CHAPTER 7

CONCLUSION AND SUGGESTIONS

7. Concluding Remarks

In the present society there have seen various changes in the mindset of the people regarding their beliefs and faith towards the traditional concept of marriage and other social relationships. It has also presented many difficulties to the traditional laws on which our Indian laws are based. The problem of Honour killings is at the top among the current challenges. The major task to the law exists in finding a correct harmony between the two clashing rights or interests, on one hand from perspective of the traditions and then again from the perspective of basic human rights. Any hasty conclusion in this field might be dangerous to the interests of one or other area.\(^1\)

Search for a balanced harmony between the basic human rights and the aged old traditions has brought about deliberate endeavours both at the national and global levels.

The biggest question is how to curb these khap panchayats and their decisions on honour killing.

Keeping in mind the flaws of the present policies regarding the above issue, this final chapter of the thesis briefs out the conclusion of the research and suggestions for a different approach to deal with the nature, structure, functioning of Khap Panchayats, their role and relevance in contemporary society with special reference on social issues especially in the light of honour killings.

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\(^1\) Samarth Trigunayat, Inter-Caste & Inter-Religious Marriages: Social And Legal Issues, CNLU, Academike, ISSN: 2349-9796, Available at: https://www.lawctopus.com/academike/inter-caste-inter-religious-marriages-social-legal-issues/, (last visited on January 1, 2017)
7.1. Conclusion

In the course of the research work, the researcher has reached to the following findings:

In India, The Constitution of India is the supreme legislation of the land. It guaranteed Right to life, liberty, security, and so many other fundamental rights to the people and its citizens (men and women both) on the principle of equality. but it does not speak anything about right to marry for the reason that India is a land of diverse cultures and religions and part III of the Constitution\(^2\) confers Right to Freedom of Religion, Freedom of conscience and free profession, practice and propagation of religion to the persons.\(^3\) Not only in India but in most of the Countries in word, Marriage is considered as a religious practice and each religion has its own traditional practice and standards to regulate the practice of marriage. These traditional practice and standards are recognized as personal laws, such as Hindu Personal Law, Muslim Personal Law, etc. Therefore in India marriages are governed by the personal laws\(^4\).

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\(^2\) The fundamental rights in The Indian Constitution have been grouped under seven heads as follows: (i) right to equality, (ii) right to freedom, (iii) right against exploitation, (iv) right to freedom of religion, (v) cultural and educational rights, (vi) right to property (very much diluted) and (vii) right to constitutional remedies, see also- M.P. Jain, Indian Constitutional Law, Lexis Nexis Butterworth Wadhwa, Nagpur, Publication, 6\(^{th}\) Edn. 2010.

\(^3\) The Indian Constitution Article 25 provides that (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law— (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation I.—the wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Though, in India, the marriages are governed by the personal laws but no personal law illegalizes marriage between male and female on the grounds of its being sagotra and inter-caste. Even inter-religious marriages are also legalize in India by The Special Marriage Act 1954. Woman who is a major and is at all relevant times a major at the age of 18, is has choice to marry or to live with anyone she loves. There is no restriction under the Hindu Marriage Act 1955 or any other laws to an inter-caste marriage in India. India is a republic, democratic and free country, whenever a person hold the major age of 18, he or she is free to marry with his/ her own choice. If the guardians of the male or female do not agree of such such inter-religious or inter-caste marriage, the utmost they can do boycott personal relationships with their daughter or the son, but they can’t give intimidation or execute or prompt acts of violence and cannot harass the person who choose such inter-religious or inter-caste marriage. Such acts of harassment or threats or violence are completely prohibited. However the principle of consent which is essential in almost in all the religions for a valid marriage is not being fully observed and

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5 Marriage between two Hindu’s is govern by the Hindu marriage act 1955. The Act prescribed certain essential requisites for a valid Hindu marriage. Section 5 explained valid consent, The bridegroom attained the age of 21 years and the bride the age of 18 years, degrees of prohibited relationships, Under the Muslim personal Law, Marriage (Nikah) is a contract based on mutual consent. Consent of parties is must for a valid marriage. Any person who is of sound mind and has attained puberty can marry to any Muslim. The marriage will be void, if there is no consent. A minor and insane (lunatic) who has not attained puberty can be validly contracted in marriage by their respective guardians. The marriage shall be deemed complete if performed having witnesses as per Islamic Law.

Marriage under Indian Christian Marriage Act, 1872 is in the nature of contract and hence there should be a free and voluntary consent between the parties. When there is a minor, as defined in the Act, the consent of father or guardian is necessary. Marriage is not permissible between the parties who are within the prohibited degrees of relationship as per the provision of section 19 of the Indian Christian Marriage Act, 1872. There is no legal impediment for marriage between a Catholic and a Protestant

6 The Central Government had enacted an Act to provide marriage a special form i.e. The Special Marriage Act 1954, for any person in India and all Indian nationals lives in foreign

7 Hindu Marriage Act 1955, Section 5 (ii) provisions regarding consent, Under the Muslim personal Law, The marriage will be void, if there is no consent. A minor and insane (lunatic) who has not attained puberty can be validly contracted in marriage by their respective guardians. Marriage under Indian Christian Marriage Act, 1872 is in the nature of contract and hence there should be a free and voluntary consent between the parties. When there is a minor, as defined in the Act, the consent of father or guardian is necessary.
followed thereby violating this by iron clad practice of "male-controlled marriages"

Despite universally recognized rights, the issue of women rights often causes uneasy discussions\(^8\), worldwide. Though the remarkable changes have taken place in the twenty first century, but discrimination and violence against women and girls remain steadfastly rooted in cultures around the world. India is no exception of it. The concept of women's rights is not culturally relevant to deeply patriarchal societies. Inter caste marriages, marriages within the village and even same gotra and \textit{intra-gotra} marriages are not illegal and uncommon in India. Simultaneously, such marriages are treated as inbreeding in certain areas of India, and among certain castes.” There is no law that bars two adults from the same 'gotra' marrying each other\(^9\), but society sometimes do not accept this. The groom or the bride is killed for marrying someone from a lower caste. Such killings happen in order to save the honour of the caste, community or family. Most "honour killings" in India target young couples who dare to marry outside their caste and are killed by relatives in an attempt to protect the family's reputation\(^10\) Secretary General of National Human Rights

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\(^8\) Honor Killing, Killing of Women on the Basis of Family Honor, Publications & Reports, The Palestinian Human Rights Monitor, The bi-monthly publication of the PHRMG, \textit{Available at: G:\honor killing\Honor Killing.mht}, (last visited on November 20, 2015)

\(^9\) The marriages which the Hindu Marriage Act 1955 prohibits are between sapindas and prohibited relationships. Two persons are said to be sapindas to each other if one is a lineal ascendant of the other within the sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference of each of them. As defined under section 3 (g) of the Hindu marriage Act 1955, degrees of prohibited relationship is as follows -two persons are said to be within the "degrees of prohibited relationship"-- (i) if one is a lineal ascendant of the other; or (ii) if one was the wife or husband of a lineal ascendant or descendant of the other ; or (iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or (iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters ;

\(^10\) Harpreet Singh (28) and his wife Amandeep Kaur (25) found brutally murdered at their house in Kiran Nagar, Ludhiana, Punjab in January 2005. because she married of her own choice and outside her caste, Honour killing shocks Ludhiana’, Hindustan Times.com, 11 January,2005; Sushma Tiwari, a UP Brahmin and her husband Prabhu Nochil, a Malayali killed by her brother and his accomplices in May 2004 in Vasai, Maharashtra,3 to hang for 'honour killings” 2006, The Times of India, 9 September ,(2006); Rohtas Kumar, a Dalit from Jhajjar in Haryana narrated how his community was ostracised and humiliated by upper caste Jats after two Jat girls eloped with a Dalit youth. He said that even though it was clear to everyone that the girls had eloped on their own, a case of kidnapping was registered. Tension ensued in the village as the Jat caste panchayat announced a public boycott of the Dalits. Essential supplies were denied to them; they were even forbidden to draw water from
Commission Mr. K. S. Money said, "Honour killings are most dishonourable. It is the worst form of discrimination against women. Honour killings are manifestations of a disease which can be seen in the form of dowry, discriminations, foeticide." 

Honour Killings are heinous crimes. It is nothing but homicide and murder only in the name of honour under the Indian Penal Code 1860. It also violates Articles 14, 15 (1) & (3), 19, 21, 39(f), and fundamental duty to renounce practices derogatory to the dignity of women of the Constitution of India. It is against the various International Commitments which the Government of India has made in the CEDAW of which India is a signatory and has also ratified the convention. It is also against the spirit of UDHR and ICCPR. Though the remarkable changes have taken place in the twenty first century, but discrimination and violence against women and girls remain steadfastly rooted in cultures in India.

"Females are still measured as belonging to the men in their family irrespective of their class, ethnic or religious group. The owner of the property has the right to decide its fate. The concept of ownership has turned women
into a commodity which can be exchanged, bought and sold. Unfortunately, most religions of the world developed in patriarchal cultures, which were male centered, male dominated, gave men (as they presume) a sort of sole authority to interpret the texts and assume proprietary rights over the lives of women. To these men who are killing their wives, sisters and daughters, their honor is something very precious and priceless in comparison to the lives of the women to the extent of replacing their lives (killing) with the honour of themselves which is certainly not reflective of any religious and cultural teachings in the countries where honour killing is writ large. The outcome of this killing is going to be disastrous for the coming generation in the era of globalization and where the governance is to be sustained on equality.

Only a legally constituted body that is judiciary has the right to adjudicate the offenses committed by the citizens. The constitution of India gives this power to judiciary but the 'khap panchayats violated the law of the land. The Supreme Court of India called these 'Khap Panchayats' as Kangaroo Courts or Katta Panchayats. In the name of khap a particular segment of persons where they declared themselves as god father of the society and the culture. They carry on their rigid and unreasonable cutom and forced to follow, on result of disregard they penalise the dooer, additionally they never accept and look to the growing culture or modern concept of neighborhood. There are so many instances in the news where these illegitimate caste based panchayats have overtly explained their commands to rule the society by issuing illegal diktats has broadened complex. Although the khap panchayat or caste panchayat is not a well-known institution throughout the Indian States, as many believe, but is confined to a particular regions or states, such as Haryana.

15 Honor killing, Wikipedia, Available at: https://en.wikipedia.org/wiki/Honor_killing, (last visited on May  8, 2016)
Uttar Pradesh, Rajasthan, Himanchal and other north India states. The government has failed to eradicate prejudice, particularly in rural areas. Caste Panchayats, or caste-based village councils, extra judicially punish inter-caste marriages with public lynching of couples or their relatives, murder of the bride or the groom, rape, public beatings, and other sanctions.\textsuperscript{18} Harassment on young boys and girls, progressive-minded people and S.C. (Dalits) have become common\textsuperscript{19}. There is a wide spread consciousness that all marriages based on choice between young couples are based on close sexual relations (incestuous). Actually the khaps are against the right to marry with their choice based partner. The actual objective is to control women's sexuality to make certain that goods remains within the male dominance caste sphere. An illogical message was announced by the \textit{khap}: that the young boy and girl have dishonoured the tradition of not to marry in the nearest village as it build the element of brotherhood. Along with the several cases of khaps delivered command in Asanda, Dharana, Hadauadi, Jaundhi, Ludana, Maham-kheri, Singhwal, and in other areas, the wedded couples were declared as brothers and sisters, and families made to suffer excommunications and furthermore, banning communications and relations from their villages. It is estimated through the news that every year approximately hundreds of married couples are murdered, asked to break their marriage, asked to leave the village, and forced to accept each other as brother-sister, displayed or paraded open body i.e. naked, and painted black their faces by their families in command to retain or regain ‘family honour’, on the derogate instructions of ‘Khap Panchayat’. ‘The sarv khap panchayat’ also stated for boycott from the society of persons who raise their voice against these caste panchayats\textsuperscript{20}.

After the decision of Manoj- Babli case a Maha Khap Panchayat was demanded that the government should amend the Hindu Marriage Act 1955 to

\textsuperscript{18} \textit{Ibid.}


\textsuperscript{20} Karela Fry, ‘khap panchayat’, Alternative constitutions, Apr 20, 2011, Available at: https://oakblue.wordpress.com/tag/khap-panchayat/, (last visited on December 1, 2016)
facilitate a ban on marrying from the ‘same gotra.' the Khap Panchayats also demanded that the Hindu Marriages Act should be amended to ban ‘same village' marriages and disallow the recognition given by the Arya Samaj to the weddings of “eloping couples” conducted in temples. These khap Panchayats acquired such a sturdy position that none can dare to go against them. Even regional and national political parties do not condemn these honour killings or the illegal acts of khap reason being that these political parties are favoured by the khap Panchayats during elections.

Due to the illegal intervention of community/ religions/ castes assemblies in the name of ‘Khap Panchayats’ in matrimonial matters, and increasing horrible incidents of these killings and other crucial crimes practiced against persons wedding or intending to wed commonly called sagotras or inter religions, inter castes or outside their community. There is a noise and shed tears for making a separate law to protect young couples from Honour killings to the amount of amending Section 300 of I.P.C. by way of amending to insert namely ‘Honour Killing’ as murder and shifting the onus to the accused. The Supreme Court also issued notices to the Centre and nine States on a PIL seeking directions to the Union government to make law to protect young couples from Honour killings. A vacation bench comprising Justices R. M. Lodha and A. K. Patnaik issued notices on a petition filed by an NGO Shaktivahini alleging that young couples who dare to defy their families or

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24 Gyanant Singh, Honour killing: Definition of murder not to be altered, The law commission of India says there is no need for introducing a provision for the so-called honour killings in Section 300 of the Indian Penal Code, New Delhi, January 22, 2012, Available at: http://indiatoday.intoday.in/story/honour-killing-definition-of-murder-indian-penal-code/1/170068.html, (last visited on January 9, 2016)
Khap Panchayat in the matter of marriage are under constant threat from them.25

The then law minister M. Veerappa Moily replied A day after the Supreme Court issued notice to centre and states government that We have already finalised a draft and Government has drafted a bill “The Prohibition Of Unlawful Assembly (Interference With The Freedom Of Matrimonial Alliances) Bill” 201126, and also proposed to include a clause under Section 300 of the Indian Penal Code to deal exclusively with honour killings27, but however this bill could not become law yet. The Law Commission observed that the present terms in the Indian Penal Code are sufficient enough to deal with the circumstances to explicit acts of killing or causing physical harm to that individual who purportedly diminished the pride of the community or caste. The reason behind murdering the individual does not grant the justification to make a separate provision in IPC, section 300, perhaps, the addition of such clause may create inaccuracy and interpretational complexity.28

The Constitutional courts in India act as the custodian and guarantor of the fundamental as well as human rights of its citizen. The Supreme Court, High Courts, and subordinate courts of India have played a significant role in protecting the fundamental, Constitutional and Statutory rights of public/its citizen as the power given by the Constitution of India. Since the crime of threats, harassment and violence against young men and women who wed outside the caste, are increasing day by day it became necessary for the

28 Ibid.
judiciary to combat the problem and provide the protection to the youths who want to get marry with their own choice because where the other organs of the state have been failed to give any solution of the problem it is the judiciary on which people have more confidence. Markandey Katju and Gyan Sudha Misra JJ. On behalf of Supreme Court of India observed that, there are so many news are listening of violence, atrocities, threatening and harassments of the young couple who get married outside the caste. Our country is on the turning root of a very dangerous era on which the Court can't be noiseless in issues of awesome open concern, for example, the present one.

Justice Katju has observed in *Lata Singh v. State of Uttar Pradesh* that, there is no way to say like any pride in such murder, and actually this atrocity is nothing but inhuman, shameful and barbaric acts of murder done by cruel and brutal minded persons should be punished hard. This would be the only way to crub such an inhuman act of brutality. The Apex Court ordered the police across the country to take stern action against those resorting to violence against young men and women of marriageable age who opted for inter-caste and inter-religious marriages. the same was again reiterated by Justice Katju as a judge of the Apex Court in *Ashok Kumar Todi v. Kishwar Jahan* that, when both, married on their own will, who were majors, and the marriage was duly registered under the notified authority, the police officials have no role in their conjugal affairs and the law enforcing authorities have no right to interfere with their married life and, in fact, they are duty bound to prevent others who interfere in their married life. Court further observed that it is the duty of all persons in the police authorities or administration all through the nation that if any male or female is adult, goes through inter-caste or inter-religious marriage, their marital life should not be disturbed or harassed and if anyone gives such threat or commits acts of violence or instigates, it is the responsibility of the officers concerned to take stern action against such persons as provided by law.

29 *Lata Singh v. State of U.P. & Anr* (2006) 5 SCC 475, the Court observed ( paras 14 to 18)
30 (2006) 5 SCC 475
31 (2011) 3 SCC, 758
The judicial attitude in deciding the cases of honour killing is very fluctuating and due to absence of any special law/provisions on honour killing the court in similar cases is pronouncing differently. It depends on the whims of the judiciary to put a particular case of honour killing either in rarest of rare cases or decide otherwise. This is the irony of justice in a country governed by rule of law.

The judges are after all the part of the society and can’t be totally immune from the dominant trend of social thoughts\(^{32}\). Benjamin Cardozo observed, the “great tides and currents which engulf the rest of men do not turn aside in their course and pass judges by”\(^{33}\).

Violence against woman clubbed with the prohibitions on marital choice is a total negation of her rights. Since, the right to choose life partner at the time of marriage constitutes an integral part of her right of self-preservation, majority of the International Conventions, Declarations and Protocols fall in line by emphasizing that her consent and choice in the matters relating to marriage should be weighed and prohibit resultant violence against her due to the difference of opinion in these matters\(^ {34}\).

Fundamentally the government of India and the apex code have been taken positive steps in this respect. It is the effect of judicial response that with the posses of time and changing scenario the ideology Khap Panchayat are changed. Now they are agreed to allow the inter-caste marriage with some

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\(^{32}\) Honour killings: Supreme Court says those who kill for ‘honour’ deserve death sentence, Court terms honour killings as ‘rarest of rare’ and says that capital punishment is necessary as a deterrent for ‘such outrageous and uncivilised behaviour’. The court says such barbaric and feudal practices are a slur on the nation and should be stamped out, by Gyanant Singh, India Today News, New Delhi, May 10, 2011, Available at: http://indiatoday.intoday.in/story/honour-killings-sc-for-death-sentence/1/137621.html, (last visited on December 2, 2016)

\(^{33}\) Benjamin N Cardozo, the Nature of the judicial process, (Benjamin N Cardozo was a distinguished jurist provides insights into the judicial role by asking and answering the question, ”What is it that I do when I decide a case?” In this legal classic, Benjamin N. Cardozo an Associate Supreme Court Justice of the United States from 1932-38 explains a judge's conscious and unconscious decision-making processes), (25th ed.) 1966, published by- Yale University Press, The United States Of America, at page- 168.

reasonable condition such as a couple cannot marriage with same villagers and same gotra\textsuperscript{35}.

\textbf{7.2. Suggestions}

The question is how to tackle the issue of honour killing? To this end, some commentators suggest that the Khap panchayats should be given due diligence. This view is often supported by number of people of the society. Leaving those debates aside, the legal system is nonetheless the mechanism through which disputes in modern society are decided. Keeping in mind the flaws of the present policies regarding the above issue, following Suggestions if materialised will be important to curb the menace of honour killing:

1. In order to prevent honour killing, inter-caste marriages need to be encouraged as per Dr. B. R. Ambedkar the real remedy for breaking caste is inter-caste marriage. Nothing else will serve as a solvent of caste.

2. The powers of the caste panchayats need to be curtailed by appropriate Legislation. In India, there is no specific criminal law to deal with the offence of honour crimes. Need is there to either enact a special law or to add specific provisions in order to curb this menace in the Indian Penal Code, 1860, for example Section 304-C Honour killing, in the same line as of Dowry death in Section 304-B.

3. The criminal law measures to prevent, prosecute and punish the honour crimes need to be strong and effective and no leniency ought to be provided to the perpetrators of these crimes on the justification of any custom, tradition or religious considerations.

4. The judiciary, elders in the society, parents, young men, police and lawmakers need to be gender sensitized. Honour crimes can be properly checked only if the police and judiciary consider it as the most heinous crimes and meet out stringent punishment.

5. There is need to clear implementation of law and judicial pronouncement related to Honour Killing. Besides, at state level, the number of honour killings can be reduced through altering the justice system with the use of media.

6. Cases relating to honour killings should be tried under fast track courts. There should be amendment in section 113 of the Indian Evidence Act ought to be made to shift the onus on accused, along these appearance making him liable to show his innocence regarding honour killing by putting it under a new Section namely 113-C, Presumption as to honour killing, in the same line as of Presumption as to dowry death in Section 113-B.

7. The governance should think of different help lines numbers and special cell where aggrieved people can approach for protection. There should be special cell for a woman who may be a victim of honour killing

8. The common man and the general public ought to be enlightened about the importance of the female population, the value of life and the horrors of honour crimes through massive and large scale awareness campaigns, public debates and discussion, media coverage etc. The family and the community attitude towards these crimes can be combated and checked only by having a discourse with them and no strategy in this direction will be successful without their consent and cooperation.

9. A wider social movement needs to be launched for making the women aware of their legal rights and in making them understand and accept that there exists no violation of the family honour or caste honour, if she educates herself, develops her personality, expresses her desire in making marital choices, develops friendships with opposite sex and chooses to work.
10. Women and girls should be trained in the skill of self-defence in protecting themselves from those who tries to hurt them.

11. There is need to change the attitude to the Khap Panchayat towards the changing society.

12. The number of honour killings can be decreased by providing education and employment opportunities, because education enlightens the minds of people to get rid of conservativeness.

13. All the marriage should be legalized and registered looking up to their context.

14. Those who are marrying inter caste should be awarded and provide them legal protection as well as social safeguard.

15. Khaps also killed the persons or spouse who belongs to same gotra (Sagotra). Legislatures should amend Section 5 in The Hindu Marriage Act, 1955, to insert the word “Sagotra” after Sapinda and Prohibited relations by which there will be legally ban to marry within Sagotra. This attempt could also reduce the honour killings.

16. Last yet not the least, the Government of India ought to recall its commitments and sense of duty regarding shield its residents from such brutality under CEDAW.