CHAPTER 2
HISTORICAL DEVELOPMENT OF THE KHAP INSTITUTIONS 
AND ITS LEGAL STATUS

2.1. Introduction

Now a days for all the wrong reasons, Khap Panchayats have been in the news for their inhuman activities especially regarding violation of right to life and liberty or not giving proper rights to female as to ordering not to use mobile, to wear cloths in particular manner with banning jeans to wear the girls\(^1\), and most of all heinous act to ordering woman's gang rape. Honour killings of such young boys or girls or both who fall in love with someone or performed their inter caste or inter religion marriage is the biggest issue as well as atrocities like debarring from the society, harassing and threatening or any other cruel acts are also prevailing in the news to hear. North India is mainly known for the existence of Khap Panchayats, which is alone or a combination of some villages, while its influence exists in the rest of the country in the same way. They have appeared as quasi-judicial or parallel to the judicial bodies, which impose ruthless penalties supported on old-time traditions and customs, which are usually prohibited measures against contemporary challenges. Some of the activities violate an humiliate the human rights. To support their practices, these unconstitutional Khap Panchayat and Kangaroo style courts always try to legalize their decisions and acts by citing themselves as successor and follower of an unsure originated protector of the society\(^2\).

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It is their view that the Khap Panchayat is an old organization existing from the civilized society, which can be said about that it established in the beginning of medieval era of the history. It is shocking that in our country India, there exists the quasi-judicial and unconstitutional organizations like the Khap Panchayats where The Constitution of India has recognized the powerful and independent judicial system along with elected panchayats such as a local self-government institutions. They are the organizations which have been securing their status to be legal when it performed to solve the clashes of the particular villagers or other wellbeing standards. Whether these organizations been administering justice accurately within the criteria or standards of natural justice in accordance with the Constitutional objects as implanted in the DPSP and Fundamental Rights, might be a question that uproar against their functioning would have not been elevated³?

At this time, Khap Panchayats role has been issued under the monitors, not only because of their disputed diktats or decisions concerned, but also because of regressive remarks made by them. It is believed in some way that the organization of khap is menace on society on which they endure⁴. Though, in Dec. 2012, an analysis conducted by a committee created by the Haryana Backward Classes Commission (HBCC) to find out the prospect of Jat reservations and other group of people, where it was found rather than the issue that old Haryanwi cultured people were more social than judicial courts There is more trust in Panchayats. And like to contact khap for remedial measures. In a survey conducted on 49,870 households in the rural areas, it was mentioned that 66.6% of the families of 16 different castes said that whenever the disputes arise, instead of choosing judicial remedies for justice, we prefer Khap Panchayats. There is not much difference in the perception about consumption in the media and the public that it is not only surprising but rather a dangerous

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³ Ibid.
⁴ Ibid.
situation where the reality of land is not like that which is being introduced in the local media\(^5\).

The main relevant issue, on which basis there khap Panchayats are supported by the villagers is “Sagotra marriages”. In spite of the fact that Sagotra marriage is legal under Indian law, but it has opposite traditional practice, especially in villages of Western UP, Rajasthan, Punjab and Haryana. Khaps are taking advantage to build up their influence which is supported by the villagers. Khap Panchayats want to amend the law to prohibit the same gotra marriage, must be consider as void, and trying to accumulate political vision towards their interests to do so\(^6\).

2.1. The Concept of Khap Panchayat

The word Khap is probably derived from Latin word corpus which means an organization of individuals\(^7\), the another view is that the ‘Khap’ word is originated from the word ‘faank’, sense fraction or an off-shoot. During the medieval period, it was the first time when the 'Khap' word was used in Rajasthan in the perspective of the Rajput ruler class in the princely states of Moinhat Nayanaasi or Marwar State, it is discovered that the 'Khaap' word has been used in reference to various sects of the Rajput rulers. The first population data report was equipped in Jodhpur in 1890-91, based on caste with religion, which separated the people of India on the basis of caste and religion. yet the gotras\(^8\) was the base to divide the castes. In the said Census report, the ‘Khap’ word has come into its existence. When it was interpreted into Hindi, instead of forming the word 'Gotra', the word was called 'Khaap'.

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\(^5\) Ibid.

\(^6\) Ibid.


\(^8\) Suprnote at 2 (Report Submitted .....)

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In the fourteenth century, Khap began to be extensively started by the upper caste Jats, to strengthen their influence and status. Each society has a hereditary male chief called “Chaudhari”. Though, some Jat groups said this post as “Wazir” (Secretary). The chief of the society was also the chief person of Khap assembly. In Haryana, the chief of Khap Panchayat is formally elected through a large consent of the society.9

The Panchayat word is originated from the word “Pancha”, which indicates to a group of five (Panchavanustitah), is available in the Mahabharata (Shanti-Parva), and panchavanustitah are semantically close to panchayat.10 The literal meaning of Panchayat is five (Panchayat) and group (Yat) of judicious and cherished old persons, which is acknowledged and selected by the village society. "Generally, some powerful and dominant persons, without any election, with tremendous public consent, itself they declare themselves as the emperor of the caste, so that the so-called “caste panchayat” is formed. ‘Khap’ is a very old notion, which has written references available in the Rig Veda. They are mainly social and political crowd, which usually include higher castes and old people who are joint by topography and caste. Therefore, khap is a word for a social and political crowd and it is used in the topographical sense. Through, ancient times, one of the administrations and social institutions in the North western states, such as Haryana, Rajasthan and Uttar Pradesh was in the system. In north-western India, Khaps has been existed a long time in the Jat-dominated areas and some of their adjudications have given rise to hot controversy which are against the personal rights. It is generally assumed that they came to exist sometime

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9 Ibid.
around 600 AD. It is assumed that the upper castes 'Jats' have started to strengthen their position and power in the community.\textsuperscript{13}

The ancient society organized themselves under clan or Panchayat system. At that time a clan was based on a large tribe or closely related tribes. The decisions related to the performances of these community groups, together with the consent of a assembly of five choosen members, were created under the aegis. At the time of danger, external attacks, or other types of disaster, collected under the banner of the entire these Panchayats and a leader will be choosen by the group. Many villages themselves are divided into a small group (Guhaand), many small groups made a 'Khaap' (covering the area of one district from the tahsil) and many khaps embraced the whole state or state of 'Sarva khap'. For example, "Sarva khap" was for everyone in Malwa and Haryana. At what height should a Panchayat collect, depending on the level of the problem and the involvement of the area. The Khap Panchayat is a specially male dominion organisation and there is no part of women in it or to say. While, Khap heads declared that they keep their daughters, wive, sisters, mother and all women in high regard and are ready to give extreme forfeit for the protection of their respect.\textsuperscript{14} But Women are not involved in the main stream of it. Usually, these khaps resolved the clashes between the peoples in the villages. Though, there is no constitutional or legal obligations in these bodies. They performed and looked like Panchayati Raj system. In fact, the Khap panchayats acts as parallel to the Panchayati Raj institution, and the elected panchayats fonctions under them.\textsuperscript{15} Though, their foundation is not democratic, They are working on their trend and desires without following the procedures of law, they in the name of protection of ethics and morals, the self-made rule apply in support of sanction and made terror. The Khap panchayat is


\textsuperscript{14} Suprnote at 2 (Report Submitted.....)

usually categorized on the basis of its local control. When the community living in more than one village of is headed, then it becomes Kheda\textsuperscript{16} at Patwari level which counted as the lowest position in the chain of domination. When people of a society are brought down the taxes from the revenue inspector-level of the villages by the same head, then it creates a Patti; there are two types of leaves in front of it. Chehpatti and BarahPatti have extensive regional jurisdiction in the latter part. Usually, more than one caste Panchayat judiciary is made for the number of more villages, its verdict can be seen strictly in implementing and thus, there is a provision for appeal for high punishment in the case of disobedience. Mahapanchayat consists of all these panchayats and the nature of its decision is endless and indisputable among the villagers\textsuperscript{17}.

\section*{2.2. History of Panchayats}

\subsection*{2.2.1. Panchayats in Ancient Period}

Panchayat word derives from the word panchasvanusthitah. In it there are references in the existence of village associations or rural communities, the institution of Panchayati Raj is as old as Indian civilization. It had existed since ancient times, in which the village community had effective control over civil and judicial matters. Rigveda, Manusamahita, Dharmashastra, Upanishad, Jatakas and others refer to the local administration in a big way, i. e. Administration of Panchayat system. There are many references to the existence of village associations or village councils in Manusmriti and Shantiprav of Mahabharata\textsuperscript{18}.

The first reference to the Panchayat is taken from the word Pancha, which refers to the five institutions (Pancha Panchasvastita), is found in the

\textsuperscript{16} Supranote at 11 (Kavita Kachhwaha.)

\textsuperscript{17} Ibid.

\textsuperscript{18} Adr: Village Panchayat in India, Big Buddy Society(Essay), Available at: https://bigbuddysociety.net/essays/adr-village-panchayat-in-india/ (last visited on August 18, 2015).
Mahabharata, shanty-parva, near the Pancha and Panchanvastita i.e. Panchayat$^{19}$.

Details of these village councils are also found in the economics of Kautilya which is 400 B.C. Lived in Orstra gives comprehensive details of the system of prevalent village administration in its time. During this period, the village administration was done under the supervision and control of the auditor or the headman. Other officers such as numerologist [accountant], Anikitsaka [veterinarian], Jam Carmika [courier of the village], Chitasaka [material] were. Headman of the village was responsible for ensuring the collection of outstanding balance of the state and controlling activities of criminals. In the Ramayana of Valmiki, there are references to Ganapati (Gram Mahasangh), which is probably a type of federation of the village republics$^{20}$.

Self-ruled rural communities, which are described by agricultural economies, exist in India from the earliest times. It has been mentioned in Rig Veda that dates of approximately 200 B.C. In the Vedic period, village was the basic unit of administration. The most notable feature of early Vedic politics was the institution of popular assemblies, of which two 'meetings' and 'committee' were eligible for special mention. A committee was Vedic Lok Sabha, in which in some cases a king had the right to choose, while the assembly used some judicial functions. Both the committee and the assembly enjoyed the right of debate, unknown privilege for the popular assemblies of other ancient peoples, a privilege The office of the head of the village indicates the rise of the village as a unit of administration. Later in the Vedic period, the committee vanished as a popular assembly, whereas the assemblies were sunk in a narrow body according to the King Privy Council$^{21}$.

During the time, village bodies took the form of panchayats considering the affairs of the village. They had the power to enforce law and order.

$^{19}$Supranote at 10 (Raj Singh, .....)


$^{21}$Supranote at18 (Adr: Village .....)

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Customs and religion raised them up in the sacred position of authority. Besides, caste panchayats also existed. It was a pattern in the Indo-Gangetic plains. In the south, there was usually a village assembly of the village panchayats, whose executive crew included representatives of different groups and castes. These villages were above the bodies, both north and south India, the axis of administration, the center of social life and all centers of social unity. In the Mauryan period, village was the basic unit of administration. Villagers used to organize public utility and entertainment activities, settle disputes and act as trustees for the properties of minors. But, he had not yet developed regular councils, during the Gupta period the village council developed in regular bodies. They were known as the Panchmandal and the village of Bihar in central India. These bodies negotiated concessions and settlement with the government. The inscriptions of the Chola dynasty show the construction and work of the village assembly and their executive committees. The elected representatives of the formation of Gram Parishad performed the village administration.

2.2.2. Panchayats in Medieval Period

During the medieval and Mughal period, village bodies were the center of the rular. In the Mughal period, particularly at the ruling period of Sher Shah, the villages were administered by their panchayats. Every Panchayat was incorporated into the village old aged persons who took care of the interests of the villagers, and provide justice and forced punishments on the defaulters. The head man of the village, a semi administrative official, was acting as mediator

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between the village panchayat and the high regulatory authority\textsuperscript{24}. The Emperor Akbar acknowledged this framework and made it a basic part of the civil administration. During this period, every villages had its own particular Panchayat elders. It was independent in its area and exercised the power of local tax collection, administrative control, justice and punishment\textsuperscript{25}. Mughal began unique administrative machinery with the hierarchy of officers, especially in the field of revenue. The Mughal local administration framework went on for quite a long time. This official foundation was controlled and griped by Mughals, its collapse was resulted in to the establishment of Britishers in India\textsuperscript{26}.

2.2.3. Panchayat in British period

The Britishers moved towards India in the form of traders, and for a long time they observed and tried to make a mind set about the cultural ideas of our country. The main attention of the British Rule was a lot of business and there was nothing to do with and development. Probably their first priority was local administrations. Actually, at the time of the arrival of British rule in India, the villagers democracy had developed and dazzled. The panchayats played a great role with the advent of the British Raj in India, which was the local self government as a representative body, was composed of British\textsuperscript{27}, in the early days. It was limited to the creation of local bodies with the nominated members in the interest of the British people. The trading centers were covered by these local self government. In 1687, a Municipal Corporation was formed in

\textsuperscript{24} Shobhit Sainesh Awasthi, Panchayati Raj System In India, project submitted to Dr. Ram Mahohar Lohiya National Law University, \textit{Available at}: https://www.scribd.com/document/241607303/Panchayati-Raj-System-In-India (last visited on August 18, 2016).


\textsuperscript{26} Supranote at18 (Adr: Village ….)

\textsuperscript{27} Ibid.
Madras, founded on the British town Council model. This body had the power to impose taxes for the buildings, schools and other construction. After the passage of time, parallel bodies were created in other main cities and this model became rampant, helped the British expand their taxation command. This model included nominated members, which further did not include an elected element.28

Lord Mayo the Viceroy of India (1869 to 1872), who first time felt the need to decentralize the powers for competent governance and its efficiency. In the year 1870 In the urban municipalities, the concept of elected representatives was started. The rebellion of 1857 had put tremendous tension in royal finance and was found necessary to fund local service from local taxation. So it was out of fiscal compulsion that Lord Mayo's resolution was adopted on decentralization.29

The Bengal Chowkidar Act of 1870

Bengal Chowkidar Act, 1870 had introduced the revival of traditional Gram Panchayat system in Bengal. The Chowkidar Act gave the right to the district magistrates to set up Panchayats by the nominated members in the villages to deposit taxes to pay the watchmen or guardians engaged by them.30

Ripon Resolution (1882)

Lord Ripon, made significant assistance to the advancement of local body. In 1882, he officially discarded the existing system of local government by the nominated people, according to their local self-government plan, local boards were divided into small units to achieve larger competency. In order to guarantee admired contribution of all, he started an election system for local boards. The proposal of government on 18th, May, 1882 was a milestone in the

28 Ibid.
29 Ibid.
30 Ibid.
structural development of local governments. It was provided for local boards, which included the elected non-official members of the majority and headed by a non-official chairman. It is considered a magna carta of local democracy in India. This resolution proposed the establishment of rural local boards, where the membership of 2/3 was made from the elected representatives. He came in the urban municipalities with the concept of self-government. He is considered as the founding father of the urban local government. Ripon's proposals followed a series of committees, commissions and regulations in this line. The Royal commission on decentralization expanded further in the year 1909 Ripon resolution but due to lack of Britishers hard will, it remained on paper only. Ripon's plan did not make much progress in the development of local self-government institutions.\textsuperscript{31}

**Montagu-Chelmsford Reforms of 1919**

This reform transferred the subject of local government to the domain of provinces. The reform also recommended that as far as possible there should be a complete popular control in local bodies and the largest possible independence for them, of outside control. By 1925, eight provinces had passed village panchayat acts. However, these panchayats covered only a limited number of villages with limited purposes.\textsuperscript{32} However, as far as the democracy is concerned to the panchayats it has creates a lot of institutional and monetary limitations.\textsuperscript{33}

**Government of India Act (1935)**

This Act was also measured as another significant step in the development of panchayats in British India. Along with the popularly elected government in the provinces, almost all the provincial administration felt that

\textsuperscript{31} Ibid.

\textsuperscript{32} Ibid.

\textsuperscript{33} Ibid.
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the duty to make laws for the democratization of local self-government institutions, including village panchayats, is bound to be enacted. However, after the announcement of World War II in 1939, The Congress had vacated the office of the existing government regarding making the situation in relation to the local government institutions till August 1947, when the country had achieved independence. However, the British government was not paying attention to make the villages independent, but they were compelled to continue their rule in India and to fulfill financial requirements. Indian rural Republicans continued to grow until the arrival of the British. During this British rule, one set was recovered back to the village society and their panchayats stopped substituting and they were replaced by the formally constituted organisations of the village administration. In the highly centralized system of British regulation, village independence seems to have vanished\(^\text{34}\).

**Panchayati Raj in Independent India**

After independence, the task of strengthening Panchayati Raj system put on the Indian government. It was clear that India was a country of villages. In order to strengthen democracy, the village panchayats, Mahatma Gandhi, firmly believed in Gogama Swaraj that for the transfer of power to the rural people. According to him, the villages should govern by themselves for self-reliant and its independency is vested elected panchayats. But surprisingly, there was no place for Panchayati Raj institutions in the draft constitution prepared in 1948\(^\text{35}\).

Gandhi ji firmly condemned the draft 1948 on the part of Panchayats and asked for direct attention. So, after that panchayat system got a place in the Constitution as DPSP, part IV. Article 40\(^\text{36}\) of the Constitution provides to constitute village panchayats as units of local governments and provide them

\(^{34}\) *Ibid.*  
\(^{35}\) *Ibid.*  
\(^{36}\) The Constitution of India Article 40, (DPSP) - Organizations of village panchayats.
with such authority and commands as may be essential to facilitate them function. The most important part to build up grass root democracy was ignored by the Constitution framers as DPSP is not obligatory on the governments\(^3\).

The first structured attempt to deal with the problem of villages and rural India was commenced in 1952 through the society welfare Program (CDP) and in 1953 through the National program (NES). This program was based on an combined approach to different phases of rural development. For the purpose of introducing the process of combined cultural, economic and social change intended to change the political and social life of the rural persons, it was to promote self-help and self-reliance among rural people. Community development program was started in 55 selected blocks. This program was based on the combined approach to various phases of rural development. The provision was made for the appointment of Block Development Officer and Village Level Workers in the program. The aim of this program was to bring the social and economic development of the rural people in a democratic way, but failed to land on expectations because of the absence of an effective means for the participation of the people\(^3\).

**Balwantrai Mehta Committee**

To consider the problems of democratic decentralization in independent India, the Balwantari Mehta Committee, was the first committee in 1957. The committee was suggested in its report on society development projects. The committee gave information about far-reaching recommendations in the direction of self-governing decentralization and rural renovation. It indicated that the programs (CDP) was not successful as it failed to create local proposal and in the lack of local proposal and local concern, development would not be achievable. Committee had set five fundamental principles-

\(^3\) Supranote at 18 (Adr: Village ….)

\(^3\) Ibid.
1. Three level structures of local self-government bodies should be at the district level from the village and these bodies should be linked together.

2. These bodies should be have the actual transfer of power and responsibility so that they can discharge their responsibility.

3. These bodies should be transferred to adequate resources so that they can discharge their responsibilities.

4. All the welfare and development schemes and programs at all three levels should be connected and distributed through these bodies.

5. The three-level system should provide future delivery and settlement of power and responsibility\textsuperscript{39}.

The committee visualized three tire system of self government i.e. Zilla Parishad, Panchayat Samiti and Gram Panchayat and suggested motivation and belief of peoples’ participation in social and rural work, advancement of agriculture and animal husbandry, promoting the interests of the weaker sections and women through the panchayati raj system. Through the report, first time where the Committee made suggestions for co-opting of two women who are concerned to do something for women and children. On the other hand, excluding the male members, women were never elected but were designate co-opted in the local governance\textsuperscript{40}.

The recommendations of the Balwantrai Mehta Committee were implemented on April 1, 1958. Rajasthan was the first state to implement on October 2, 1959. By the middle of the 1960s, the Panchayat had reached all parts of the country. Over 2,17,300 Gram Panchayats were included in more than 96% of the 5,97,000 population and 92% rural population was recognized. There was passion in rural India and people felt that they had to say in matters affecting their daily lives. They were considered as hopeful days of Panchayati Raj System in India. In the report of the Ministry of Community Development in 1964-65, it was said that young and better leadership was rising through

\textsuperscript{39} Ibid.
\textsuperscript{40} Ibid.
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Panchayati Raj System and there was substantially high gratification in the performance of panchayats among the villagers.41

It also found backing with the 73rd amendment in 1992, addition with the eleventh schedule in the Constitution of India, to reorganize the recommendations of the Balwant Rai Mehta Committee. The Amendment Act of 1992 comprises conditions for decentralization of powers and farm duties to the panchayats both for the groundwork of social justice and economic development policy, over and above for accomplishment in relation to 29 subjects provided in the eleventh schedule of the constitution42.

The panchayats receive funds from three sources:

- Funds released by the state governments on the recommendations of the State Finance Commissions.
- Funds for implementation of centrally sponsored schemes
- Local body grants, as recommended by the Central Finance Commission

The recommendations of Balwantrai Mehta Committee were executed by several states of the country. Until the sixties, Panchayati Raj system was developed in India. But in the Panchayati Raj Institutions, due to the mainly centralized practice of working in the whole country after the mid sixties, there was a decline. Elections were not made repeatedly and people's participation became diluted in these bodies. Most of the development programs dropped in the irregularities, uncertainty, inefficiency, favoritism and corruption. Due to these reason main object of the local self government was looked like excluded from their preview. Centrally sponsored schemes were launched; Parallel administrative bodies were built and the government reduced substantial funds. During the period of the National Emergency, the bureaucracy got higher

41 Supranote at 22 (Mathew George.....)
42 Nidhi Kumari, Concept Of Village Panchayat: Constitutional Analysis, CNLU, ACADEMIKE (ISSN: 2349-9796), posted on April 5, 2015, Available at: https://www.lawctopus.com/academike/concept-village-panchayat-constitutional-analysis/ (last visited on December 18, 2015).
position and these local institutions lost their importance. Govt. Subordinate units were created to implement their programs to the village panchayats.\(^{43}\)

**Ashok Mehta Committee (1977)**

In this background in year 1977, the Janata Dal Government made a committee under the headship of Ashok Mehta, was tasked to investigate the reasons accountable for the imperfect presentation of Panchayati Raj organizations. Further more to find out that means to strengthen Panchayati Raj organizations with suggestions. The committee, in consultation with Zila parishad at the district level and Mandal Panchayats at village level, suggested two tier system of Panchayati Raj. Further he suggested as Balwantrai Mehta Committee earlier recommended for the decentralization of Panchayati Raj institutions and power at all levels and its Constitutional protection.\(^{44}\)

**The Ashok Mehta Committee Suggested:**

- To extend people’s participation in developmental activities.
- Adequate financial resources for the panchayats
- Two seats reserved for women
- Reservation of seats for the weaker sections
- Requirement of Constitutional sanctions

After failing to exist in the government of the Janata dal party, the Ashok Mehta Committee recommendations were not put into operation. Few states including Karnataka made new law on the basis of the recommendations of the Mehta Committee. Both the Committees ignored the importance of panchayats as units of self government. During 1980’s, two important Committees were appointed to focus into self governments. GVK Rao Committee in 1985 and Dr. L.M. Singhvi Committee in 1986. The GVK Rao committee recommended More responsibilities for the renewal of Panchayati

\(^{43}\) *Ibid.*  
\(^{44}\) *Ibid.*
Raj system such as planning, implementation and monitoring of rural development programs can be allocated to them.\(^{45}\)

L.M. Singhvi Committee recommended that Panchayati Raj systems should be protected and recognized under the constitution. A new chapter should be made in the constitution to define its establishment, functions and powers along with fair and free elections to be conducted through the state Election Commission. The Committee recommended the appointment of the state Finance Commission and all rural development programs are assigned in Panchayati Raj institutions by amending the VIIth Schedule of the Indian Constitution.\(^{46}\)

**73rd Amendment Act, 1992**

After these state of affairs, Rajiv Gandhi, the existing Prime Minister of India, introduced a bill on Panchayati Raj in the Parliament, i.e. 64\(^{th}\) Amendment Bill, on May 15, 1989, but failed to get this essential support. In the 1990's, another effort was made in the Parliament to pass the bill. The bill was not even considered for the purpose again. In September 1991, the existing Prime Minister, P. V. Narasimha Rao, the Congress government introduced a new bill on Panchayati Raj. This was passed in 1992 as minor revision and correction with the 73rd Amendment Act 1992 and was implemented on April 24, 1993.\(^{47}\)

**2.3. Historical Background of Khap Panchayats**

Khap is the informal institution of each gotra in the Jat community of North India which determines the customs and practices as well as religious norms for its specific gotra. The members of each gotra elect their headman.

\(^{45}\) Ibid.

\(^{46}\) Ibid.

\(^{47}\) Ibid.
This headman convenes the *panchayat* of his village. It is obligatory for all members to comply with the decisions taken in the *panchayat*. There is a supreme organisation of the entire Jat community which is called the ‘Sarv-Khap’, it includes all gotra’s khap\(^{48}\).

This gotra based institution is not peculiar to this region. Such types of institutions also existed in Munda and Gond tribes of central and eastern India. Gotra based institutions are product of that tribal age when human society was in its primitive stage. The society was divided into Kul (clan or Gotra) based groups at that time. These kinship-groups independently determined their social norms and customs. Rig Veda refers to many clans (Kul). The society of that period was primarily based on pastoralism, though some amount of agriculture was also carried out. However, the concentration of power was checked by various assemblies of the clansmen, in particular, the vidatha, sabha and samiti\(^{49}\). As long as the *gana-sangha* system of polity existed; these clan-based institutions were responsible for regulating the society. The assembly of the clan-chiefs used to wield the power of governance. Their society was organized on the basis of clans, of which the larger unit was the tribe. This form of organization distinguished them from the peasants and the caste-based society\(^{50}\). Tribal groups which did not become a part of the caste-system in India still exist. They have genus. In Munda tribe of Jharkhand, all the gotras have their own headmen. They are called the *Rajas*. They determine the social norms by holding assembly in accordance with their respective gotras. For determining the norms of the entire tribe there is an assembly of the Rajas of all gotras within the tribe\(^{51}\).

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\(^{48}\) Ajay Kumar, Khap Panchayats: A Socio-Historical Overview, Economic & Political Weekly, Vol. 47, Issue No. 04, Jan, 2012. ISSN (Online) - 2349-8846, Available at: http://www.academia.edu/4774552/

\(^{49}\) Ajay Kumar, Khap Panchyat, uploaded by Manjeet Singh Narwal, Available at: http://www.academia.edu/9619032/Khap_Panchyat (last visited on December 3, 2015).

\(^{50}\) Supranote at 48 (Ajay Kumar......)

\(^{51}\) Ibid.
However, in other communities which have become part of the Indian caste-system, such gotra-based institutions hardly exist. In some castes there are biradari panchayats. But neither the structure of the biradari panchayats is similar to that of the gotra-based panchayats, nor are they so strong and powerful. In these communities too there might have been gotra-based institutions sometimes in the past. According to Frederick Engels, it was the tribe-based and genus-based institutions which played the role maintaining order in the society in the primitive stage of social development. The headmen of the tribes and gotras were selected in this manner, and so were the priests and the military generals. However, during the process of State formation which progressed along with social development, these Kul-based institutions started to meet their end or it survived merely in symbolic forms.\textsuperscript{52}

\textbf{2.3.1. Khap Panchayat in Ancient Period}

In Magadh during 5\textsuperscript{th} century B.C. earlier pastoral cum agriculture economy with tribal organization had given way to a more settled agrarian based economy which become major factor in State formation and in the process of the strengthening and geographical expansion of state power, the collapse of the political institution of gotra-based tribal republics known as gana sanghs was becoming inevitable in the face of rapid changes taking place in 6-5 centuries B.C. The rule of the assembly of the clan’s chieftains in the gana-sanghas or the tribal republics was now replaced by monarchies\textsuperscript{53}. The monarch was now being determined by inheritance and by birth. Political power got concentrated in the hands of the king. The council of ministers or an assembly remained merely as advisor. However, the character of such an assembly or council was totally different from those under the clan-based

\textsuperscript{52} Supranote at 49 (Ajay Kumar.....)
\textsuperscript{53} Supranote at 48 (Ajay Kumar.....)
system. The emergence of the state meant the abandoning of clan-based institutions from the society and the polity\textsuperscript{54}.

In Haryana too, clan-based tribal republics such as Yuddhyeya, Arjunayan, Agra and Kunid etc. got disintegrated by the 5\textsuperscript{th} century A.D., and monarchy under Pushyabhuti came into being. Harshvardhan was a member of this Pushyabhuti royal family and established a vast empire, whose initial capital was Thanesar. With the emergence and expansion of state power in India the caste-system also got consolidated. Castes (jati) were different from the clans, because the former were in general not based on kinship, nor were there any collective ownership of resources\textsuperscript{55}. The peasantry was generally distinguished for its caste system. But in spite of the fusion of the Jat community into the caste-system, the gotra-based institutions of the primitive tribal age are not only in existence today but also remain highly powerful and unchallenged, and maintain the ability to implement all the decisions pronounced by it. They remain ready even to confront modern state if and when a contradiction develops with it\textsuperscript{56}.

2.3.2. Khap Panchayats in Medieval Period

The Jats who now inhabit Haryana reached this region between the Sutlej and the Yamuna in 11\textsuperscript{th} century after getting displaced from Sindh. During that time, this community was a pastoral society and its social structure was egalitarian/semi-egalitarian. In the pastoralist society, the family formed the core and paternal descent was often traced from a common ancestor. Kinship, whether actual or Active, was essential to identity and to loyalty, with a premium on the latter. This ensured the coherence of the larger unit, the clan, which because of constant movement would otherwise tend to get dispersed. The clan was relatively egalitarian with a sharing of the produce, although a

\textsuperscript{54} Ibid.
\textsuperscript{55} Supranote at 49 (Ajay Kumar.....)
\textsuperscript{56} Ibid.
Chapter 2  Historical Development of the Khap Institutions & its Legal Status

better and bigger share was collected by the chief. A group of clans constituted what have been called tribes, although this word can cover diverse forms of social groups.  

In all probability, these characteristics of the pastoralist society may have also existed among the Jat community. The Jat community continued to migrate towards the north-eastern direction or the present-day Haryana, Punjab, and Western Uttar Pradesh. Most of the Jats in Haryana settled in bangar area, the dry region where there was insufficient rainfall. This region presently falls under the Rohtak, Sonipat, Panipat, Karnal, Jhajjhar, Bhiwani, Jind, Kaithal and Hisar districts. There was also no river in this region. Therefore, this was a region of sparsely populated barren land without having any means to make the land cultivable through irrigation. In this region of sparse population, people belonging to each gotra could settle their villages only within the borders specified for their gotra. With the victory of the Turks over India, the entry of ‘rahats’, the Persian wheel, also paved the way for the transformation of pastoralists to peasants.

Muhammad Bin Tughlaq also constructed four canals in Haryana along with the Western Yamuna Canal in this period. This canal created better conditions for cultivation in this region. Possibility to increase agriculture productivity had been amplified. Various gotras of Jats also settled in and around this region along with their clan members. The possibilities of maintaining the gotra-based institution or khap also continued along with the settlement of specific gotras in specific areas.

In that period of history i.e. the reign of Sultan, a land revenue based feudal social system got firmly established in this region of Haryana. Under feudal system, the state and the big landlords used to usurp a large part of the crop produced by the tenants and the peasantry in general. The tribal society of Jats displaced from Sindh also started cultivation. The Jats who were once

57 Supranote at 48 (Ajay Kumar.....)
58 Supranote at 49 (Ajay Kumar.....)
59 Ibid.
60 Ibid.
pastoralists, became peasants engaged in settled agriculture between 11th and 16th centuries. However, they maintained many of the tribal characteristics in their society. In the process of becoming settled cultivators, they became a part of the contemporary feudal social structure and the production process of that period as well as got fused within the India’s caste-system61.

For being close to the political capital of the Sultans and the Mughal Empire, land revenue in this part of Haryana was collected directly by the royal officials under the supervision of the central authority. Khap, an institution of the primitive tribal age became an instrument of struggle to reduce the revenue of the peasants. Under the banner of the ‘Sarv-Khap’, peasants also fought against the central authorities of Balban and Shah Jahan62.

A section of the Jat peasants became a part of the revenue collection mechanism which played the role of intermediaries. They were employed in the post of Chaudhries and Muqaddams as a part of the tax collection mechanism in the parganas and villages respectively. Chaudhuris and Muqaddams usually belonged to castes and gotras which were dominant and in majority in a particular region. There used to be 10 to 15 villages within a pargana. They received a fixed amount from the revenue collected as their pay. Most of the Haryana region was within the Delhi subah during the Mughal era. Jats were employed as Chaudhuris in 35 percent of the parganas under the Delhi Sarkar encompassing Rohtak, Sonipat and Chaproli, etc. Under the Hissar-e-Firoza sarkar that included Agroha, Hissar, Fatehabad, Gohana, Hansi etc, Jats were employed in 74 percent of the parganas for the collection of land revenue. They were also employed as Chaudhris in 25 percent of the parganas under the Rewari sarkar which included Patodi, Baawal, Rewari, etc. and that of 33 percent under Sarhind sarkar including Thanesar, Khijrabad etc. Thus, the tribal egalitarian society of the Jats during pastoral stage disintegrated by the

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61 Ibid.
62 Ibid.
time of the Mughals and as a part of the feudal society got stratified and divided into various classes of landlord and peasants. The dominant class of Jats who emerged as Chaudharis and Muqaddams became owners of large landholdings by using state power and influence of their official position. This very class also started to play important roles in the khaps by wielding the influence of their property and political power. Akbar even co-opted the members of the ‘Sarv-Khap’ to the status of ministers in order to integrate them within his state. On one hand, the khaps were used by the Jat landlords in making bargains and compromises with the Mughal emperor in order to maintain or strengthen their role as intermediaries in the feudal land revenue system. On the other, the upper class that belonged to those who were called khudkast-the landholders and peasants and had proprietary ownership of land, used the inherent power of the khaps and panchayats to maintain control over other artisan class and castes, menial castes and tenants. The village administrators connected to the khaps also used to collect hearth-tax from other inhabitants as additional revenue. It was also used to control the Jat peasants from other gotras who were invited to the village to till fallow lands in a khap’s area. The tenant peasants who belonged to other Jat gotras were not given the right to intervene in matters of village management, and only a subordinate status of their rights over land was recognized. The ruling class character of the Jat landlords who were appointed as Chaudhuris once again came in clear evidence when they opposed the rebellion by the landless peasants, tenants, artisans and merchants led by Banda Bahadur, and pleaded with the emperor of Delhi to crush this movement that raised the slogan of land redistribution. The Jat leader Churaman of Mathura which himself rose up against the Mughal Empire with the help of the khaps went to

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63 Ibid.
64 Ibid.
65 Ibid.
the extent of becoming a part of the Mughal army in order to quell the rebellion under Banda\textsuperscript{66}.

This way, the Jat tribal society did not get transformed into a caste based feudal society in the general course of social development in which gotra based institutions generally got disintegrated with the emergence of the state. The Pastoral society of Jats straight-away got assimilates into the relatively advanced land revenue and caste based feudal system. This is why the clan-based institution of a society and rule survived among the Jats. This tribe and gotra-based institution of srav-khap/ khap continued to survive and coexist with the feudal social and political structure. Khaps got transformed into a means of fulfilling the interests of big landlords from being the political institution of an egalitarian community and became an instrument to maintain the \textit{status-quo} in agrarian relations as per the needs of landlords\textsuperscript{67}.

\section*{2.3.3. Khap Panchayats in British Era}

The British East India Company inaugurated colonial rule in Haryana by taking over the right to collect land revenue from the Mughal Emperor in 1803. The British started the Mahalwari system here. Under this new system, they did not bring about any fundamental change in the lower stratum of the land revenue collection mechanism. Revenue continued to be collected in the villages through the Muqaddam/Muqaddams, who later came to be termed as Numbardars. The pargana system was transformed into the Zaildar system. Post of Chaudhari had been replaced by Zaildar. The posts of Nambardars and Zaildars were continued to be filled by the government from among the dominant Gotra and caste in concerned area. They were invariably from the wealthy and influential families of the region\textsuperscript{68}.

\begin{itemize}
\item \textsuperscript{66} Ibid.
\item \textsuperscript{67} Ibid.
\item \textsuperscript{68} Ibid.
\end{itemize}
Only one khap (clan as used by the British) was kept in on Zail circle and someone from that khap who was loyal to the British rule, who had helped British during 1857 revolt was appointed as the Zaildar. One Settlement officer had to alter his proposed division so as to separate a Dehia village which he had included with Haulanias while framing Zail. So the Zail was framed as per Khap area. The person appointed as Zaildars and Nambardars played major roles within the khaps as well. The hold over the khaps also gave them an important place in the colonial regime. The headmen of Gathwala gotra’s khap was appointed as a Zaildar. So British had co opted influential section of Jats who had a prominent position in Khaps. This is probably why the khaps did not play any significant role after the struggle for independence against the British in 1857, even though there was a sharp increase in land revenue demand as well as a number of famine occurred during this period. This influential section of jats also consolidates their hold over land during the land settlements introduced under the British rule. During the 19th century ‘there was an abundance of land and a scarcity of cultivators’.

However, the tenants from Dalits, backward and other castes were deprived from ownership of land. They were forced to take up share-cropping on the fields of the landlords who had proprietary rights over land, to work as bonded labourers (siri-sanjhi), to supply the means and tools of production. These influential section had probably crushed the aspiration of tenants of other castes (kamera class, or ‘partial cultivator’) to acquire a proprietary right on land by using the strength inherent in Khap. During the colonial period even after the establishment of the ‘modern’ state according to the rule of law, organizations like Khap were making parallel political power, which became a way to strengthen the political standing it’s the reason it influence the political leaders in support.

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69 Supranote at 48 (Ajay Kumar.....)
70 Supranote at 49 (Ajay Kumar.....)
2.3.4. Khap Panchayats in Post Independence Era

The situation did not change even after 1947. The hold of big landlords over land remained unaltered. The land-reform acts of the government proved to be ineffective. There might be even a single family from big landlords whose land was adjudged surplus. The state legislative assembly tried to delay in every possible way the imposition of the upper limit on landholdings. This is because these big landlords themselves had become society’s representatives in the state and central political institutions.

Peoples’ movements against feudalism and for land redistribution could also not emerge so strongly in Haryana. The Mujhara movement had taken place only in some villages of Hissar, Sirsa and Bhiwani. The sporadic struggles took place under the leadership of the Laal Jhanda Party of Teja Singh Swatantra in Narwana and Yamuna Nagar. The movement for land is hardly heard in the areas where Khaps are very strong. The most important factor behind this is the fear of the organised strength of the khaps, which violently crushes even the smallest of resistances by the oppressed classes and castes.

In recent times, there has been some struggle to claim the right over the Samlati lands reserved for Dalits. However, these struggles too have not been able to expand in an organised way at a mass level. No significant change took place in the pattern of land ownership and consequently agrarian relations even after Green Revolution. In spite of the development in the productive forces in agriculture, no fundamental change has come about in the production relations in the agrarian society.

Nevertheless, the development of new sectors of production and service has created ever new opportunities for productive labour. A part of the so-called ‘lower’ castes entered in these new productive sectors since manual

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71 Ibid.
72 Ibid.
73 Ibid.
labour is primarily undertaken by the members of these oppressed castes in the Indian caste-system. Political consciousness and sense of dignity developed among this section of Dalits and other oppressed castes as a result of working in urban areas, getting into government employment and procuring higher education. The aspiration to live a life of dignity and self-respect emerging among the Dalits and oppressed castes has also led to the development of this consciousness among the agricultural labourers and poor peasants as most of Dalits do not have a proprietary right on land and have to face exploitation and extra-economic coercion. These classes are now raising their voice against caste-based exploitation, discrimination and begar (obligatory labour service) and are walking with their heads held high.

Now impediments are being faced by the landlords in their policy of extracting extra surplus on the basis of caste. But the landlords are using the power of their gotra or community inherent in khaps for their own interest and try to maintain control over exploited and oppressed classes by perpetrating caste-based social-boycotts and attacks on those who claim their legitimate rights. Incidents of caste-based atrocities in Gunna, Mahmuddpur, Gohana, Harsola and Mirchpur are some of its terrible instances. The big landlords not only prevent the tenants, artisans and agricultural labourers from even availing their constitutionally-guaranteed rights but also deny them a life of dignified existence.

The agricultural sector has got trapped in a great crisis after the Green Revolution. New techniques of production are being introduced and applied in a big way. The input costs are growing exponentially. Most of the small and middle peasants are indebted to the usurers who appropriate a large part of the peasant’s land of the indebted peasants is being bought over at nominal price by the big landlords and usurers in lieu of the lent amount.

The peasants of Haryana had to also bear the consequences of being close to the country’s capital Delhi. Due to the policy of ‘Special Economic

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74 Ibid.
75 Ibid.
76 Ibid.
Zones’ introduced in the name of second generation reforms led to the flourishing of the real estate speculation. The peasants of Haryana engulfed by the debt trap adopted the selling of land as a means of escaping from indebtedness. Most of the peasants lost their primary source of livelihood. The youth does not consider their future to be secure in the agrarian sector which is entirely being overlooked by the government. On the one hand agrarian crisis has deepened in Haryana, and on another hand, Gurgaon, Faridabad, Bahadurgarh, Sonipat, Rewari, Bawal etc. have become the centres for industrial production and the service sector on the other. This process has expanded rapidly after adoption of Liberalization, Globalization and Privatization in 1990; it has become the nerve-centre of foreign corporations and Indian big business.\(^{77}\)

Due to the expansion of these new sectors of production and the transformation of agriculture as an unprofitable venture, the new generation of youth in Haryana have also started to become part of new production relation after leaving their ancestral agriculture. This section of the youth is now in contradiction with the traditional customs of the feudal society. To point fingers at the traditional norms by the youth is to challenge that section of the agrarian society whose interest is fulfilled even today by these traditions. This amounts to challenging the exploitative agrarian relations and the caste system nurtured by it, through which the landlords keep control over the labouring classes. The big landlord class therefore are getting these youths killed through the khaps in order to maintain their sources of strength – the caste system and the agrarian relations. The strict control of the landowning castes over the society’s matrimonial relations is a ground reality in all the states of the country.\(^{78}\)

The Jat peasants have also benefited from the support of the khaps to their struggles. These khaps have played an important role in the peasants’ movements of Kandela, Adampur, Nisingh etc. led by Bharatiya Kisan Union,

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\(^{77}\) Ibid.

\(^{78}\) Ibid.
and because of the active participation of the khaps the peasants’ movement of Haryana have been so militant and extensive. Therefore the khaps also fulfill the interests of the Jat peasants apart from serving the Jat landlords, for which the former also accepts the decisions of the khap panchayats. In the context discussed above, not only the tribe and gotra-based institution of the khap survived, but it also remained highly powerful.  

2.4. Panchayats Vs. Khap Panchayats

Adjudication of local disputes by the "Panchayat", in an earliest Indian notion which is now constitutionally acknowledged in the democratic state, as well as the representatives of the Panchayat have been elected and the panchayats have been formed under the Panchayati Raj Act. At every village level, Panchayat proceeding commences, when a group of men, whether classified by race or caste, meet to solve any problem. Those who attend a meeting that affect a particular group are those people who are threatened by the crisis or feel uncomfortable and those who feel they will be affected by this, will participate in the meeting. To reach a pronouncement, the customary panchayat gathered a large number of people from outside the local area on the basis of communities, families, gotra, kin, castes, and religion. Issues like disobeying social supremacy, rituals, customs and breaking the hierarchy are used as draft approaches. With their highly emotional approaches, they are successful in uniting people and get regards in rural society, where villagers are inspired by feelings more than common sense.

Applying a decision by a Panchayat, which is not considered under the law, depends on the opinion and action of the joint public. The use of force in execution of the judgment of Panchayat is always a secret possibility as honour. After making the decision, the liability of the head members of the

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79 Ibid.
80 Constitution of India, Article 243 B (1)- 3-level Panchayati Raj System – Village, Intermediate and District level
81 Suprnote at 2 (Report Submitted .....)

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village to watch the punished party resides. The punishments imposed by village or the caste panchayat are usually money, modest or adequate, which must be collected in a common fund of Panchayat; Ritual Soreness, Public dishonor\(^8\)\(^2\), which means that before the distressed party or the entire conference shaving head, touching the other's feet, blacking the face or rub on the nose, or dipping or rubbing the nose in urine of one person or others. The command of the panchayats is not unheard of for punishing as moving naked or gang rape. The traditional panchayat's hands are outcasting the last weapon. Exile is an exaggerated form of group withdrawal\(^8\)\(^3\).

These Khap panchayats were also the branch of social-political life of rural communities in pre-colonial times. They were basically familiar, decision makers, groupss of 'men' of the elderly wise people, who were represented from their particular castes or from the abroad caste group, who control traditional values in the community. They appointed themselves as members, were not elected, but were members by consent and occasionally by heredity. The decisions related to inter castes are adjudicated by the village panchayat, which is discussed for a wide range of problems, both in criminal and civil nature\(^8\)\(^4\).

Members of the Panchayat are from the leaders in the village which are important from different caste groups. From accessible confirmation, it is sure that these gatherings have severely been commanded by the head of governing caste group members; the previous (because of the coordinated idea of the monetary framework and the virtual imposing business model over land) can control the later and authorize choices upon them. This is typically accomplished through dangers of monetary endorses and additionally utilizing or undermining physical viciousness\(^8\)\(^5\). The quality of the customary caste Panchayat found in twin variables; firstly they are in a huge numbers belonging to a particular caste and secondly, it is directed by land owners.

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\(^8\)\(^2\) Ibid.
\(^8\)\(^3\) Ibid.
\(^8\)\(^4\) Ibid.
\(^8\)\(^5\) Ibid.
That is the reason the high perceivability of the caste Panchayats is proved in Jaat commanded regions of Western Uttar Pradesh and Haryana. Essential powers of the caste Panchayat was controlled by the jaats command, comprising the only largest existing caste in Haryana. As indicated by 1931 evaluation, the areas of Rohtak, Hissar and Karnal had 36.80 %, 28.48 % and 15.20 % of Jaat populace individually.\textsuperscript{86}

In these regions, the Jaats shaped 33% of the aggregate populace as well as held the greater part of the farming area as proprietors, with whatever is left of the land appropriated among a substantial number of various caste gatherings. The statistical quality in mix with arrive possession designs implied that the landowning class and upper-position populace of a town or a religion commanded the customary Panchayats. We can state that these customary Panchayats were generally useful nearby components for a progression of exercises extending from accumulation of income or supervising works of open utility, going about as courts for debate settlement and meeting out equity in group matters. This was affected inside the structure of the provide food standards, custom or use of the territory, exchange or family.\textsuperscript{87}

The correct source of the khap Panchayats is to a great extent obscure. Verifiably, it has been a decentralized arrangement of social organization in the north-western states like Haryana, Punjab, Rajasthan and Madhya Pradesh. Khap Panchayat is kind of tribal association. It is a customary and casual association. It is a social and also a political association.\textsuperscript{88} It directs not just the social traditions of the predominant tribe of the jaats of the Khap yet in addition of the jaats of different families living in its locale. The Khap Panchayats is to be differentiated from the Biradari Panchayat or Caste Panchayats of different caste for managing intra-caste disputes and social standards. Khap is an alternate unit inside and out. It is not prepared of single gotra but rather it comprises of more than three or four gotras gathered together and talk about

\textsuperscript{86} Ibid.
\textsuperscript{87} Ibid.
\textsuperscript{88} Ibid, at page 21.
few matters that is known as a Khap Panchayat. Therefore Khap is different form of normal Panchayat.

2.5. Reasons For Persistent Servival, Strength And Dominance Of Khap Panchayats

Khap Panchayats have an awesome control on the majority as is obviously reflected in the investigation directed amid the time of this study venture. Following are a portion of the different causes which can be considered as the strength of Khap Panchayats.

2.5.1. Weakness of the elected Panchayati Raj Institutions

Panchayati Raj system is democratic and constitutional body on the grass root level which is established by the fairly elected members. One noteworthy motivation behind it is why the Khap Panchayats and other parallel like a semi legal bodies have risen as empowered organisations in the country especially villages of U.P (West) and Haryana. The Panchayati Raj system steps of having 33 percent seats booking for ladies. May it be, such a reservation winds up chosen ladies competitors as less intermediaries of their men society. The election for chosed Panchayats again is impacted by standing element significantly because of which khaps overwhelm Panchayati Raj system.

2.5.2. Political Supports

Regardless of the explicit detachment of human rights by certain khap panchayats, the State particularly with the political class doesn't appear to

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89 Ibid.
90 Supranote at 13 (Vijender Beniwal.....)
91 Ibid., at page 7.
notice or make any query on the developing ability of khaps. The real purpose for this looks as the caste based vote elements. No political pioneer or their authority electorate khaps to fall, If any of their authority, any capable official would set out to rub the Khap leaders activity considering as offence, doing as such would basically resulting in to the end of his political affairs in that voting demographic. For each legislaturer intending to get it together on the jaat vote tries to legitimize the khaps. Bhupinder Singh Hooda, Chief Minister, Haryana and Arvind Kejriwal, Aam Aadmi Party pioneer are no less than two specimen of such lawmakers. Mr. B.S. Hooda contrasted khap Panchayats associated with piece of Indian culture and "NGOs" Mr. Arvind Kejriwal addressed that he observed there is no reason to boycott these bodies, as they serve for protect "social identity".

What social reason khaps serve separated from keeping up a strict man centric mind set hold in the general public is a faith on which each sensible individual would inquire. To cite Ex- Union Finance Minister P. Chidambaram who trusted the khap Panchayats to be conservative associations that can't be a section of India's way of life "I am horrified to see some individual say it is a piece of India's way of life."

2.5.3. Judicial Delays and Distrust of System

Postponement in pronoucement of equity by the competent courts is can be one motivation behind why villagers and nearby individuals protect these standing Panchayats, shalishi adalats and so forth is that they convey the decision in one sitting while court cases drag for a considerable length of time. There is additionally a general doubt among the villagers of the law authorization organizations. As indicated by them, as a rule blameless individuals get irritated by police and in the court. The Panchs are altogether

92 Suprnote at 2 (Report Submitted .....
93 Supranote at 13 (Vijender Beniwal.....)
known, so the villagers believe them and are sure that the panchayats adjudicate before all the findings with guaranteed lack of bias and then regulate pronouncement\textsuperscript{95}.

2.5.4. Socio Economic Factors

Mathura, 2014, Some of the ladies as well, shockingly encouraging khap orders for different causes in accordance with their social and financial circumstances. In a organised maha panchayat of 52 towns prohibited young ladies from wearing fitting pants, going out alone or utilizing cell phones various young ladies in the locale felt terrible yet they think that the Panchayats bans different choices like not to operate DJ music in marriages or forbidding endowments of costly things like tractors or bikes as demand or compulsory gifts, were significantly more imperative and deserving of regard. Concerning the prohibition on tight fitting pants and cell phones which took on account of unmarried young ladies, they joyfully bear and needed as part of life \textsuperscript{96}. Rekha, a minor girl from Neemgaon, said pants and mobiles were "not the disaster, and not exactly as essential for young ladies as fresh air and water." She additionally included viewpoint by saying that in light of the khaps decision her dad would not have the capacity to drink liquor and bet and furthermore because of the means taken by the khap Panchayat, hopefully the occurrences of sexual harassment would diminish\textsuperscript{97}.

\textsuperscript{95} Ibid.


\textsuperscript{97} Ibid.
2.5.5. Other Source of Strength

This leads us to the question, what are the sources of the strength of the khap panchayats? In this context, following submissions may be made.98

- The main secret of the strength of the khap panchayats is the steadiness of close relations of emotions among different sects (gotras) of Jats because of the proceeded with conviction that being the offspring of a typical precursor they have relations of blood.

- Another source of their strength is the prevalence of the concept of seem-simali (the concept of bhaichara (brotherhood) among the clans living in contiguous villages having common boundaries.

- Yet another source of their strength is the existence of traditional institution of the Ghwand panchayats (neighbourhood panchayats) for resolving the inter village disputes in the adjoining villages.

- The presence of the feelings of bhaichara among different gotras, living in the same village and the tradition of avoiding matrimonial relations among them.

- The traditional alliances among various gotras developed during medieval times such as the alliance between the Dalals, Deswals, Maans and Sihags; among the Rahuls and the Rathis and between the Chhiklas and Chikaras enable the khap panchayats to mobilise large-scale support.

- The institution of Sarva khap panchayat (a loose federation of various khaps) enables them to enlist support of the khaps of Haryana, national capital of Delhi region and western UP.

- The weakness of the panchayati raj institutions (PRIs) is also responsible for the continued strength of the khap panchayats. Despite the release of Document on Activity Mapping (17 February 2006) there

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98 Ranbir Singh, The Need to Tame the Khap Panchayats Volume 45, Issue-21, 2010, Available at: http://www.epw.in/journal/2010/21/commentary/need-tame-khap-panchayats.html?0=ip_login_no_cache%3Dd2c14eb4880301aad7ac32a1d292b53f (last visited on Jan 1, 2016).
has been no genuine devolution of functions, functionaries and funds for them.

- The tendency of the elected representatives of the PRIs to remain confined to the Kharanja-Paranja (construction of streets and drains) and their neglect of social issues has also enabled the khap panchayat to sustain their power in the domain of social relations.

- The conversion of the khap panchayats into vote banks has also made them virtually unchallengeable.

- All the major political parties have been reluctant to raise their voice against them.

While some political leaders lend them clandestine support, others overlook them by declaring that these are social institutions in which administration should not interfere. Only very few like Shamsher Singh Surjewala, a veteran Congress leader have the guts to speak against them. This leads us to the question. How can this menace be tamed? For this purpose, it will be worthwhile to empower the PRIs and to change the orientation of the panchayati raj leadership from construction work to social development.

Besides, a mass awareness campaign, to be launched by the civil society on a mission mode will help in the rural areas for making the people realise that this anachronistic institution which existed when there was no Constitution, no modern judicial system, no representative government, no democratically elected panchayats, has no relevance or rationale for continuation in the changed social, economic and political milieu. The universities, the NGOs and the media can play an important role in this context. Last but not the least, the political leadership of the state will have to show statesmanship and gather courage for curbing their illegal activities.


100 Frontline (magazine), Ranbir Singh, Feudal Roots, Volume 26 - Issue 17, from the publishers of THE HINDU, August 28, 2009. (last visited on Jan 1, 2016).
2.6. The General Discriminative And Derogatory Practices by Khap Panchayats

In a village of Haryana, the young ladies are regularly undermined, intimidated and murdered under Khap decisions. It is satisfactory for the families to nourish pesticide pills to the high school young ladies and after that arrange off their dead bodies by blazing them with no police records. The whole burden of brotherhood lays on the young lady. She is the custodian of village admiration. Now and then guidelines are bowing the young men however a young lady is never permitted to bear the standards. If any young lady go beyond the khap culture and bear as she likes, then her families noticed to the blacklist and threatened and imposed fines in rupees lakhs. Indeed, to set example in the society even the other ladies of the house could not be mishandle\textsuperscript{101}.

With regards to the Khap rules, more established towns endeavor to keep the youngsters separated. A few schools are additionally compelled to have different timings for the young men and young ladies. Dreading their little girls who has less mind would go far away with any male by which the pride of the family would be in risk. So, many guardians wed them before getting the age of mazory. Individuals have undeniable trust in the adjudication of Khap. The issue of rights for ladies does not subsist anyplace in the regions governed by Khap Panchayats\textsuperscript{102}.

The act of Khap Panchayats can be studied by the different structures in which they forced their orders and applied in the region wherein they exist. These habits are seen in huge numbers of the structures which are being forced on the common persons of the villages\textsuperscript{103}. There are following some acts of the khap panchayats which they performs includes as:

\textsuperscript{101}Khap Panchayat in India, Azad India Foundation, Available at: http://www.azadindia.org/social-issues/khap-panchayat-in-india.html (last visited on Feb.11, 2016).
\textsuperscript{102}Ibid.
\textsuperscript{103}Suprnote at 12 (Manbir_bhinder…..)
2.6.1. Honour Killing

Honour killings are the real motivation behind why khaps have been pulling in all the negative media scope. Hence, there have been many information we see in the news of honour killings in different structures which are direct or indirect being related to the khap decisions. Human Rights Watch characterizes honour wrongdoings as "demonstrations of savagery, Generally murder, done by male relatives against female relatives for the shameful acts which are seen to have brought disrespect upon the family. Such "shameful acts" incorporated as sexual relations or/and pregnancy before marriages or adultery or/and divorce after marriages generally being the casualty of a assault or rape. Nevertheless, honour offences are in no way, shape or form restricted to these conditions, as an extensive variety of exercises can trigger doubt of disrespectful result and movement in ensuing assaults or killings to the sufferer.

2.6.2. Forced Marriage

In customary social orders, marriage is basically a private space relating the family and the society. A wedding performed by threatening either or both the spouses and without their full consent and free will is known as forced marriage. Articles 16 of the UDHR, ensures the consent to marriage as an essential human right. Be that as it may, societies which are fixated on respect have a prevailing element of organized marriage. It doesn’t mean that all

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104 Suprnote at 2 (Report Submitted .......)
107 Forced marriage - Wikipedia, the free encyclopedia, Available at: https://en.wikipedia.org/wiki/Forced_marriage (last visited on December 24, 2016).
customs where marriages are organized are ones there does not possible honour killing, rather it is atrocity which is menace within culture where the consent of the person is considered less significance than the will of the guardians and more extensive and where wedding are viewed as a union of two families instead of only two persons. Found in this setting, it might be viewed as worthy to drive a person into marriage without their consent regarding maintaining the honour of the family.\textsuperscript{108}

Where the marriages are arranged by the parents of their minor children are known as Child marriage, is an example of a marriage of without consent. as the minors can't give their assent. These marriages are practiced in such societies where the idea of honour is given much importance. Child marriage is supported in such social orders as deterrent against shame as the young ladies wedded of in early immaturity age or even before have little opportunities to frame their own relationship decision, accordingly leaving no extent of disrespect by dismissing a match decided for them by the family\textsuperscript{109}.

Khaps regularly announce marriage between two grown-ups having a place with same town or gotra as unlawful and compel the female to wed someone else who has a place with an alternate gotra. It is thought to be a type of aggressive behavior at home. Notwithstanding expanding number of such cases law, police and society is turning a visually impaired eye to such cases and it has been noticed that individuals being victim to such marriages under the threat, need to experience both physical and mental harassment\textsuperscript{110}. Some detailed occurrences of Forced weddings by khaps as mentioned in papers are-

A young lady whose wedding was arranged by her family members against her desires finished her life by setting herself on fire. She was unhappy with her marriage against her desires and off of late she drenched herself in lamp oil and set herself ablaze. An that young lady was professedly singed to death by

\textsuperscript{108}BBC - Ethics - Honour crimes, Available at: www.bbc.co.uk/ethics/honourcrimes/crimesofhonour1.shtml (last visited on December 24, 2016).

\textsuperscript{109}Suprnote at 2 (Report Submitted .....)

\textsuperscript{110}Ibid.
her dad and uncle for declining to wed with the picked person by them. She was thrown in a hollow cavity and set burning.\(^{111}\)

### 2.6.3. Limitations on Personal Liberty

An announcement issued by the Khap Panchayat, in a village of Bagpat, Uttar Pradesh, 2008, which made an alarm in the nation as it focused on ladies on the premise of sexual discrimination. As per their proclamation, ladies who are under aged 40 years old should not use or negligible utilization of mobiles\(^{112}\), not to go out with a male under aged 45 and furthermore restricted marriages on her choices. This proclamation made waves all through the nation and furthermore people raised voice against Panchayats, are about what legitimacy of such announcement, is issued by the Khap. These kinds of proclamations make doubt in our psyche whether we are really living in modern era, so called modern era.\(^{113}\)

Activists and Sociologists opposed such diktats and expressed it as the origine of evil mentalities, as displayed by a social boycott forced by oldr persons of villages in the eastern part of Bihar on the utilization of cell phones by ladies. The senior citizens of Sunderbari village declared Ten thousand rupees fine if an unmarried female or young lady is found utilizing a mobile phone, saying these technologies are means of sexual connections, even they have pronounced for extramarital affairs too. A married lady was punished with rupees 2000 for going against the culture of the society\(^{114}\).

The boycott can be justified is supported by its implementers by considering the cell phone where a cause of spoiling the social environment as even wedded ladies are professedly betraying their spouses to run off with the

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\(^{111}\)Ibid.


\(^{113}\)Suprmote at 12 (Manbir_bhinder…..)

\(^{114}\)Aljazeera, Honour killings bring dishonour to India, Published on : Dec. 27, 2012 Available at: http://www.aljazeera.com/indepth/features/2012/12/2012121614107670788.html, (last visited on October, 28, 2016).
person who love her, which is a dishonorable subject for the common public, subsequently the orders are keeping in mind to handle with the circumstance. It is not the first instance in India that village elder persons have restricted ladies from freely utilizing cell phones\textsuperscript{115}.

A comparative restriction was forced for young ladies under aged 18 in Udaipurwati in the State of Rajasthan. A female telephone prohibition was moreover ordered in the village of Baghpat in the state of Uttar Pradesh. In this scenario Activist Madhu Kishwar raised voice that guardians and family members have the privilege to be worried about young ladies in the family. We ought to abstain from assaulting individuals in various societies without understanding the particular complexities of the circumstance\textsuperscript{116}.

First of all it is need to be clear about to Understanding of the male attitude which is prevailing in the society, is dominating. However, as Prabhavalkar (activist) observed that it may be the most essential move to building up gender based understandings in our society. This will do awesome sights which effects will remain till long period, she further told that "honour killings" hopefully can be damage India's status\textsuperscript{117}. Additionally, in a move supporting the retrogressive orders of Panchayats, ladies of a group of villagers in Muzaffarnagar have chosen to destroy fitting pants and tops. The choice was taken at lady Panchayats held at Mansoorpur, Moghpur and Dudaherdi villages of Muzaffarnaga\textsuperscript{118}. The three Panchayats, meets of ladies of all age group, have effectively reported their choice to dispose pants and tops from their cupboard and have begun a motion to prepare favouring the various khaps in the nation. Subhash Baliyan, the general secretary of 'Sarva Khap' (the umbrella association of all the 360 khaps in India), said that the highest khaps body of the nation had chosen to coordinate every one of the individuals in the

\textsuperscript{115} Ibid.
\textsuperscript{116} Ibid.
\textsuperscript{117} Mahatma Gandhi on Non-Violence - studylib.net, Available at: studylib.net/doc/9809950/mahatma-gandhi-on-non-violence, (last visited on August,28,2015).
nation to incorporate senior ladies of their particular zones while examining ladies relating issues. This new terms will guarantee that before declaring any pronouncement connected with ladies, the head of the specific khap would talk about the disputes with his spouse before announcing the declaration. An elder person of Bhartiya Kisan Union head Sohanviri, who is activating to help for young ladies to wear jeans pants and to use cell phones which is declared ban by the khap panchayats. He had observed that the choice to burn the western outfits like pants and tops was decided by the gathered lady Panchayat held at the home of village pradhan Reshpal Singh, at Moghpur and after survey where he has talked to the ladies of the villages and no one of them has rejected the suggestion, either housewife or a school going young lady.

While the vast majority of the parties have kept quite on Aasara town khap Panchayat's pronouncement, a large group of Jaat heads have demonstrated their hatred over the way the matters are being displayed. In this way where the media has anticipated khaps is disgusting. Baliyan Khap's chaudhry Naresh Tikait, A senior Jaat head said that every older person in each family informed their kids concerning the rules and regulations and anticipate them that they will take after their recommendation. This is specifically what the khaps head are doing on a village level. Yashpal Malik, who is additionally the head of the All India Jaat Reservation Committee has been protecting khaps then and again, stated that the media has anticipated that the limitations are just for ladies, which is not correct. Indeed, even young males also have been bared from utilizing mobile phones excluding to talk with their family members and friends, its is banned to talk with girls or loved ones. He further told that We

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have likewise made blacklist the families who are demanding and accepting dowry, however the media has not anticipated all facts about our panchayats.  

Where as the UP government stays equivocal about the diktat of khan Panchayats which is against the women's right. An amicus curie had been appointed by the Supreme Court and proposed to proceed police activity against such them. The thought behind the move, is accepted, to oppose affirmations that the reasonable relationship was being unreasonable by khaps which became only the members of the khaps are just male. More of the people are against them saying it as arbitrator. As the spouse of any chaudhry can't take any step forward where he has not approved as better for her. The sudden rise of all-lady Panchayats in western UP as far as the Baghpat village khan contention came into the news is likewise being seen as a frantic endeavor of khaps to build up that the ladies in such groups additionally have a voice in the basic management and leadership practice.

2.6.4. Property Rights

Other than favoring honor killings, restriction on freedom, as in passed years, khan Panchayats have mounted a movement opposing the Hindu Succession (Amendment) Act 2005 that provides parallel inheritance rights to females. July, 2013, a khan in Jhajjar disallowed a cultivator to give some cash to his daughter by which in result to pull back a legitimate case that she had claimed to get her inheritance right in the family's genetic land. The thinking being that it would encourage different young females to go with the same pattern.

In Haryana, activists have for long been stating that the resistance to marriages of intra gotra or inter caste by khaps is really gone for keeping away from the monetary strengthening of young ladies in light of the fact that the

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121 Ibid.
122 Ibid.
123 Ibid.
individuals who performed their own marriage with her choice accomplices will probably go on and claimed to get her inheritance right in the family's genetic land. All ladies are indirectly anticipated that would leave their property share, in case if any married or unmarried female claims her part in the property, blood relations will be finished on that demand. In Haryana to remove any contention after a young females' marriage (organized or love), the current practice is followed that her property share vested in the male of the family. 125.

The unfavorable media hyped that the khaps got as a product of their maintaining the honour killings, generated some course correction and there is now, a conscious effort to refurbish their mixed image by projecting a socially responsible facade. But this change is more cosmetic than fundamental. Bibipur village in Jind district where the local sarpanch held women organised sarvkhap Panchayat consist of several major khaps of Haryana. The motive was to contest female foeticide, in which women were requested to participate. In any case, when a few ladies activists endeavored to raise the issue of equivalent part of young ladies in parental estate and how ladies are being deprived of this right, they were removed from the stage by insulting 126.

2.7. Legal Status of Khap Institution

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

125 Ibid.
126 Ibid.
127 The Hindu, Pinky Anand, A khap comprises village elders grouped along caste or community lines and inspired by the need to sustain a male centric and primitive request. Khaps enjoy hegemony over 84 villages. They are powerful enough to issue fatwas ostracizing families, and declaring marriages void without due legal process or the sanction of law. The paradox of the 21st century – OPINION, May 18, 2010, Available at: www.thehindu.com/todays-paper/tp-opinion/The-paradox.../article16036894.ece (last visited on January 11, 2016).
Historical Development of the Khap Institutions & its Legal Status

Courts or Katta Panchayats. In the name of khap a segment of individuals of one specific position announces itself as the social delegate, declining to recognize the traditions and conventions honed by others in their own particular neighborhood. The quantity of cases in which the absolutely unlawful caste panchayats have explicitly opposed the tradition that must be adhered to by issuing illicit decisions has expanded complex. Although the khap or caste panchayat is not an element predominant all through the Indian States, as many believe, but is confined to a particular regions or states, such as Haryana, 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. Assaults on youthful couples, progressive-minded and Dalits individuals have become recurrent.

There is a wide spread notion that all marriages of choice between youthful pairs are depraved. In fact the khaps are against the right to marry with chose partner. The main issue was to control women's sexuality to make sure that property remains within the patriarchal caste sphere. A foolish regulation was summoned by the khap: that the couple disregarded the tradition of not wedding in the neighboring village as it shapes some portion of bhaichara (fraternity). Among the numerous exampleless of khaps issuing fatwas in Ludana, Singhwal, Maham-kheri,Dharana, Asanda, Hadaudi, Jaundhi


131 ‘khap panchayat’ Alternative constitutions, Available at: https://oakblue.wordpress.com/tag/khap-panchayat (last visited on January 11, 2016).
and other villages, the wedded pairs were affirmed brother and sister, and families made to undergo excommunication and boycotts from their villages. It is evaluated that consistently many wedded pairs are killed, asked to leave the town, asked to break their marriage and paraded stripped, acknowledge each different as siblings and their faces are blackened by their families with a specific end goal to recapture/hold 'family respect', on the disastrous guidelines of 'Khap Panchayat'.

After the decision of Manoj- Babli case a Maha Khap Panchayat was demanded that the government should amend the Hindu Marriage Act 1955 to facilitate a ban on marrying from the ‘same gotra.' the Khap Panchayats also demanded that the Hindu Marriage 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.

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 badgering, dangers and brutality against young fellows and ladies who wed outside their caste, are increasing day by day. It became necessary for the judiciary to combat the problem and provide the protection to the youths who

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132 Supranote at 130 (The Hindu, Jagmati ....)
133 Ibid.
134 The Constitution Of India, Article 32 -Supreme Court power regarding the enforcement of any of the rights conferred by Part III and The Constitution Of India, Article 226- High Court power regarding the enforcement of any of the rights conferred by Part III and for any other purpose.
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\textsuperscript{136}.

Markandey Katju and Gyan Sudha Misra JJ. On behalf of Supreme Court of India observed that, “Since a few such occasions are going as far as anyone is concerned of badgering, dangers and savagery against young fellows and ladies who wed outside their caste, the nation is passing through a crucial transitional period in this era, and we the Court cannot keep silent in matters of public interest, as this is one of the alarming issue relating to the welfare of the society\textsuperscript{137}.

\section*{2.8. Conclusion}

After going through the detailed historical development of khap it is clear that the Khap Panchayat is a well established organization, having its establishment in the primary phase of the medieval period. It is very disturbing that in a nation like India which is republic, socialist and democratic country with a broad and firm legal framework and having local self-government organizations like Panchayats, there exists a pseudo-legal foundations like the Khap Panchayats, are the establishment which has been staking case to authenticity with regards to settling debate of neighborhood open or other welfare measures. Khap Panchayats have an incredible hang on the majority as is plainly reflected in the examination directed amid the time of this investigation venture.

It is also evident from the above discussion that the institution of khap panchayats is undoubtedly illegal and in number of cases judiciary has also condemned it. But it is also a harsh reality that this Khap Institution is still supported by many political parties and to some extent by our society too.

\textsuperscript{136} Honour Killings | Law Resource India, Posted in Fundamental Rights, Gender, Honour Kilings, Human Rights, NNLRJ, India, on August 7, 2010, \textit{Available at:} https://indialawyers.wordpress.com/tag/honour-killings/ (last visited on November20, 2015).

\textsuperscript{137} Supranote at 128 (\textit{Arumugam \ldots\ldots\ldots})
Therefore, it is required that much more awareness should be spread among all the different members of the society.