CHAPTER- 4

ROLE OF KHAP PANCHAYAT IN HONOUR KILLING

4.1 Introduction

―To the poor the courts are a maze,
If he pleads there all his life,
Law is so lordly,
And loath to end his case,

Without money paid in the presents, Law listeneth to few.”  By Pier's Plowman

Equal and fair justice is the hallmark of any civilized society. The effective justice system is extremely indispensable to sustain peace, order, progress and supremacy of the country. Like pollution poisons the physical atmosphere, the poor justice system poisons the social atmosphere. It is the first and foremost duty of the State to ensure equality, liberty and freedom to all its citizens by suppressing tyranny and autocracy. The State must check disorder and dominance of one class of people services or amenities provided to them by maintaining the balance of protecting Fundamental Rights for the upliftment of its citizens through proper administration of justice. The basic meaning of administration of justice is justice according to law. Law and order of a society are maintained through the administration of justice. The process of administration of justice reached its present stage through various stages of evolution. In the prehistoric society, when a mistake was done against an individual it was solved by relatives or kinsmen, later on, it was solved by society when individuals organized themselves in the form of a society. In early days, the natural elements of

---

water, air, fire etc. were considered as Almighty and accordingly people appeared before them for justice. For example, if a person against whom an allegation was there, and was ordered to walk through the fire and if they come out unhurt it was deemed that they were not guilty rather innocent and thereby crime was discovered. So it is noteworthy, that simply on the basis of presumption and faith towards natural elements enabled them to control peace in society.

According to Narad Samhita “Aspramsat Paneha Macham Bandhu bhyah Matra Pitratah, Avivahaya Sagotra” signifies that man and woman of marriageable age are excluded by Sapinda and Degrees of prohibited relationship to marry each other. In Hindu Law marriage solemnized in between same gotra or Parivar is not allowed unless customs and usages permit it. But in the Hindu Marriage Disability Removal Act, 1946 it is affirmed that the Hindu marriage cannot be negated if the husband and wife belong to the same gotra or Parivar or of sub-castes of the same caste.

4.2 CASTE SYSTEM

The caste system is exclusive to Indian society. It seeks its foundation in the ‘Chaturvarna System’. According to which, Hindu society was separated into four main varnas namely, the Brahmans, the Kshatriya, the Vaishyas and the Shudras.

The Varna system was mainly based on the categorization of labour and occupation. However, varnas and castes are not identical. The word ‘Caste’ is derived from the Spanish word ‘Casta’. It means breed, race and a host of hereditary qualities. The Sanskrit word of caste is ‘Varna’ which signifies colour.
Different definitions\textsuperscript{129} have been given by different Jurists which is immensely relevant to clarify the notion related to ‘Caste’.

In the words of C.H. Cooley\textsuperscript{130}, “When a class is somewhat strictly hereditary we term it as caste”.

Another Jurist, Green\textsuperscript{131} he said, “Caste is a system of stratification in which mobility up and down the status ladder at least ideally may not occur”.

According to Anderson and Parker\textsuperscript{132}, “Caste is that extreme form of social class organization in which the position of individuals in the status hierarchy is determined by descent and birth”.

In the words of Ketkar\textsuperscript{133}, A caste is a group having two characteristics

a) membership is continued to those who are born of members and include all persons to born,

b) The membership is forbidden by an inexorable social law to marry outside the group.

Thus it is notable from the above definitions that the concept of “Caste” is anecdotal and defined by different Jurists in a different outlook.

In 3\textsuperscript{rd} century B.C, the Greek traveler Megasthenes tinted two essentials of the caste system, namely

a) There is no intermarriage and

b) There can be no transform of the profession.

\textsuperscript{129} R Myneni, Sociology 132(Allhabad Law Agency,Allahabad, 2\textsuperscript{nd edn.},2017).
\textsuperscript{130} Ibid
\textsuperscript{131} Ibid
\textsuperscript{132} Ibid
\textsuperscript{133} Ibid at pg 133
The following features of caste system are indispensable to demarcate an inclusive picture about it.

### 4.2.1 Segmental Division of Society

Caste is genetic and caste status is incontrovertible. The Hindu civilization is divided into a variety of castes. There are habitual caste councils to standardize and organize the activities of its members. The leading body of the caste is called Panchayat which takes cognizance of the offence against the caste related social taboos pertaining to marriage, communal issues, etc. According to Mac Iver Caste is its own ruler where the ruling is governed and controlled by the very concept of which caste a person belongs to.

### 4.2.2 Social and Religious Hierarchy

The caste has a specific system of social superiority. The whole society is separated into diverse classes positioned high and low in a pecking order.

Thus as we can glimpse; Brahmins are to be found at the pinnacle of the hierarchy and are considered as authoritative, chaste and superior whereas the Shudras are kept at an inferior position and are considered as untouchables and superfluous for society.

Even in the religious matter, it was noted that caste system was in a dominant position to rule the world. Whateoever, dictum the superior caste had provided others are compelled to follow. Most importantly, such a social structure is taken for approved.
4.2.3 Restrictions on Food Habits and Social Relations

Each caste has its own ethnicity and tradition in maintaining its life in society. Some limitations and restrictions were imposed related to sharing or distribution of food and social status quo. For example, Brahmins are allowed to take “pakka food” that is food prepared in pure butter not any “kaccha food” from any other community.

This notion of division from the origin of the caste system is continuing hitherto. Higher castes governing lower castes people, their commanding decrees are having severe consequences on lower castes.

In Kerala, a Nair may approach a Nambudari Brahmin but has no right to touch him. Moreover, a Tiyan was estimated to keep himself at a remoteness of thirty six steps from the Brahmins and a Pulayan at a distance of ninety six spaces. Even in the villages wells are measured to be contaminated if a low caste people take water from the well. Such is the devastating after-effects of the rigid caste system in India.

4.3 Caste System Theory

The derivation of the caste system is ambiguous. It is however assumed that caste system originated in India since the ancient period. To gain an idea about the source of caste system following theories mentioned below are very important.

4.3.1 Traditional Theory

According to the Traditional Theory the caste system has a celestial origin. This theory is divided into two parts – Mythical and Metaphysical. The traditional theory differs from the sociological concept of the caste system as they firmly believe one’s status and role are determined by birth that is human endeavour is important whereas,
the Traditional Theory accepts caste system as a normal and natural process. The Mythical version of Traditional Theory considers four varnas as four types of castes and thinks that these four ‘Castes’ have emanated from the different parts of Lord Brahma’s body. It believes in the doctrine that an individual belongs to a particular caste because of his activities done in past that is as per his ‘Karma’ and ‘Dharma’. The Metaphysical edition of Traditional Theory describes that each caste has different functions as determined by the personality and individuality of caste members.

This Traditional Theory was denied by different Jurists as it deems caste as a normal happening and also of the reason that four varnas as four castes are incorrect.

4.3.2 Brahmanical Theory

According to some Foreign Researchers caste system originated and developed in India by the Brahmins. Since, they always tried to sustain their superiority in society and hence the division of caste systems. They consider caste system as a resourceful apparatus to run the society. This Theory is also subject to criticism. Firstly, as caste system has developed gradually in society. Secondly, if we mark out the distant origin of caste nowhere we can sketch Bramhin by blood or Shudra by birth.

4.3.3. Racial Theory

According to this Theory the caste system enhanced and improved in India due to the conflict in cultures and the communication of races. A complete amalgamation or merger took place whenever there was a war and one party conquers another. The defeated group’s women were taken as concubines or wives and as a consequence evolution turns up. In case of India, the migrants Aryans were patrilineal and the local
people were matrilineal in nature. The Aryans incorporated their own ideas of ceremonial transparency and consider the other population as substandard to them. They married the daughters of the aboriginals but denied to give daughters and the children born out of such wedlock were called the “Chandals”. So it can be observed that caste system originated due to racial differences and Pratiloma marriage. This Theory is also marked with different criticism that Racial Theory does not narrate the absence of Caste system among Christians and Muslims who consecutively established themselves in India. Racial Theory is unable to explain the root causes of growing Caste system in India.

4.3.4 Occupational Theory

This theory is based on the differences of occupation hold by different members in a community. For example, the priesthood is not under the domination of a Brahmins. But they convinced other classes in such a manner by showing their superiority that priesthood became their hereditary rights. This Theory also suffers from certain drawbacks. Due to changes in occupation caste system cannot be grown up social status always differ even if, a person continuing in the same profession.

4.3.5 Evolutionary Theory

Denzil Ibbetson explains this theory that caste systems are the upshot of exchanges in between three forces namely, tribes, guilds and religion. But this theory is also criticized by many as this cannot be the sole cause of widespread caste system in India.
4.3.6 Religious Theory

Religion was a significant tradition since ancient period. The King was considered as having a direct relationship with God. Religious beliefs and principles are having a great power to control the lives of people. Today in this modern era also it is observed how religion influences people. Not single social crimes are without the authority of religion rather they are interconnected with religion directly or indirectly.

All the above affirmed points are raised in this Research paper as in case of this cruel Honour Killing similar instances we can find in the role and nature of Khap Panchayats. Khap Panchayats due to their seniority and authoritative diktat over the upper caste, the Jats assumed themselves to be the ruler and wiser humankind to settle on cases related to inter-caste marriages, kinship and so on. They take cognizance of the offence against the caste related social taboos and other similar incidents. Nobody ventures to question their self-imposed diktats though all the decisions are subjected to variety of disabilities and dictatorship. The very intervention of these Khap Panchayats is beyond law and legal acknowledgement. They don’t even support the supreme law of the land, our Indian Constitution, not even personal law and Hindu Marriage Act, 1955. The position and function of these Khap Panchayats are simply due to traditional patriarchal notion which they firmly injected into ordinary people to believe that they are the only principal authority to decide cases related to ‘Honour Killing’ and whatever dictums they are providing, parties involved in the case are bound to observe otherwise, death is the ultimate penalty for disrespecting their judgment. Not only that, their judgments are sometimes so atrocious and brutal and so convincing that the family members of the spouses don’t even think twice to implement the same with their own sons and daughters. Evidence of cases or killing is
wiped away before it reaches to the police station before it gets registered as a case. And all these are supported by the family members to obey the orders imposed by the Khap Panchayat. So the dark consequence of these self-created courts by Khap Panchayats are immensely shocking and dreadful and are simply having sinister effects on society in the name of so-called caste. Gradually, it is increasing and becoming powerful as a society and civic people surviving in society and the family members of the victims are allowing them to become influential and commanding by remaining silent and unvoiced.

Honour Killings are reported in various newspapers whereas in our country women are playing a major roles in all aspects of life and performing their duties with great keenness and Honour as being President of the country, Administrative Officers, Lawyers ,Judges ,Police Officers, Doctors ,Engineers, Pilots, Astronauts, Bank Officers ,Businesswomen, Sports persons, film Industry and so on . In this 21st century when Judiciary is playing a vital role in controlling Indian legal system where it is mentioned clearly under Article 141 of the Constitution that the decisions given by Supreme Court are binding on all Courts, the role of unconstitutional Khap Panchayat is something improbable and outrageous.

Khap Panchayat is the union of few villages, mainly in North India though it exists in similar forms in the rest of the country. Lately, they have emerged as quasi-judicial bodies that pronounce harsh punishments based on age-old customs and traditions, often bordering on regressive measures to modern problems. The Khap verdicts of Honour Killings came into limelight in 1991 with the Mehrana Killings

---

when a Jat girl and a Jat boy was executed on order of a Khap. In 2007, The Manoj-Babli murder was also carried on order of Khap.

A Khap consists of 84 villages or 12 Thambas. Each Thamba is a group of seven villages. The Sarva Khap is a Khap of Khaps and is the supreme Khap council. A Khap Panchayat is an assembly of Khap elders, and a Sarv Khap is an assembly of many Khap Panchayats.

Earlier, villages were the origin of Indian heritage and people were nomads which with due course of time converted into agricultural community and civilization originated. India is known for diversity in the region, diversity in languages, diversity in food, diversity in clothes, diversity in the festival, diversity in states, diversity in everything which uniquely represents the country and its people. Today, in India there are so many tribes and villages persisting with their old customary beliefs and thoughts along with their practices and cultures. Gradually a system had developed to rule the law and justice of villages and hence the Panchayat system came into action. The forms of governing society are that of the ‘Sabha’ or ‘Samiti’ i.e gathering assembly. The Sabhapati, the president of the Sabha was elected to deliver administration of justice appropriately.

Khap is a term for social- political federation and used in a topographical sense. The political unit of Khap is defined as a group of eighty four villages. It is a system of social administration and unconstitutional political organization in the north western Indian states such as Haryana, Rajasthan and Uttar Pradesh since ancient times.

The exact origin of Khap Panchayat is till date not known but is believed to start back in 600 AD. In ancient times, during the time when a man was living a migratory life, and man was heading towards civilization and better standards of living. Even after
this rapid modernization and civilization, a lot many villages and tribes continue to exist in all parts of India, which have their own customs and traditions and different activities to deliver justice to their people. Across Rajasthan, UP, Haryana and Delhi there are over 600 Khap among which 106 is are only from Haryana.

Khap Panchayat” is a cluster of villages united by caste and geography without any iota of law (Bhaichara or Brotherhood). It is as old as 14th century started by upper caste Jaats to amalgamate their power and position. 10-15 men who constitute a Khap Panchayat settle the disputes and control the lives of young people by imposing its writ through social boycotts and fines and in most cases end up either in killing or forcing the victims to commit suicide or she was raped, murdered, abused, threatened etc.. Even if, Khap Panchayat’s order is acceptable for a family at such a level that they don’t shiver to feed pesticide pills to the teenage girls and then dispose of their bodies by burning them without any police records. The sense of community feeling, co-operation, a traditional value system and the feeling of inseparability provide the main strength to the Khap Panchayat.

Earlier and now the leading role of Khap Panchayat is to maintain peace and harmony in their community so that, in case of any offence or crime synchronization of the community should not be affected. The whole community gives respect to the leaders of Khap in such a manner that something like God’s verdict and needs to be implemented without any failure.

So it is noteworthy, that ‘Khap’ is an ancient concept whose vignettes have been found from the Rig Vedic times. These Social institutions are not approved by law and have no legal status. But, voluntarily they are engaged to deliver their dangerous

---