social influence within the community it represents. The Baliyan Khap as led by Mahendra Singh Tikait until 2011 is one that has gained particular media attention. Khaps are very old institutions and have their origin in the 14th or the 15th centuries. During this time, the khaps were well established in the Jat community dominated areas which form the present day Rajasthan, Haryana, Western Uttar Pradesh (Sangwan, 2008). It is believed that the Jats, reached the region between Sutlej and Yamuna rivers in the 11th century after they were displaced from Sindh. The community was pastoral at first and then settled down to cultivation and eventually as agriculturalists..

**Key Words:** Khap, ROLE OF THE KHAP, Categories of Khap,

### **Introduction:**

Khap Panchayat like the caste system is a traditional institution which is basically engaged in a process of dispute resolution in village communities. Traditionally every village has its own Panchayat or Council. Panchayat literally means assembly of five (Panch) prudent and respected elders chosen and accepted by village community. Usually, some mighty and powerful persons, with the coerced public consensus and without any election, group together and declare themselves the „king of the caste“ , thereby constituting the so called „Caste Panchayats“ . Traditionally these assemblies settle disputes between individuals and villages. However these bodies lack any constitutional or legal basis. They should not be confused with „Panchayati Raj Institutions. Khap Panchayats are undemocratic in origin. They have unwritten laws and their decisions are clearly illegal and unconstitutional. Without application of law and acting on their whims and wishes, they impose self-created norms backed by sanction in the name of preserving morals and values of the society. Khap is a term for a social political grouping and used in geographical sense<sup>6</sup> and it originally consisted of 84 villages.<sup>7</sup> The concept of Khap Panchayat is closely associated with the cultural relativism<sup>8</sup> i.e., considering that one culture is superior to

others and this leads people to protect their culture by their own authority. These are prevalent mostly in Haryana, western Uttar Pradesh and parts of Rajasthan.

### **ROLE OF THE KHAP PANCHAYAT:**

This particular institution is formed by the upper caste Jats on the grounds of bhaichara (brotherhood) to consolidate their power and position over the entire clan or village. The traditional caste panchayat upholds the four corners of rural life that are aikya (unity), izzat (honour), biradari (community) and bhaichara (brotherhood) (Chaudhary, 2004). It clearly demonstrates its characteristics by being male dominated and is being acknowledged and supported by powerful male elements of the society. In a long time, the caste system has been further more strongly institutionalized by the khap panchayats. The caste system plays a crucial role in the rural areas. The values and norms that govern the relationship and behaviour of a rural society are by and large governed by the caste. In a khap panchayat people of different caste and gotras get representation but the power to rule remains in the hands of the upper caste leadership, and the people of the lower caste do not get membership in panchayat.

### **Categories of Khap Panchayats:**

A Khap Panchayat can be broadly classified into four categories Sarv Khap Panchayat, Khap Panchayat, Tappa Panchayat. Tappa Panchayat is mainly found in parts of Tamil Nadu and the omnipresent village panchayat which is most commonly found. The Sarv Khap is the largest panchayat which solves disputes of Khaps within its jurisdiction. It is an amalgamation of many Khaps within neighbouring areas in a district which have been living collectively since ages. One major criticism of the Sarv Khap Panchayat is that the participation of women at the administrative level is negligible. Women are not allowed to be representatives even when crimes are committed against women. They are considered inferior to men, next only to untouchables and scheduled castes in traditional Khap panchayats (Sangwan, 2011).

### **Traditional Approach:**

The origin of Khap Panchayats can be traced back to the Vedic period. Originally, they provided a secured living for people of the same clan and worked for the social upliftment of the community. The panchayats were expected to ensure a high level of justice, fair play and efficiency, in the absence of which the panchayats could not command respect from the villagers. The leaders of Khaps passed resolutions for banning female foeticide, preventing the evil practice of dowry, abolition of sati, imposing a limit on the costs involved in marriages and restricting the number of people invited in a marriage so that the girls' family is not burdened with extra expenditure people because they do not involve any money, are less time-consuming and peaceful negotiations between parties is possible (Sangwan, 2011). Khap panchayats remain a popular method of rendering justice at the doorstep of Whenever, there is a dispute, the panchayat is asked to settle it. The attendance of all council members is compulsory for Khap

meetings. These members conduct the trial in the presence of the villagers and the decision which is considered best under the prevailing circumstances is rendered. This decision is binding on both the parties. In case there is an objection by any one of the party, the Khap leaders can reopen the matter and decide accordingly. In most cases, the panchayat reaches a consensus after consulting villagers who possess the freedom to voice their opinions. This right of exercising the freedom of speech and expression is deep rooted in our democratic system and also given under Article 19(1) (g) of the Constitution (Senthilraja, 2010) Traditionally, women played a great role in the panchayati system. They were appointed as leaders and council members in villages.

The Khap panchayat is neither a binding authority nor do they have the knowledge of law to give verdicts on matters of honour killings. These honour killings are punishable in the court of law and tried in accordance with the provisions of law. Even the political parties work as a team with these panchayats. In one of the instances, there was unrest in one of the villages in the state of Haryana because the Jats were asking for reservations in educational institutions and government jobs. Because of the unrest, police opened fire and one of the members of the Jat community got killed. The Chief Minister Mr Bhupinder Singh Hooda requested the Khap panchayat to resolve the matter. Even the court refused to take up the matter and asked the Khap panchayat to resolve it. The Khap panchayat resolved the matter without further loss of life and resumed normalcy. In this manner the Khap panchayats play a major role in resolving disputes where even the court fails or refuses to interfere because of the unshakable faith in Khap panchayats. It is the belief of the people that justice is done without any biases or prejudices. Thus khap panchayats play a major role in protecting the rights of the villagers, in solving their property related, marital disputes. It also plays a role in bringing changes in the society by working towards eradication of social evils and encouraging more and more women to participate and voice individual opinions. The way media reports cases relating to khap panchayats, is a very one sided exaggerated view. We cannot rely on those reports and ignore the noble work these panchayats are engaged in doing.

### Modern Approach :

The main criticism of Khap panchayat is that rights of an individual are not respected. Rights of liberty, dignity, freedom to choose own life partner are jeopardised. Women are abused and their issues are never addressed. Most of the Khap rules are against law. Rule of men rather than rule of law prevails(emphasis added). The rate of female foeticide and infanticide is highest in North India, especially in Haryana, where the sex ratio is highly disproportionate. According to the census, there are only 792 females for 1000 males. These Khap panchayats have failed to take measures for social upliftment such as propagating primary education, criminalizing killing of girl child- the reasons which led to the formation of these panchayats in the ancient times. There

is a lack of adequate representation of women at the decision making level. One major criticism of such a mechanism is agitation by the youth as it disregards their aspiration. In one of the instances, the Bagpat district of Uttar Pradesh, Khap panchayat had issued a diktat that women will not be allowed to carry cell phones and they cannot visit the market place unescorted if below 40 years of age (Ramachandran, 2012). This clearly is a violation of fundamental right of freedom of movement throughout the territory of India as guaranteed under Article 19(1) (d) of the Constitution of India. The justification given by Khap leaders is that diktat protects women from harassment. However, strict action must be taken against the harassers who should not be allowed to move freely and not the other way round. Our so called leaders were in news for blaming women for the rapes committed on them and demanded reducing the marriageable age of women to 16 years (The Economic Times, 2012). Such insensitivity and deplorable remarks on womanhood by these leaders should be dealt with seriously. In case of *Lata Singh v. State of U P. and Anr* (2006) 5 SCC 475, it was stated that the petitioner was a major and is free to choose her life partner. The Hindu Marriage Act, 1955 clearly does not prohibit inter-caste marriages. Infact, inter caste marriages are helping to abolish the caste system and they should be encouraged. The offenders should be severely punished in case of violence or threat to life of such couples. The court allowed the petition. In this case, the Supreme Court had the opportunity of restricting the powers of Khap panchayats and declaring them unconstitutional and ultra vires. However, the court failed in doing the same. One of the major criticisms of this judgment is that the Justice Katju declares that parents of such children can abandon them. Such acts by parents are not justified because marrying out of choice is not a crime. Such couples are free to be a part of the society. The hostile behavior of family members causes emotional trauma and ultimately creates ill feelings which leads to failure of the institution of family. A common practice among Khap Panchayats is to declare an inter-gotra marriage null and void. In extreme cases, the husband and wife are forced to become brother and sister in front of the entire village and the child born out of wed lock is given to the family members or given away for adoption without the consent of the parents. In cases of such cruelty, the enforcement to intervene and prevent such practices. Unfortunately, the law has failed to take cognizance because such matters are handled solely by Khap panchayat who are prejudiced in their minds. The court refuses to interfere with matters related to caste. Recently these panchayats were seeking to amend The Hindu Marriage Act, 1955 wherein same gotra marriage will not be recognised. It will have a negative impact on personal matters of other religions like Sikhs, Jains and Buddhists (Senthilraja, 2010). Such unreasonable demands are ultra virus and unconstitutional. The question is to what extent should the government adhere to demands of Khap panchayats? How far their functioning is justified under the umbrella of having strong political ties and protecting their distinct identity authorities need.

## CONCLUSION:

Khap panchayats brings people of the same caste together who decide to reside peacefully. They

came into force to champion the cause of human rights but somewhere that purpose got lost. Instead now Khap panchayats moral police people and when an individual revolts; he is punished as per their whims and fancies. These panchayats do not have the authority to enforce or declare the law under the Constitution yet it is a common practice. In reality, they only have the power to form self governments and uplift the rural areas and bring them at par in matters of opportunities, jobs, education and economic growth with the urban areas. The Khap panchayats have failed in discharging these functions efficiently. There is a great disparity in the customs of Khap panchayats and the law. This has resulted in a lot of criticisms among the educated youth. Their right to choose one's life partner has to be respected. The law needs to take strict action against honour killings. No caste, community or society is bigger than the right to live with dignity. The role of khap panchayat, then and now, as explained above can be summed up in a pictorial manner for better understanding of the reader. It highlights the 'testers' against which the journey of khap panchayat from Tradition to Modernity is measured.

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