Chapter 4: Khap, State and Law

4.1 Introduction

In this period of globalisation, states are struggling for identity both externally and internally, and the idea of a state continues to remain problematised. The predicament of the Indian state becomes more awkward when one examines how it deals with the female gender. While the Indian state has evolved over time, it still remains in flux due to the demands of accommodation and representation. The aim of this chapter is to look into the gender issues in the context of the identity of the state through the lens of conflict as well as from the points of convergences with specific cultural identities. The notion of citizenship and its justifications within a state, which itself seems like a very fluid concept in its present form, calls for attention. How the two dominant identities -- the identity of the nation-state and the identity of the cultural groups -- are rendering invisible the issues of gender. The chapter tries to lay bare the complexity involved in the convergence of state institutions and cultural organisations like khaps. It seems that in the parallel struggle of both state as well as the cultural communities for identity and legitimacy, the real sufferers are always missed out and fall off the straight line of vision. These are the groups of people who need to be made visible. The question of how the women would be accounted for within the concepts of the nation-state and citizenship in a representative democracy like India are also be enquired into.

The chapter, in its first half, problematises the understanding of the modern Indian state. It deals with various notions surrounding the Indian state tracing back from scriptural texts to ancient Indian history as well as the indigenous understanding of the state. The second half of the chapter discusses women’s issues and the problem of the Indian legal system. The chapter also discusses experiences of women who are on the crossroads between the law of the state and the khap.
In a representative democracy like India, the problems surrounding gender get further complicated in situations when state has to interface with the cultural organisations -- as in case of khaps, my area of research. The difficulties faced by the state in addressing gender issues calls for an analysis of the nature, form and historical aspects of the Indian state. The gender issues that need to be addressed are often camouflaged by the debates simply surrounding the idea of the modern Indian state. The views are divided, in the sense that some believe that it is the Europeanised state, which is the root cause of all problems occurring within its boundaries. It is believed that this kind of a modern state is alienated and imposed.

As Partha Chatterjee explains, the early pioneers of women’s rights addressed the women’s question in a way which seems to have percolated down to the modern times and kept the problem intact. The nationalist elites came up with the solution of two realms: the outer material realm and the inner cultural realm. In the outer material realm, they portrayed that they were equal as citizens like the British; but in the inner realm, they said they were different from the British as being essentially spiritual, and it is this inner realm in which women were thought to be remade as “appropriately modern” -- but according to their lines and the colonial state needed to be out of this realm (Chatterjee, 2010, p. 17). It is believed that amidst all these complexities, the efforts of the modern nation-state to “carve out a sphere of the state where only the values of statecraft will rule” (Nandy, 1995, p. 37) puts it in direct struggle for identity and legitimacy with various cultural groups within its boundaries and creates the “hierarchy of citizenship” (Nandy, 1995, p. 38). This struggle for identity and legitimacy between the modern Indian state and cultural groups creates further negligence and marginalisation of the underprivileged sections of the society like women, minority and Dalits.

The complexity of the Indian state makes one halt and focus on the issues surrounding the making of the identity of the Indian state and the difference between the sense of nation in people’s minds and on paper. The constitution of India has guidelines on well nigh all possible relevant issues for a healthy democratic society. At least it appears so on paper. Although the Indian constitution and state machineries look very inclusive and sensitive towards
various kinds of cultural groups within its boundaries, one needs to rethink and analyse how far this idea of inclusiveness has reached.

Before we move on to the analysis of the current situation and the handling of women’s issues by the Indian state in its interface with the communities, it is imperative that we try and grasp the various accounts of the notions of nation that have existed in the annals of history as well as with much needed attention to the chronicles of “texts”. Such notions that exist against the colonial state and westernised lifestyle give us a glimpse of the fears and concerns of the population through different time periods. The idea of a pre-modern and post-modern state (Kaviraj, 2010) tells about the divided vision for the state and discontents with it. It also indicates the desire for a kind of state whose picture, though muzzy, comes out in the criticisms of the modern state.

4.2 Indigenous Imaginings of Indian state

Bhudev Mukhopadhyay, a writer and intellectual of 19th century Bengal, gave the idea of nationhood, which he called jatiyabhav (national feeling). Bhudev’s concept of jatiyabhav is explained by Harihar Bhattacharyya as, “a society-centric notion of nationhood, which asserted the sovereignty of culture/society, swadeshi samaj, and rejected the Western state-centric (and hence society-destroying) exclusionary notion of nationhood” (Bhattacharyya, 2010, p. 49). There is another writer of Bengal Renaissance, Rajnarayan Basu, who also had reservations about the universal notion of modernity. Partha Chatterjee explains Rajnarayan Basu’s concerns by asserting that “the forms of modernity will have to vary between different countries depending upon specific circumstances and social practices.” (Chatterjee, 1997, p. 8)

The pre-modern states give an indication of a status-quoist state, which came in favour of the haves or the propertied class “against the combined attack of have-nots” (Sharma, 1996, p. 56). There is also an indication that the three institutions -- property, family, and varna -- put together played a role in the origin of the state (Sharma, 1996, p. 53). The other notion of state in ancient times is similar to that of the Contract Theory spun around the need for a state-like formation. This notion of contract is there in Agni Purana, one of the sacred
writings on Hindu mythology and folklore: “Agni Purana believes in the secular origin of kingship, origin and tribute being the basis of social contract. The king receives in return of protection, contributions from the people to support himself and his retinue.” (Shastri, 1943, pp. 15-16). The rules of governance were mentioned in another sacred work called Manusmriti (Manu’s code of law), which says that the king should govern and provide justice to his people after acquainting himself with their customs and beliefs (Buhler, 2004, pp. 181-182). Today, when one sees people lobbying for the amendments in the Hindu Marriage Act, 1955, Hindu Succession Act, 1956, and its latest amendment in 2005, one could see where this line of thought is coming from. The communities, which saw women as properties along with their wealth and land, cannot see the state laws favouring the female section of the society. The longue durée of patriarchy would suggest that when the erstwhile state came in to the picture to help them keep their women and property, then how the modern state could deprive them of this control over women. This creates a sense of alienation in the minds of patriarchy-minded groups like khaps, who feel the state is unfairly imposing its will on them.

It is said that many third world states are states only in name because of the segmentary nature of the society (Nelson, 2006, p. 9). Nelson also mentions that the “state sovereignty cannot exist where real authority exists with subordinate social units” (2006, p. 9). It appears that the modern structure of the state seems to be struggling for legitimacy on certain units, which draw their authority and loyalty independently of the state (Nelson, 2006, p. 9). This creates a struggle between the two dominant political units, as in the case of khaps. The weaker voices, which could have been heard or awakened, seem to be on the margins amidst this struggle for legitimacy even within the modern state structure. For these reasons, the analyses of the political structure of a dominant cultural group like khap, which its a huge colony-like pattern, becomes relevant.

4.3 Political System and Jurisdiction of Khaps

Jat communities’ social and panchayati arrangement is based on institutional set-ups depending on blood relations like gotra, thok, kutumb (family) and is believed to be deriving power from the said sources. Jat is a farmer caste organised around
Pita pradhan gotra (patrachal clans) as explained by Ashok Baliyan, a revered member of Baliyan khaip. An inhabited village in the area within its limits of authority is called khaip. The area that comes under khaip panchayat also comprises of members from communities other than Jats. This political unit called khaip is organised for the purpose of social and juridical control of several villages. A khaip consists of several gotra (clans or tribes). Chaudhary, or headman, of the biggest clan of the village is chosen as the chaudhary of that khaip.

The clan’s chaudhary is the chaudhary of khaip panchayat. Chaudhary’s eldest son gets the position after him, based on inheritance. The pagari of the chaudhary of khaip or gotra is of utmost importance and of great significance. Om Prakash of Mundwar village, which comes under to Baliyan khaip, explains wearing a pagari in the following manner: “Pagari ke bandhan mein bandhana bahut zimmedari ki baat hoti hai, uski sabhi sunani parti hai aur sabko samjhana parta hai.” (Once the head scarf is tied, it brings great responsibility to the head of the clan: he has to listen to everyone, pacify one and all.)

In the above statement, we get a glimpse of similarity between the present notions of a clan leader and the ancient role and expectations that were expected from a clan’s chief. Earlier, even when the territory was not defined, the population of the clan was taken as belonging to him. This political and cultural continuum seems to exist in almost its original form in the khaip areas. The only modification appears to be in the nature of settlement, which looks like an expanded settled encampment. The territorial settlements and the drawing of identities of ruling lineages from the territories’ names are mentioned in historical works of eminent scholars like Romila Thapar (Thapar, 2003, p. 25).

The political organisation of the khaip system is as follows: each gotra is classified into divisions and sub-divisions on various levels viz., thamba, thok and khandaan. All the divisions and sub-divisions have their chaudhary, but, unlike the khaip chaudhary, once they are chosen, they cannot be removed. Gotra chaudhary is at the highest level in the order of authority and honour; below him comes the chaudhary of the thamba (thamba is a unit below khaip panchayat with jurisdiction over about 12-15 villages. One khaip may have around six-seven sub-units called
The procedure of calling a meeting for decision-making on an issue goes from one level to another. If the dispute within the thamba panchayat remains undecided, then khap panchayat is convened to decide the matter; khap panchayat’s decisions are made available to the minister of the khap, who makes an entry in the khap register.

The above mentioned political structure gives khap panchayats the opportunity to flaunt themselves as one of the oldest form of governance with traces of democracy. They feel that the modern police and legal system is not well-equipped to deal with such societies and disputes, as the modern legal system is too aloof and disconnected from the local cultural issues. On this basis, they claim from the state to designate their panchayats as lok adalats (lok adalats are an alternative and non-adversarial system of dispute resolution held by state authorities and law courts). This will give a conclusion to their process of legitimation, which seems to have slightly got eroded in the wake of so-called modern state system and representative democracy. The opportunities provided by representative democracy also gave such groups a chance to be part of the state political system. The entry into the state political system gave them a chance to make their voice heard in the state assemblies and parliament. They could voice their concerns and demand the amendments in various Acts, which seem to be going against their caste and patriarchal interests. For example, a few representatives in Haryana demanded for the amendment in the Hindu Marriage Act of 1955, Hindu Succession Act of 1956 and Hindu Succession (Amendment) Act, 2005. On similar lines the khaps of western Uttar Pradesh have been lobbying for the amendments and inclusions in such Acts. They claim that the laws were not made according to the customs of the community and they say that justice could be meted out only when the communities’ customs and ethics are to be taken into consideration. Here again we see the resemblance with the Manusmriti (Manu Code of Law), where it is mentioned that the laws should not be made in
opposition to the customs of the community, clan or family (Buhler, 2004, p. 182). Khaps are a good example of how certain groups are resisting the modern state.

4.4 Problematising the Indian state

The Indian state, it seems, is caught between the devil and the deep sea. Neither can such claims by cultural groups and territorial caste organisations be fully accommodated, nor can they be completely suppressed. It is explained by scholars that the modern Indian state, which is such a large democracy could survive because it left the complexities and issues of accommodation aside without taking any strong action. This is reflected when Sudipta Kaviraj says, “Indian nationalist state produced a new powerful imagination for itself which reconnected it to popular aspirations” (2010, p. 70). It could be said that the modern Indian state succeeded in sustaining itself because it always had safety valves intact to give vent to the protests. It is said that after 1970s, the local representation increased (Kaviraj, 2010, pp. 72-73) and the local vote-bank politics got a fillip and this seems to have facilitated the convergence of the interests of the modern Indian state and the local aspirations.

When we look into the histories of certain areas and groups, we realise that certain groups of people or region could never be completely subdued, whatever be the ruling body or type of state system. With respect to the Jat community of western Uttar Pradesh in north India, this stands true. These territorial communities could keep their separate identities of local governing unit through different time periods. During the Mughal king Akbar’s rule, they negotiated their separate space and identity and took the rights to govern their area as per their terms and conditions, and also kept expanding their area as colonisers (Pradhan, 1996, p. 95). During the British rule also they could not be completely subdued (Stokes, 1978, p. 15). Although the khap panchayats’ functioning was restricted during the colonial period, they were not completely eliminated. After the independence, they again started convening their largest congregation of Sarv-khap panchayats (meetings of all the clan councils. ‘Sarv’ means ‘all’ in english), to discuss certain reforms and their way forward.

The coming of democracy and modern nation was coupled with attempts
towards the rebuilding of the identity of clan councils like khap. Khaps started
gaining visibility especially in the late 1980s and 1990s when Mahendra Singh
Tikait, a chaudhary (headman) of a Jat clan, almost developed the khap areas into
juridical autonomy of the Jats -- and their independent police force -- was revived
in a Jat Kisan Raj (farmers’ rule)” (Jeffrey & Lerche, 2001, p. 102). The Jats also
tried to control the activities of low-caste sections of the village (Jeffrey & Lerche,
2001, p. 103).

The above-mentioned development created a situation where the modern
state and the cultural organisations were locked in a battle for legitimacy and
control. In this battle for control, both the parties -- i.e. the modern state and the
dominant cultural groups -- appear to be at loggerhead, but they in fact avoid
crossing swords with each other. One of the views of the state of ancient times,
whether in Indian context or in Greek philosophy, has been that state is not
something in itself but a unity of all its organs and machineries (Sharma, 1996, p.
47). The state starts fumbling if all its organs do not work in tandem. If the
judiciary comes up with a particular judgement but it does not get implemented on
ground level by different state machineries, the situation goes back to the status
quo ante. This is what often happens in many parts of India.

In khap areas, what happens is that the state machinery -- i.e. the
bureaucracy and district court -- seem to be playing out the regional and cultural
role at times; on some occasions, though, they try to put the burden back on the
khap to solve their own case by taunting them to be losing their characteristic and
trademark strength. Sometimes the administrators themselves are seen to be
humiliating the khap members on the grounds that they are weak when they try to
take refuge in the state police and administration. A few examples, which would
represent this argument well, are as follows.

In May 2012, the DIG (Deputy Inspector general of Police) of Saharanpur,
a district in western Uttar Pradesh, uttered blazing remarks regarding the
elopement of young couples. A person named Shaukeen, along with a few people
from village Kaserwa Khurd (it comes under Adarsh police station), had come to
appeal for the recovery of his daughter who had allegedly eloped. It is said that the DIG told him that a man should commit suicide if his daughter elopes or brings bad name to the family. It is believed that he was also heard saying that if his sister did something of this sort, he would either kill her or commit suicide himself. These remarks by the DIG were highly condemned, and, later, the officer said that his words were twisted by the media. In this whole situation, one can see that first of all the idea of elopement is made to understand by the family members as abduction. Elopement involves certain amount of free will or choice of the boy as well as the girl, which is not appreciated, especially in the case of a girl. This is the reason why mostly the case is pursued on the lines of abduction and the state machinery is used for the purpose of recovering the girl. This idea can be traced back to the ancient texts that show that the state was supposed to prevent the forceful abduction of women (Sharma, 1996, p. 58). The above is an example of how the modern state faces a threat of getting co-opted or manoeuvred.

Other similar examples could be drawn from amongst the lawyers of the khap regions. The lawyers belonging to Jat community in these regions often share the same sentiments as that of other people. Surrounded by the lawyers in the chambers of Muzaffaranagar District Court, I, during my fieldwork heard the arguments such as, “The present day legal practitioners and lawmakers are Indians but they should be called ‘Black British’”. These lawyers believe that the borrowed legal system and the conditions of United Nations’ Charter are not helpful in this country. They say that these laws further promote crimes and disturbances in the society. They believe that the social atmosphere and culture should be examined and the laws should be framed accordingly. The lawyers also believed that crime has increased because of the annihilation of social systems and declining respect for elders.

The above-mentioned sentiment comes from the notion that the state has to take into account the subjectivity of the case i.e. the cultural context. It appears that this kind of sentiment comes from the notion, as discussed before, that dates back to the ancient Indian concept of the state and duties of a state as mentioned in the Hindu scripture Manusmriti (Manu Code of Law) (Buhler, The Laws of Manu, 2004, pp. 181-182). In those times the king was instructed to give judgements after
inquiring into the laws of various castes, guilds, families etc. and also instructed to make laws that do not oppose the customs of countries, families, castes. In Agni Purana, it is mentioned that since the "pleasure of the public" is one of the main criteria of good government, the king is advised to rule neither with too much tightness nor with too much clemency (Shastri, 1943, p. 19). When one sees through the idea of the ancient state, one gets a sense that when it is said ‘pleasure of the public’ and the ‘need of the state ’, it actually means need of the state for the propertied and wealthy class against the have-nots, in order to punish the have-nots for indulging in robbery or stealing of property and wives.

The above-mentioned point regarding the nature of the ancient Indian state needs to be pondered upon because in the present times also the state seems to be working for the 'pleasure' of that section of the society which is in a better position economically and socially. The state seems unwilling to take the risk of upsetting the dominant public or groups. In this process of the convergence in the interests of state organs and dominant groups, the voices and welfare of the public on the margins get ignored. The groups on the margins happen to be belonging to the female gender, religious minority groups and the groups lowest in the order of caste system in India vîz. the Dalits. This is very much evident in the khap areass as well. The two dominant parties -- one in the form of the state itself and another in the form of the dominant clans -- seem to be struggling for control and authority with each other, but actually one can see the collusion between them against the reforms, which could bring benefits to others at the margins. They negotiate with each other to mutually derive the political and economic benefits, pushing aside the rights and interests of the weaker sections.

In the ancient times, the crimes committed were considered as crimes against individuals and state came in to punish the guilty; but in the modern legal system, the crimes committed are crimes against the state, as the state is not supposed to simply maintain the status quo. As said earlier, any crime committed in the modern legal system is the crime against the state, which means that automatically the state becomes party with the affected people; but when crimes are committed against the weaker or against the people considered as insignificant by the administration and political class, the state seems to be detaching itself
instead of fighting on their behalf. This is very much evident in khap areas, where cases of crime and violations are rampant: examples are killing of women or young couple in the name of honour, or usurping the property of the Dalit, or the killing of Dalit boy if he marries a Jat woman. The state machinery seems to be reluctant in giving protection to the affected parties. Here again, we witness the retraction of the state. The aims of the modern state and the legal system are envisioned as an assurance of safety and protection of the individual rights of the citizens and also as the up lifter of the downtrodden.

The concept of citizenship, which forms a basic criterion of belonging to a certain nation-state, seems to be gasping mid-way to give benefits to all. An eminent feminist theorist and social scientist, Nivedita Menon, explains the aforesaid situation through the analysis of Uniform Civil Code (UCC), which is mentioned in the Directive Principles of State Policy of the Indian Constitution (Directive Principles are non-justifiable, but serve as guidelines to the people.) Through the analysis of the debates surrounding a Uniform Civil Code with respect to personal laws, one can understand how the struggles between the state and cultural communities actually end up veiling the focal issues. In the words of Nivedita Menon, “The UCC debate remains poised on the polarity of state and community, rendering invisible the axis upon which it turns, that of gender.” (Menon, 1998, p. 3). It would be apt to mention here Catarina Kinnvall’s work, where she talks about “ontological security” and “homesteading”. An understanding of this may help us know why and how certain communities or cultural groups try to assert their authority and identity. In Catarina Kinnvall’s own words she explains “ontological security” and “homesteading” as a process, which is “likely to involve the construction of a ‘hegemonic tradition’, which refers to those sources of social authority that seek to represent themselves as the true interpreters of a particular tradition.” (Kinnvall, 2006, p. 32).

It is noted that the fault lies in believing that all marginal groups have the right atmosphere, knowledge and resources to pursue their rights through the available legal mechanism. In the case of women, especially, what the writers say about South Africa, stands true in case of Indian legal system as well. The legal system is inaccessible to women because they lack resources. Lack of awareness
and complicated legal language leaves women high and dry (Hames, 2006, pp. 1319-1320). Furthermore, the difficulties increase for women as they also fall within a certain cultural frame and the inhospitable attitude of the local state organs makes the situation worse.

4.5 Women’s Lived Experiences of State Law and Khap

Pierre-Joseph Proudhon’s statement “property and society are completely irreconcilable with one another” comes alive in present times: on the one hand, laws are available for the protection of women’s rights; on the other hand, those very laws bear the allegation of being the motivating factors behind the trivialisation and breakdown of social bonds surrounding a woman. This section juxtaposes the laws available for the protection of women’s rights with the lived reality of the women’s lives in contemporary Indian society.

This is especially true of khap areas where property is of paramount concern: the entire social set up is crafted around property ownership. Honour and identity is also measured with the yardstick of property ownership. Prakashchand of Bhonra Kalan village explains it well when he says, "Dharti mata aur izzat sabse badi cheez hai (land and honour are the most important things)." Prakashchand is a 38-years-old unmarried man. Bhonra Kalan is the village which has most number of unmarried men. It is believed that those men could not get married because of less property and a general lack of income sources. Vinod, a resident of Bhajju village told me, "Jo log zamin bech dete hain unki koi izzat nahi karta. Zameen ko bech dena matlab ma ko bechna hai (those who sell off their lands have no honour: to sell your land is like selling your mother)."

Patrick Olivelle, in his work, Language, Text and Society, portrays that the laws and guidelines were more of rhetorics of conservative attitude towards women, whereas the reality painted a different picture of more liberal view towards them (Olivelle, 2011). On the face of it, the guidelines and laws in Dharmasastras appear to be very conservative, but a close look at these guidelines and punishments brings out a reality that is contrary, as they allude to the fact that not only did women own property, but also executed legally-binding transactions, including legal documents (Olivelle, 2011, p. 252). When it is said that there is
dissonance between the rhetoric of the Dharmasastras and the reality of women in those times, it is meant that in reality women then had more economic and sexual autonomy than what gets depicted through the laws and guidelines of that time period.

When we contrast the above-mentioned nature of the rhetoric of the laws and reality of ancient India with that of the contemporary laws and reality, we realise the sharp differences of rhetoric of law and reality of women. Modern India depicts a more liberal nature of the laws in the face of more conservative attitude towards women, which is in contrast to the ancient period where laws had a more conservative rhetoric confronting a more liberal reality of women, since women’s agency appears to have had more power and autonomy.

In the light of the aforesaid points, this section analyses the reality of women’s rights and their protection by juxtaposing the laws available, for the protection of women’s rights, with the reality of the women's lives in contemporary Indian society.

Data sources for this section have been field narratives, reviews of documents and interviews carried out among the members of Jat community of western Uttar Pradesh. I also reviewed Acts, rules, legal documents and cases. Historical accounts, texts and scriptures and community-based proverbs and narratives have also been used in order to understand the mentality of the khap set-up and their demands. Interviews with lawyers of Allahabad high court, Muzaffarnagar district court in western Uttar Pradesh and Kanpur district court in eastern Uttar Pradesh, were carried out to understand the legal realities. In-depth interviews and observations were carried out among the men and women of western Uttar Pradesh, which happened to depict a complex picture of the dialogues between the cultural laws and present Indian legal system. A few comparisons between certain countries were looked into: it turns out there are similar concerns regarding women’s rights and the legal system elsewhere too. Reports on women’s rights and legal issues compiled by various groups and organisations have been consulted as well.
4.5.1 Locating Obstacles and Entry-points through the Lived Reality of Women’s Rights

In the case of women’s rights and their claims to resources, first thing that has to be thought over is the conceptualisation of the idea of women as citizens. When the idea of women as citizens is understood thoroughly, the shortfalls in the achievement of full citizenship for women become instantly visible. The ‘invisible barriers’ (Uyl, 1995) that happen to be the subtle and out of sight hindrances in the attainment of full women’s rights and protection can be made visible only by locating ‘softer powers’ that shape the lives of women, their sexuality and social and political image, as well as self-image (Uyl, 1995). Location of such invisible barriers will help in getting a clearer picture of why and how the rights of women get denied even if we accept that the intentions of law-makers have been largely good and in the best interest of the female population. It becomes necessary to figure out why gender-sensitive laws often fail in giving protection to women or in helping them gain control over resources.

Needs and conditions that hinder the attainment of full rights for women have to be recognised in their specific social realities. The laws are made as one solution for all, which is in some ways unavoidable, but what can be worked at is the implantation of those laws. The social realities of women differ significantly: It would be imprudent to ignore the fact that women from different regions, castes and cultures have different paths to access the laws that are made for providing justice to them (Cross & Hornby, 2002).

Citizenship is an abstract concept, which is why it is suggested that immense care must taken to explain what it means in practice and what can be done effectively in the context of development interventions (Sever, 2004). It is argued that citizenship should be understood as ‘multi-tiered’ and formed through many different positions according to gender, ethnicity and urban/rural location rather than seeing citizenship from the angle of ‘uniformity’ (Yuval-Davis, 1997). The ways in which the division between the family/private and the political/public operate to exclude certain groups, particularly women, from citizenship have to be consciously and perceptively looked into (Yuval-Davis, 1997). Most of the time it is seen that community, and not individual agency or voice, is essential to the sense
of ‘self’ to women, and that is why even when women are given the role of decision-maker in the family, they happen to take decisions based on collective needs rather than individual interests (Bulbeck, 1998).

This sense of ‘self’, where a woman thinks only for the good of her father and brothers, is a major obstacle in Indian society in claiming the property rights she is entitled to. In such cases where the ‘self’ is seen as something to be sacrificed for the betterment of the family by the womenfolk, can only be mitigated through strong implementation of law and exemplary action taken in case of any failure to abide by the law as well as by having rigorous, dedicated and continuous awareness programmes for women by involving women from all social backgrounds. There is struggle between the objective identity of a woman and her subjective identity and also between her physical and social location (Rao, 2008). This sense of ‘self’ among women can then be converted into more fluid, or as Paul Ricoeur would suggest, ‘meanwhile self’, which will get protected from “accusations or self-accusations of fortune or guilt” (Thiselton, 2006, p. 237).

There are a few laws in India that stand helpless and mute in the face of such social realities where women do not claim their rights, as it would render them “selfish, uncaring and individualistic, in the eyes of the society” (Rao, 2008, p. 4). The Hindu Succession (Amendment) Act, 2005, happens to be the most glaring case in point. The amendment to the Act revised the rules on coparcenary property and gave daughters of the deceased, equal rights with the sons. This Act gives an impression of a revolutionary change but the ground realities tell a very different story. The narratives and voice of women as well as men from Muzaffarnagar district bring out the grim reality of the use of the amendment to the inheritance law. There have been protests and demands against the changes brought about in the inheritance law in favour of women. The Hindu Succession (Amendment) Act, 2005, for example, is being alleged to be the potential cause of degeneration of family value system. Chaudharies in khap areas of western Uttar Pradesh and other elderly men lament that such low moral values are being impressed on their social system by the legal system.
I met Om Prakash, 69, of Mundavar village at Baliyan khap’s chaudhary’s house in Sisauli. He told me, “nyun aein, jit bhi jageh naye naye niyam kanoon a rae se, samaj sab barbad hoge se” (Wherever news kinds of laws have been introduced, the social fabric of societies has got destroyed.) Another elderly man, Iqbal Singh, 70, of Sisauli village, told me, “Izzat aur vajood ka aankalan parivar se hota hai aur agar ye sab kanoon ladki ko parivaar todne ko uksayenge to ladki ka hi nuksan hoga.” (Honour and existence are measured through the status of the family, and if these laws motivate girls to break the family then it will be detrimental for the girls themselves.) Devendar Singh, who is Phugana village pradhan’s husband (the village falls under Gathawala khap of Malik gotra) said, “Ladkiyon ka sara mamla agar court hum par chhor de to sab kuch control mein rahega” (If court leaves all the matter related to girls to us, everything will be under control.)

Young women themselves said that after they get married, husband’s family will meet their needs and therefore it is be better to leave the parental land for their brothers’ use. A 30-years old man from Narottampur village (belonging to Bariyan khap) also told me that his sisters were not ready to take their share in property and agricultural land even when they were offered by the parents, as they did not feel the need of it and suggested that it would be better for the brothers if the land remained undivided.

The reality of the inheritance law is that girls end up getting nothing from either their husband’s side or their parents’ side even when provisions are available. The obstacles in property claims by women are: firstly, due to of the social stigma involved in claiming their rights, and, secondly, due to the fact that equal share in father’s property applies only if he dies intestate -- that is, without making a will. “Given the bias and preference for sons and notions of lineage, discrimination against daughters in inheritance through will is bound to remain” (Shukla, 2005).

It is also seen that at times girl’s education is used as an excuse to make property rights redundant for them. The girls are also made to understand that giving them education is in itself a huge effort on the part of the family, so once
they are educated, they shouldn’t think about getting property rights. Here is what a woman, newly married into the family of a khap chaudhary in Muzaffarnagar, had to say: “Jab ghar se itna kuch mila, padhai karai itni mehnat se aur ab acha parivar bhi mil gaya hai shadi kakre to kaun sar dard lena chahta hai jameen jayedaad ka.” (I got fine upbringing and facilities from my parents. They worked so hard for my education and marriage. When there is already so much security and care available, why bother about the property?)

The other reasons that the lawyers give as to why women are not able to claim their property rights, are that women are hardly able to access the laws and the legal system either due to lack of awareness or due to poverty or due to the complicated and inaccessible legal system. Examples from certain other countries in Asia as well as South Africa point out the problem of accessibility of laws and programmes to the poor women and rural women (Cross & Hornby, 2002; Sever, 2004). A senior advocate of Allahabad High Court I talked to gave a solution to the problem involved in the implementation of the amended inheritance law. He said with conviction that this law will work only when a rule is introduced with a provision that in cases where property is not given to the daughters (or in case the daughters don’t claim their share of property), the state government takes over the property and uses it for women’s welfare dedicatedly. He says with such rules people would be left with no choice but to give the girls their due share in the property. There is a loophole in this suggested rule and can be easily bypassed. The girl’s family would give the property in her name and then ask her to show on paper that she is sold the property to a third party and this way the family can get it back from her through the third party. On this the senior Allahabad High Court advocate said that to fix such problems it should be made sure that in cases where the selling of property is taking place, she should get the market value or at least the circle rate fixed by the government and the money should appear in the girl’s bank account. He argued that once the women start getting a taste of financial power, it will not be very easy to take back the money or property from them.

The “Sub-group on Economic Empowerment of Women with focus on Land Rights, Property Rights and Inheritance Laws” had also raised concerns regarding women’s property claims: it pointed out that ownership of land by
women happens to be very low, that their right exists only on paper to inherit property and this right gets subverted in various manners (Planning Commision Government of India, 2011). This sort of circumvention of law keeps it away from being effective. It happens to mark merely a nominal existence by being there and yet not prompting any substantial change, owing to some major loopholes like the ‘right to will provision’, which still exists unrestricted in the inheritance law even in its amended form.

Zillah R. Eisenstein has talked about the afore-mentioned kind of nature of law where she argues that, “because law is engendered, that is, structured through the multiple oppositional layerings embedded in the dualism of man/woman, it is not able to move beyond the male referent as the standard for sex equality” (Eisenstein, 1988, p. 42). She further says that the law names reality and at the same time it mystifies reality (Eisenstein, 1988, p. 22). This argument by Eisenstein stands true in the case of banning of khaps in the wake of ‘honour’ crimes. The Law Commission was asked to look into the matter of honour killings and prepare a report. Law Commision’s Report No. 242 was submitted to the Law ministry in August 2012. The report was titled “Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework.” The report mentions that:

“The law proposed by the Commission under the title of Prohibition of Interference with the Freedom of Matrimonial Alliances Bill is intended to curb the social evil of the caste councils / panchayats interfering with and endangering the life and liberty of young persons marrying partners belonging to the same gotra or a different caste / religion. These offending acts imperiling the liberty of young persons marrying or intending to marry according to their wishes are being perpetrated in certain parts of the country in the name of honour and tradition. It is felt that such honour crimes can be effectively checked by prohibiting the assembly or gathering of such members of panchayats for the purpose of condemning the marriage and taking further action of harming or harassing them.” (Law Commission of India, 2012)
The above-mentioned understanding of crimes of honour as well as the proposed solutions appear to be too simplistic and futile in the effort of controlling such crimes. The banning of khaps appears to be more of a propitiatory gesture offering superficial solutions. Such tactless solutions only contribute to the worsening of women’s condition. This fact came to surface loud and clear when chaudhary Naresh Tikait (headman of Baliyan clan) said that if courts troubled them and misguided the womenfolk then they would be forced to kill the girls in the womb itself. This also hints at the easy availability of pre-natal sex determination test facilities, despite a ban on it under the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act. The driver of a cab service in Muzaffarnagar told me that he had worked in a clinic nearby where such tests were conducted. He said that many people had started keeping the portable ultrasound machines, as no registration was required for them. On the analysis of such facts and in the wake of such solutions, Zillah Eisenstein’s statement keeps coming back that law names reality and at the same time mystifies it (Eisenstein, 1988).

The Jat community, in response to the allegations of honour crimes on khap panchayats, said that such crimes are perpetrated by the families and khap panchayats have nothing to do with it. They suggested that such crimes can only be controlled by making same-gotra marriages illegal. This demand makes for an intriguing case of how law or legal system is always under the threat of being co-opted by cultural communities, which, if not handled thoughtfully, might further make matters worse for women.

A few years ago, Jat Ratna, a Jat community’s magazine, put forward the idea of amendment in the Hindu Marriage Act, 1955. It argued that Hindu Marriage Act came about in 1955, whereas marriages have been taking place since the formation of the society and every society has been conducting marriages in accordance with its own beliefs and system (Dahiya, 2010). The magazine further said that the laws are formulated only for the purpose of stronger implementation of social belief systems and sanctions. It gave the example of Hindu Marriage Act and explained that whenever laws are made, the cultural belief systems and traditional values are always kept in mind. The
magazine quoted the Hindu Marriage Act section 5 under which the conditions of Hindu marriage are mentioned. It said that section 5 of the Act prohibits *Sapinda* marriages, unless the custom or usage governing each of the parties permits of a marriage between the two. In line with this fact, the Jat community currently demands the prohibition of *Sagotra* marriages, unless any society according to its rule permits such marriages (Dahiya, 2010, p. 54).

Other members of Jat community in western Uttar Pradesh also suggested that if such a section is added to the Hindu Marriage Act then most of the problem would be solved and a separate law for honour killings would not be required for its control. It is suggested that honour killing can be treated as any other murder (Dahiya, 2010, p. 54). The problem in this argument is that honour killing cannot be dealt with in similar manner as any other murder due to the problem of missing evidence and witness -- even if it is carried out in broad daylight or in front of the entire family, village or community.

A multi-pronged approach has to be adopted in dealing with such crimes and mental set-up. One way would be to have a robust arrangement for the protection of young men and women in case they report threat to their lives from the community or family -- something which is currently very badly handled. A local stringer called Yogesh Tyagi told me what he once heard at a police station. The police was trying to persuade a girl who had eloped from going back to her family by telling her, “*Ekkis saal ka pyar chaar din ke pyaar se jyada bada hota hai* (two decades of love that the family gave you holds more importance than a small courtship with a man)”. Another suggestion that was made by the lawyers at Allahabad High Court in a conversation with me is that the new enactment for the protection against crimes of honour has to be similar to that of Indian Penal Code Section 304-B read with Section 113 and 114 of Evidence Act as is provided for dowry death cases. Apart from these provisions, efforts should be made to locate certain people from within the community who either condemn such crimes or have the potential of coming out of such mind-set and civil society should try to work along with such insiders and discuss with them rather than imposing views and solutions from above. Research on the khap regions of western Uttar Pradesh shows that many such insiders are available and working in their limited capacity
towards social causes beneficial for women and other marginal communities.

There are various incidents that show how the sense of justice in cultural jurisprudence lacks sensitivity towards the realities of women. An incident from Shoron village of Muzaffarnagar district narrated to me portrays this sense of justice. Kanti, an elderly woman of about 80 years of age, and chaudhary Rajpal Singh, about 70 years of age, both from Shoron village, narrated an incident and took pride in their justice delivery mechanism. A case was brought before the panchayat regarding the issue of claims on the pension of a deceased defence person from the village. The guidelines for defence pensioners clearly state in the Joint Notification of Family Pension that the “widow in whose favour the pension has been jointly notified should report the death of her husband to the PDA (Pension Disbursing Agency) and submit the death certificate for the commencement of the payment of family pension and in cases where the wife is not alive the pensioner may nominate some other family member.” (Principal Controller of Defence Accounts (Pensions)). This legal provision in favour of the wives of defence personnel happens to be unacceptable to Jat community members of Muzaffarnagar.

When the above-mentioned case was brought before the khap panchayat by the deceased man’s parents for justice, the clan council summoned both the families, the deceased man’s parents and his widow’s parents. The widowed woman, after her husband’s death, had started living with her parents. The widowed woman’s family didn’t turn up despite being called several times, as they believed that husband’s pension was their daughter’s right. Rajpal Singh and Kanti narrate the story further and describe how the woman’s parents were dragged by young men all the way from their house to appear before the panchayat. Chaudhary Rajpal Singh says, “ladke gaye aur juttam jutii karte hue laye phir unko” (Young men went and literally dragged them before the panchayat.) The decision was taken to give share in pension to the deceased man’s parents, and it was believed that justice was delivered by the clan council. Many such cases are solved in similar manner even by elected gram pradhans, which reflects how the cultural mind steers into the state organs, systems and its mechanisms. Certain members of the Jat community believe that the Indian legal
system is too alienated in consciousness from the realities and experiences of the culture and community, which makes it incapable of delivering proper justice. Such simplistic sense of justice fails to take into account the complex realities of women’s lives and conditions.

The aforementioned argument about the simplistic understanding of women’s realities and rights gets reflected in matters of domestic violence as well. The complex realities and experiences of domestic violence are dealt with perfunctorily on three levels: firstly, on the level of comprehension; secondly, on the level of implementation; and thirdly, on the level of interpretations of the law available for the protection of women from domestic violence. The use and understanding of this law in particular brings out the flippant orientation and simplistic understanding of the social and legal agency with regard to women’s everyday life experiences. The provisions of the legislation and the scope of their use and interpretations show a wide gap, reflecting a distance between the ‘ideal’ and the ‘real’. The Protection of Women from Domestic Violence Act, 2005 (PWDVA 2005), “covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by ‘consanguinity’, ‘marriage’, or through a relationship in the nature of marriage or adoption” (Choudhari, 2009, p. 7). In addition, relationships with family members living together as a joint family are also included, and even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the legislation (Choudhari, 2009, p. 7). The law also provides for the appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter and other such services (Choudhari, 2009, p. 8).

The above-mentioned provisions of the Protection of Women from Domestic Violence Act, 2005, when compared with the report and its findings as well as the lawyers’ experiences, depict the obstacles in its use and implementation. The report entitled “Staying Alive: Second Monitoring and Evaluation Report 2008” on the Protection of Women from Domestic Violence Act, 2005, highlights and reaffirms the obstacles due to the simplistic
understanding of justice in case of women (Lawyers Collective: Women's Rights Initiative, 2008). It shows that there have been petitions filed in various courts challenging the constitutionality of the PWDV Act, 2005, with grounds that the Act by providing reliefs only to women, is in violation of the constitutional right to equality. The report also highlights the issue of the qualification of the Protection Officers or Service Providers. The majority of the Protection Officers have B.A., B.Com, or B.Sc. degrees and in some places they are appointed on independent contractual basis, whereas in most places the already serving government officials are given the additional duty of Protection Officer as well. This is because no educational qualification or specific requirements are mentioned in the Act, which makes it weak in its very foundation. It raises questions about the ability and training of the Protection Officers in dealing with matters of human rights specifically related to women and legal procedures. Lack of seriousness in the appointment of Protection Officers makes the law less accessible to the aggrieved. The report also shows that medical professionals hardly acknowledge domestic violence as a public health issue despite being a stakeholder in the PWDV Act along with police and judiciary. The issue of interpretation of ‘shared household’ is becoming another obstacle. Another issue is that domestic violence goes mostly unrecognised in cases of non-marital situations i.e. when siblings, parents or children are involved (Lawyers Collective: Women's Rights Initiative, 2008).

Legal practitioners at Allahabad High Court, Muzaffarnagar and Kanpur District courts, said that in most of the cases relating to women’s issues, immediate retaliatory counter-cases are filed, which hinder and defer justice.

4.6 Conclusion

The major obstacle in the attainment of women’s rights and full citizenship is the lack of recognition and conceptualisation of women’s issues and rights through their lived experiences. The process of dispossession and the language of constraints regarding the attainment of justice for women in line with human rights and citizen rights ought to be identified for the better formulation and implementation of laws, policies and programmes. Measures taken for the
implementation of laws and for spreading awareness regarding them need to be visualised keeping in mind the least resourceful. Network of civil society, including privileged and underprivileged women from various backgrounds and locations, needs to be built and approached extensively in order to understand the experiences in a detailed way: the detailed experiences would assist in spreading awareness about the complexities of women’s conditions.

The laws related to the protection of women’s rights have to be studied in line with the theory of ‘law in action’ (Pound, 1910), which suggests that the role of law should be examined not only as it is mentioned in the statutes, but also on the basis of how it is applied in the society. Continuous scrutiny of the laws in the said manner is crucial for identifying the loopholes and for lobbying to fix them, otherwise the laws will exist merely nominally and hyperbolically. Exhaustive documentation of women’s experiences will reflect the status of their rights and the use of the available laws. Effectiveness on the women’s agency and body is a true litmus test of the laws and policies formulated for the protection of women’s rights.

In places where the largest section of the society -- like women and other marginal groups -- suffer voicelessness, one cannot simply call it a result of cultural patterning; rather it also has to do with the conscious or unconscious ignorance on the part of the state from recognising them as political subjects. The idea of a masculine state seems true in a way that the state and its laws appear to remain largely inaccessible to the female population. When the complex and inaccessible state’s legal system and the law of the cultural systems overlap, it imposes marginality of multiple kinds on the weakest sections of its people.

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