

“Honour Killing and Role of Khap Panchayats in India: A Study with Special Reference to Emerging Legislative and Judicial Trends”

Thesis

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LUCKNOW**

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2017

*DEDICATED TO
MY FATHER AND
MOTHER*



DECLARATION

I, **VIVEK KUMAR**, hereby declare that this research work for the award of Ph.D. thesis in Law entitled “**Honour Killing and Role of Khap Panchayats in India: A Study with Special Reference to Emerging Legislative and Judicial Trends**” has been done by me on the basis of original research material and information taken from other research works has been duly acknowledged.

I further declare that this is an original work and has not been previously submitted in part or full for any other degree or diploma in this or any other university.

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Date.....

CERTIFICATE

This is to certify that the thesis titled “**Honour Killing and Role of Khap Panchayats in India: A Study with Special Reference to Emerging Legislative and Judicial Trends**” submitted by **Mr. Vivek Kumar** is an original research work and has not been previously submitted in full or part for award of any other degree or diploma to this or any other University.

This thesis submitted to Babasaheb Bhimrao Ambedkar University, Lucknow satisfies all the requirements as stipulated in the Doctor of Philosophy (Ph.D.) Regulations, 1999 as amended in 2010 and it is fit for submission and evaluation for the award of degree of Doctor of Philosophy of the University.

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Dated:

(Vivek Kumar)

PREFACE

The study is an attempt to understand the nature, structure, functioning of Khap Panchayats, their role and relevance in contemporary society with special reference on social issues especially in the light of honour killings. This is what the proposed study intends to accomplish.

The Ph.D. thesis “Honour Killing and Role of Khap Panchayats in India: A Study with Special Reference to Emerging Legislative and Judicial Trends” is divided into Seven chapters.

The first chapter is the “Introduction” of research work. At the initial stage, the selected area of research work has been identified. Chapter 2 titled “Historical Development of the Khap institutions and its legal status”. In this chapter researcher after giving a brief introduction of the subject matter of the chapter tries to explain the concept of the Panchayat. In Chapter 3 “Status of Marriages under different Personal Laws” the researcher has mentioned in detail about marriages in India. While the chapter No. 4 i.e., Khap Panchayats and Honour Killing. This chapter directly deals with the honour killing. It has been found that honour killing is the outcome of the decisions of the Khap Panchayats. Chapter 5 titled “Honour Killings: Violation of Human Rights and judiciary” starts with the provisions relating to protection of women in the U.N. charter and in other different International Documents. It is found that none of the provision directly provides protection to women against Honour Killing. Chapter 6 i.e., Honour Killing (Interference with the Freedom of Matrimonial Alliances) Bill-2011: An Analysis. This chapter is the main operative part of this thesis as in India there is no special law dealing directly with the problem of honour killing. In the last chapter 7, on the basis of this research study, certain conclusions are drawn and some suggestions are also placed for consideration. On the basis of findings of this research study, it is inferred that the problem of Honour killing needs to be addressed urgently.

It is an occasion for me to feel proud in presenting this research study. I hope and trust that this research study would be more useful for today as well as for future. Although, I have put in my best efforts to avoid all the mistakes but despite this if any mistake has been left out ignorantly, for that I personally tender my apologies.

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List of Abbreviations

AIR	:	All India Reporter.
Apr.	:	April.
Art.	:	Article.
AWAG	:	Ahmadabad Women Action Group.
BOM	:	Bombay.
BPFA	:	Beijing Platform for Action.
CEDAW	:	Committee on the Elimination of Discrimination against Women.
CrLJ	:	Criminal Law Journal.
CSW	:	Commission on the Status of Women.
CSWB	:	Central Social Welfare Board.
DEDAW	:	Declaration on the Elimination of Discrimination against Woman.
DPSP	:	Directive Principles of State Policy
DWCRA	:	Development of Women and Children in Rural Areas.
DWCUA	:	Development of Women and Children in Urban Areas.
e.g.	:	For Example.
ECOSOC	:	Economic and Social Council.
Etc.	:	Etcetera.
FGM	:	Female Genital Mutilation.
FIR	:	First Information Report.
FLS	:	Forward Looking Strategies.
FWCW	:	Fourth World Conference on Women.
GDI	:	Gender Development Indices.
GOI	:	Government of India.
HC	:	High Court
http	:	Hypertext transfer protocol
id.	:	<i>idem</i> (in the Same Place)
Ibid.	:	in the reference immediately proceeding.
i.e.	:	that is
ICCPR	:	International Covenant on Civil and Political Rights.
ICESCR	:	International Covenants on Economic, Social and Cultural Rights.
ICPD	:	International Conference on Population and Development.
IGMSY	:	Indira Gandhi Matritva Sahyog Yojana.
INRAW	:	International Women Right's Action Watch.

List of Abbreviations

INSTRAW	:	International Research Institute for the Advancement of Women.
IRDP	:	Integrated Rural Development Programme.
J.	:	Justice.
Jan.	:	January.
Ker.	:	Kerala.
Ltd.	:	Limited.
Mar.	:	March.
MMR	:	Maternal Mortality Rate.
MOU	:	Memorandum of Understanding.
MP	:	Madhya Pradesh.
NCW	:	National Commission for Women.
NGO	:	Non-Government Organizations.
NMEW	:	National Mission for Empowerment of Women.
No.	:	Number.
NORDA	:	Norwegian Agency for International Developers.
PARA	:	paragraph.
Pub.	:	Publication.
Pvt.	:	Private.
PWDVA	:	Protection of Women From Domestic Violence Act.
RGNCS	:	Rajiv Gandhi National Creche Scheme for the Children of Working Mothers.
Raj.	:	Rajasthan.
RMK	:	Rashtriya Mahila Kosh.
SC	:	Supreme Court.
SCC	:	Supreme Court Cases.
SCR	:	supreme Court report.
SEC	:	Section.
SEP	:	Socio-Economic Programs.
SGH	:	Shelf- Help Groups.
SGS	:	Swadhar Grih Scheme.
STEP	:	Support to Training and Empowerment Programs.
Supra	:	In the Work Previously Cited
TRYSEM	:	Training Rural Youth for Self-Employment.

List of Abbreviations

UDHR	:	Universal Declaration of Human Rights.
UN	:	United Nations.
UNESCO	:	United Nations Educational, Scientific and Cultural Organization.
UNFPA	:	United Nations Population Fund.
UNICEF	:	United Nations Children's Emergency Fund.
UNIFEM	:	United Nations Development Fund for Women.
UOI	:	Union of India
UP	:	Uttar Pradesh.
USSC	:	United State Supreme Court.
Viz.	:	Namely
Vol.	:	Volume
WELP	:	Women's Empowerment and Livelihood Programme.
WWH	:	Working Women's Hostel.
www.	:	World Wide Web

Chapter-1



CHAPTER- 1

INTRODUCTION

1. Introductory

The only place for romantic love is beyond society's boundaries-in the barren wilderness, or in heaven .

..... unknown

According to Aristotle “man is a Social animal”, and for social life there is a requirement of some rules and regulation (popularly known as Law). At every stage of development of human civilization people evolve some rules to systemize their life in accordance with the society. Rules are for the betterment of the peoples. But sometimes they create problems; recently an old aged institution for the purpose of adjudication has attracted huge attention in the media. These Khaps have been in News these days mainly because of their diktates related to various social issues (Honour killing, female feticide and castism)¹.

In India, among the liberal minded people, democratic and social associations and even worldwide organizations there is a developing worry on the increasing pattern of merciless murders of blameless youths for the sake of clan or family honour. Likewise, the United Nations takes an intense perspective of such intolerable offences. The exposed fierceness of such acts against ladies is in negation of the soul of the CEDAW which has been appropriately marked and approved by India. The commonness and entrenchment of the caste framework and male dominance centric philosophy in the general public every where is the underlying driver of this social

¹ Report Submitted by- Jamia Millia Islamia University, Discriminative and Derogatory Practices against Women By Khap Panchayats, Kangaroo Courts and Shalishi Adalats in India: An Empirical Study in the States of Haryana, Uttar Pradesh (West) , West Bengal, & Rajasthan Available at: <http://ncw.nic.in/pdfReports/ReportbyJamiaMilia.pdf> (last visited on July 8, 2016).

insidiousness².

Basically, the word “Khap” derived from the Hindi word “Khep” which means a region consist of a particular caste. It developed as an institution of Jaats community of Haryana region which believes in inter-gotra marriage. Khap is a gotra based panchayat which leads the group of some villages. Khap have played important role in solving common problems³.

At the time when a Khap panchayat fails to solve the critical problem of the member of the society, the Mahapanchayat was called to solve such problem. From ancient time it has been working for the welfare of the society some times as a law maker and to defend them from external attack, to preserve peace and security. Decision of the Mahapanchayat was binding upon every person otherwise such person had to leave the society.⁴

There are gathering of approximately ten to fifteen people constituting Khap panchayat (average age of khap panchayats member is 60 years, uneducated and irrational), who control and make the decision of the lives of the young people. Many people from the village also support these Khaps because of their efficiency in delivering the verdict in a single sitting as against court proceedings which linger on for years. These people possess undeniable faith in the decisions of khap, since everything is cross-checked to ensure there is neutrality in decisions, and so they can survive from courts where innocent people become subject to harassment of the police sometimes⁵.

Khap Panchayat enforces its diktats through social prohibitions and sanctions, imposes heavy fines or even kills the victims or makes them to

² Act now for the enactment of a law on ‘Honour Killings’, December 22, 2010, *Available at:* <http://www.sacw.net/article1785.html> (last visited on July 28, 2016).

³ Suruchi Thapar- Björkert and Sanghera Gurchathen, The Ascendancy of the Khap Panchayats in Contemporary India: Gender, Caste, Globalisation and Violence, *Intersections: Gender and Sexuality in Asia and the Pacific*, Issue 34 March 2014, *Available at:* http://intersections.anu.edu.au/issue34/thapar-bjorkert_sanghera.htm (last visited on July 8, 2016).

⁴ Ritupriya Gurtoo, Khap Panchayats In Relation To Women’s Human Rights: Indian Perspective, *Journal of legal studies and research*, vol.2, issue 2, April 2016, *Available at:* <http://jlsr.thelawbrigade.com/wp-content/uploads/2016/04/Ritupriya.pdf> (last visited on December 8, 2016).

⁵ Khap Panchayat, law teacher, the law essay professional, *Available at:* <https://www.lawteacher.net/free-law-essays/constitutional-law/khap-panchayat-law-essays.php> (last visited on December 8, 2016).

commit suicide. Many of young pairs are being killed for the reason that of violation the khap regulations. Such Khap Panchayats were formed in a democratic pattern consisting of every religion, caste member and also women but now a days they are consist of few upper caste peoples. Although Supreme Court, in the case of *Manoj Banwala and Babli honour killing case 2007*, on April 19, 2011, had confirmed these Panchayats 'unlawfull' & called it 'barbaric'. The Apex Court ordered for a hard criminal action against managing and performing persons in Khaps, highlighting that Khap Panchayats are "illegitimate" and such barbaric killing they implement to be "primitive" and 'despicable', alongside requesting action against the officials and police experts additionally neglects to avert them. As per Apex Court these Khap Panchayats support Honor Killings or different barbarities in an organized route on young male and young females of different castes who are in love, are going to get married or have been married⁶.

These Khaps taking law in their grasp and articulating on the weakness and shamefulness of inter caste marriages and Sagotra and giving punishment to the couple and pressurizing the relatives to implement their decision by any methods add up to blatant infringement of rule of law and attack of individual freedom of the individual affected. Although in Indian law, marriages within Sagotra are not prohibited by law, but in the view of custom it is being issued to avoid it⁷.

After independence, to dismiss any questions the Hindu Marriage Disabilities Removal Act 1946 was enacted. This demonstration explicitly pronounced the legitimacy of marriages between Hindus to having a place with the distinctive sub division of same rank or same gotra. Presently Hindu Marriage Act does not denied inter caste marriage or Sagotra⁸.

⁶ *Ibid.*

⁷ Unlawful interference of Caste Panchayats etc.with marriages in the name of honour: A suggested legislative framework. Available at: <http://lawcommissionofindia.nic.in/reports/cp-honour%20killing.pdf> (last visited on february 19, 2017).

⁸ Report of Law Commission, 242nd Report on Prevention of Interference with The Freedom Of ... Available at: <https://indiankanoon.org/doc/3764069/> (last visited on january 11, 2017).

Regarding the constitutionality of Khap Panchayats, although our Indian Constitution has a provision to the organization of village panchayats in every states i.e. Article- 40⁹ and 243(B)¹⁰. Again according to Article- 243(G)¹¹ these panchayats are conferred with some powers, authorities and responsibilities for the purpose of providing solution for the grass root level problems¹². It is for sure our Constitution has not provided anything for the establishment of khap panchayats. Our Indian Constitution under Article- 21¹³ has provided us the right to life and personal liberty which includes right to marry through the judicial pronouncement under Article 2. In the case of *Lata Singh v. State of U.P.*¹⁴, Supreme Court held that a person of his/ her choice in accordance with their personal laws.

In spite of this provision under the supreme law of the land peoples are not allowed to marry a person of their choice. The main reason behind violation of this fundamental right is the decisions of khap panchayats. These khap panchayats just for their false pride/ honour often ordered the killing of wedded couples or lovers, who in their view cross the social barrier i.e. caste/ gotra/ religion of the society. These khaps are not only supported by the relatives of the concern person but also supported by that society as whole. Even the politicians are seems to be supporting them¹⁵.

⁹ The Constitution Of India, Article 40. Organisation of village panchayats- The State shall take steps to organize village panchayatsunits of self government.

¹⁰ The Constitution Of India, Article 243 B- Constitution of Panchayats-

(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs

¹¹ The Constitution Of India, Article 243G - Powers, authority and responsibilities of Panchayats Subject to the provisions11th Schedule

¹² Nidhi Kumari, Concept Of Village Panchayat: Constitutional Analysis, CNLU April 5, 2015, Available at: <https://www.lawctopus.com/academike/concept-village-panchayat-constitutional-analysis/> (last visited on january 11, 2017).

¹³ The Constitution Of India, Article 21. Protection of life and personal liberty- No person,by law.

¹⁴ AIR 2006 SC 2522

¹⁵ Hindustan Times, INDIA, Same gotra marriage unacceptable: Khap, Updated: Nov 15, 2010 (In a marathon meeting that continued through out the day, heads of different khaps discussed various social issues in detail, mainly focusing on 'marriages within same caste' and allegations on khaps for supporting honour killings.) Available at: <http://www.hindustantimes.com/india/same-gotra-marriage-unacceptable-khap/story-kLCiG98rRuHfEeWjVttYqO.html> (last visited on Jan. 11, 2017).

However our parliament shows a common concern on this matter by introducing The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill-2011, which shows that khaps and their acts are wholly illegal¹⁶. In the case of (*Asha Saini, 19, and Yogesh Jatav, 20, Murder Case 2010*)¹⁷, (*case filed by Shakti Vahini, NGO, 2012*) the honorable Supreme Court has taken harsh view regarding the decisions of khap panchayat on honour killing. Now the question before us is that in spite of Supreme Court decisions why they are continuing to give “Talibani Decisions” and by what authority they are doing so?¹⁸

There are different legislations on marriage dealing almost every religion along with the “Special Marriage Act- 1954”. These legislations itself provides the grounds on which the marriage will become void/ voidable. The khap panchayats are out right denying this legislation. For example- The Hindu Marriage Act- 1955, prohibits the marriage only on the grounds mention under Section- 5 of the Act. It has no where provide the Gotra/ Caste as the ground for invalidating marriage. The khap panchayat mostly passes their decision on this vary ground. Whereas Section- 5 of The Hindu Marriage Act- 1955, provides only two grounds for invalidating the marriages i.e. Sapinda and Prohibited relations¹⁹.

¹⁶ Utkarsha Sharma & Aishwarya Sharma, Khap Panchayat- Tradition V/S Modernity, Available at: <http://jcil.lsyndicate.com/wp-content/uploads/2017/01/Utkarsha-Aishwariya.pdf> (last visited on Jan. 12, 2017).

¹⁷ India: Apex court upset at increasing cases of “honor killings”, Posted on June 22, 2010, Available at: <https://shaktivahini.wordpress.com/category/uncategorized/page/7/> (last visited on Jan. 12, 2017). See also- 2010 Delhi honour killing: 5 of family get death penalty for murder of teen couple (Asha, 19, was beaten, and then electrocuted along with her 20-year-old boyfriend Yogesh as her family was opposed to the relationship), Mail Today Bureau, New Delhi, October 5, 2012 | Available at: <http://indiatoday.intoday.in/story/delhi-court-sentences-five-of-a-family-to-death-for-honour-killing/1/223521.html> (last visited on Jan. 12, 2017). See also- *State v. Om Prakash And Others* on 17 April, 2014, (Sessions Case No. 56 of 2010, Death Reference No. 5/2012, Criminal Appeals No. 105, 156, 274, 288 and 460 of 2013)

¹⁸ Kavita Kachhwaha, Khap Adjudication in India: Honouring the Culture with Crimes, IJCJS, Volume 6, Issue 1 & 2 January- June / July – December 2011 (Combined Issue), Available at: <http://www.sascv.org/ijcjs/pdfs/kavitaijcjs2011i&iind.pdf> (last visited on Jan. 12, 2016).

¹⁹ Live Mint News, Khap inter-caste marriage ruling a sign of compulsion, not reform, (With a sex ratio of just 877, permitting such marriages in Haryana is less radical shift and more pragmatic solution), Apr 25, 2014, Available at: <http://www.livemint.com/Politics/97nIRJpAoePXPXIp0CvbxN/ Khap-intercaste-marriage-ruling-a-sign-of-compulsion-not-r.html> (last visited on Jan. 12, 2016)

It is the need of the day when much hype is given to the concept of human rights along with Fundamental Rights; young people are killed for their false honour in the name of Caste/ Gotra/ Religion. Such decisions and heinous criminal act need to be checked. We have provisions in Indian Penal Code-1860 dealing with the crime of murder under section-300 and Section-302 punishment for murder. There is need to insert a specific Section as “304(C)” in I.P.C. and a specific legislation as “Prohibition of Honour Killing Act”, by which youth can be protected and if there is any killing, then this murder can be easily justify²⁰.

To stamp out the barbaric and feudal practice of ‘honor killings,’ in the case of *Bhagwan Das v. State of Delhi (NCT)*, 2011²¹ the Supreme Court directed. “It is time to destroy these feudal, barbaric acts which are a stain on our nation”. This is essential as an obstruction for such outrageous, savage conduct. All people who are intending to execute “honour” killings should realize that there is claws of law await them. According to S.C. the offence of Honour killing should be punished with death sentence as it felt under the category of *rarest of rare* case. However it should be put under the category of Rarest of rare or not is also dealt in detail under the Chapter named: Honour Killing-Whether rarest of rare case? So what we come to know of the Khap panchayat is that it is a Jat social structure since medieval times, where a consolidate bunch of several villages or castes. Their main agenda that governs their functioning is that conjugal relations between people belonging to the same gotra are barred because of the fact of “brotherhood” between them²².

India is a diversified country with a variety of cultures spread in every nook and corner. It will be a total mess if every community starts practicing their own ways to deliver justice as a means of providing justice. And with such chaos all over, how can we even dream of a better organizing in the nation

²⁰ *Supranote* at-1 (Report Submitted

²¹ Special Leave Petition (Crl.) No.1208 Of 2011

²² *Bhagwan Das v. State Of Delhi*, May 9, 2011, Available at: <https://indiankanoon.org/doc/1422914/> (last visited on July 8, 2015)

marked by the essential element of “civilization”²³.

In States like Haryana, each passing day costs the precious lives of so many innocent men and women. The irony is that Haryana stands just a few kilometres from the national capital of the country, and even then the rule of land here begins to change as the scenery changes. The villages here are governed by the Indian laws only on papers, where actually it is the rule of the khap panchayats that prevails out of their vested interests to subdue the women, poor and backward classes. Compelling these acts which the Supreme Court has tagged “Barbaric”, is actually the deficiency of the political will to do something against these “horror killings” which tend to ‘guard’ the “honour shakings” of the country. Politicians and leaders have the fear of losing votes of the Jats, which constitute a dominant caste in such areas²⁴.

The UDHR can be read to state the concept of free will when it appears to marriage in Article 16²⁵. Apart from the free recognition of marrying out of choice in the UDHR, there are quite a few other guarantees that are complexity in the declaration of choice and free will when it comes to marriages²⁶.

The preamble of the UDHR for example, reconfirms the “faith in fundamental human rights, in the equal rights of men and women in the dignity and worth of the human person”, while also making sure to sustain the “freedom from fear and want”. Article 3, provides that everyone has the right to life, liberty and security while Article 5, bars inhuman treatment and torture and/or penalty. Article 8, assured valuable curative procedures in national judiciary structures for practices that breach the fundamental rights assured by the Constitution of the Nations. Article 12, bars illogical obstructions with home, family or privacy concern including assaults on reputation and honour. The honour killings taking place universally on the earth, breach every individuals rights provided under one of the articles. The UDHR also promotes

²³ *Supranote* at-5 (Khap Panchayat.....)

²⁴ *Ibid.*

²⁵ UDHR, Article 16: Right to marriage and family

²⁶ Human Rights, Honour Killings and the Indian Law Scope for a ‘Right to Have Rights’, Available at: <http://xaam.org/human-rights-honour-killings-and-indian/?print=print> (last visited on february 19, 2016).

the right to the protection of law against such assaults under Article 30, which is available as a guard of all rights that performs as a wall against any breach of the rights provided in the UDHR²⁷.

From one perspective we see Indian laws has been prepared on the premise of a few conventions and traditions, however some detestable acts has been limited and a few has been sured the obligatory power as a law yet now after freedom we have different personal laws to direct ourselves in our different family disputes. Then again governing by Khap Panchayats which are not lawfully perceived, regardless of whether these practices are in the infringement of effectively settled law identifying with the property and marital issues. On the off chance that the Khap Panchayat will mediate every one of the issues identifying with wedding then what will be the capacity and presence of court of equity and the proficiency of lawmaking body in the country. Presently the issue is that whether these Khap Panchayats ought to be lawfully perceived or nullified or that the thoughts of the Khap Panchayat members is concerned it should be additionally accepted as the general assessment and the popular sentiments ought to be perceived with respect to making law in an equitable setup in the light of facts and circumstances that the state is made by people in general and furthermore the law is the voice of the people²⁸.

Though, woman in India has achieved great advances in the academic and professional fields after independence, however she is still facing discrimination based on conservative ideas, especially in traditional societies. In those societies, the woman is still treated in a conventional manner, with neglect to her basic human rights. She is regarded as being inferior to man, and not deserving to enjoy the identical rights. This belief is based and built upon a

²⁷Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, EJIL, 2008, vol. 19, issue 4: 655-724, Published: 01 September 2008, Available at: <https://academic.oup.com/ejil/article/19/4/655/349356/Human-Dignity-and-Judicial-Interpretation-of-Human> (last visited on february 19, 2016).

²⁸Dr. Ashish Kumar Singhal, Ikramuddin Malik, Abroo Khan Malik, Khap Panchayat & Personal Laws in India, 2013; Volume 5 Issue 2, (ISSN: 1553-9865), at page-39-40, Available at: http://www.sciencepub.net/researcher/research0502/008_15782research0502_39_43.pdf (last visited on february 19, 2016).

long succession of customs and traditions²⁹.

Despite the fact that in India, woman has attained some rights under various laws including the equality rights under the Constitution of India, but there are still several instances of discrimination and violence committed against her. Some of those are reflected in the phenomenon of killing women on the milieu of the honor of the family. Honor killing is considered to be a crime that threatens the unity and harmony of the community, and it acts as a barrier preventing woman from enjoying equal rights, equal opportunities and to live a dignified life with her counterparts of her choice. Killing of women on the basis of family honor is considered one of the forms of discrimination against woman and is a stern contravention to her basic human rights³⁰. Yet it is an observable fact that continues in India. Honour killing dealt with a barbaric custom of murdering women for immoral activities, at the hands of male family members, including fathers, brothers, and even husbands, to maintain the purity of honor or restore the family honour³¹. The daughters who disobey their parents and decide to marry with a man or decided to live with him of their choice are considered to bring dishonor upon their family and commit an offence that could be purified only with blood³². This is the reality where in one hand we are talking about rights, freedom, dignity, choices, privacy, education, developments and other essential for a developed and modern society but on second hand we are borrowing the patriarchal traditions and discriminations, where some of the people on their false and rigid pride made them to involve in the act of the honour killings.

²⁹ Dr. Vibhuti Patel, Gandhiji and Empowerment of Women, *Available at:* <http://www.mkgandhi.org/articles/womenempowerment.htm> (last visited on february 19, 2016).

³⁰ Office of the High commissioner, Women's Rights are Human Rights, United nations Human Rights, ISBN 978-92-1-154206-6 E-ISBN 978-92-1-056789-3, 2014, *Available at:* <http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf> (last visited on february 19, 2016).

³¹ Mohamad K. Yusuff, Honor Killings in the Name of Religion, Islamic Research Foundation International, Inc., Posted March 9, 1999. This article was printed in the February/March 1999 issue of the Voice of Islam newsletter. (This newsletter is published by the Islamic Society of the Washington Area). *Available at:* http://www.irfi.org/articles/women_in_islam/honor_killings_in_the_name_of_re.htm, (last visited on November 1, 2016).

³² Urmila Bhardwaj, Nothing Honourable in "Honour Killing" A Social Stigma, Published on : October 29, 2014, *Available at:* http://www.legalservicesindia.com/article/print.php?art_id=1721 (last visited on July 8, 2016).

1.2. Literature Review

The researcher has studied and reviewed literature and various concept of research work carried out in the study.

First reviewed book is “Honour - crime paradigms and violence against women”, by Lynn Welchman and Sara Hossain, Published on 2006, Zubaan Publication, ISBN 8189013807. The author examined strategies of response to such manifestations of violence against women, focusing largely on honor killings an interference with the right to choice in marriage and legal treatment of the defense of the honour and provocation in different countries of Europe, the Middle East, Latin America and South Asia including India. The book is distinctive in approach and content, highlighting activist and practice oriented. The author has raised the voice to the struggle to locate crimes of honour within the international framework of violence against women and human rights, rather than specific to the particular culture and committees.

Next reviewed book is “Khap panchayaton ki prasangikta” by D.R. Chaudhary, published on 2013, NBT publication, ISBN 978-81-237-6814-4. The author has emphasized on the Khap panchayats and their illegal acts the author has tried to analyze, who are khaps, its constitution and reason behind their functioning. The author has also tried well on the content of the origin and historical background of the khap panchayats highlighting about gotra and heredity. The author specially studied the Jat group of Haryana, where this major activity occurred. Again the author praises the media and the Judiciary for their participation to curb the Khaps. The book contains special features of the movie “Khap” also.

Next reviewed book is “Honour killing- Roots and Remedies, a Global View”, by Rao Arif Ali Khan, published on 2012, Mittal Publication, ISBN 9788183244053. The author has viewed on the killing of male or female or

both due to false pride in the name of honour not only in India but also in various part of the world. He has focused on various norms of society in name of traditions and raised the question that Is the love or choice marriages should be forcibly dissolved by executing the person or couple in the name of honour. Author has justified such killings should be completely banned, which is against the right to life, right to marriage and against the human rights.

The first reviewed article is “Roots, rationale and judicial outlook on killing in the name of honour: A solution based scrutiny”, written by Priti Saxena and Sudarshan Verma, Indian Bar Review, 39(4), 2012(Oct-December).

This article focuses on gender-based violence within the family, with an emphasis on ‘honour killings’. These types of crimes are associated with the concepts of ‘honour’ and ‘shame’ within patriarchal societies. Killing of women on the basis of family honor is considered one of the forms of discrimination against woman and is a stern contravention to her basic human rights. Yet it is an observable fact that continues in India. Honor killing dealt with a barbaric custom of murdering women for immoral activities, at the hands of male family members, including fathers, brothers, and even husbands, to maintain the faith on honor or restore the family honor. The daughters who disobey their parents or the custom of the society and decide to marry with a man of their own choice are considered to bring dishonor upon their family—and commit an offence which penalty must be execute as her death. This article takes a feminist perspective with the conceptual goal to reconcile the feminist approach with multiculturalism, by removing the assumption that multiculturalism is simply moral relativism.

Next reviewed article titled- “Khap Adjudication in India: Honouring the Culture with Crimes”. International Journal of Criminal Justice Sciences (IJCJS) – Official Journal of the South Asian Society of Criminology and Victimology (SASCV), January- June / July– December 2011 (Combined

Issue) Vol. 6, Issue (1&2), pg. 297-308, ISSN- 0973-5089, by Kavita Kachhwaha, <http://www.sascv.org/ijcjs/pdfs/kavitaijcjs2011i&iind.pdf>

The author has emphasized on reevaluation of the traditional culture existing in society and the existence of khaps, spreading fear in India and across world. According to the author honor killing is human rights abuse and harassment against female, rejection of ones right to choice and in the contravention of the law. She has raised the voice that why the khaps are existing and still declaring the barbaric decisions which are inhuman and unconstitutional.

Next reviewed article titled “Patriarchal Ideology of Honour and Honour Crimes in India”. IJCJS – Official Journal of the SASCV, Jan. – Dec., 2011 Vol. 6, Issue (1&2), pg. 386–395, ISSN- 0973-5089, by Jyoti Vishwanath, <http://www.sascv.org/ijcjs/pdfs/jyothiicjs2011i&iind.pdf>

According to the author honour crimes cut across racial, religious, cultural and regional divides. The horrendous waves of massacring, young and innocent women to choose their life partners. There are norms in the society to control the human behavior and the culture, which becomes inevitable to examine the status of the women in India. Khaps are the social authority having patriarchal ideology of honour. These khaps rapidly engulfing the entire ocean of mankind and terrorising the society. This is the need of the day to check the cruel culture of victimizing the feeble population for protecting and restoring the pride of the nation.

1.3. Utility of the Topic

The study is an attempt to understand the nature, structure, functioning of Khap Panchayats, their role and relevance in contemporary society with special reference on social issues especially in the light of honour killings. This is what the proposed study intends to accomplish.

1.4. Statement of the Problem

The very idea that international human rights are material to every single individual regardless of some other thoughts are necessary here. Although, the vision of "matrimony" is the comprehensive one, the requisites and situations of its implementation and essence are particular and social. A broadminded perspective of matrimony would analyse it as a subject of individual decision and opportunity, though a few groups as for this situation view it as attached to thoughts of religion, genealogy and respect. Clearly the right to life of human is breached by committing honour killings. yet is there something more to this brutality? Is there a reasoned aspect to this deliberation of physical brutality? What is the part of custom and how can it legitimize murdering individuals for honour?

An honour killing is the homicide of a member of a family or social group by other member due to the belief of the perpetrators that the victim has brought dishonor upon the family or community. It prevails in almost all the societies without the difference of any modernization and development of civilization. About thousand young man and woman are killed every year because someone in their family, clan, village or caste belief they violate their concept of honour in 21st century by doing such a normal thing like choosing a life partner which incidentally is celebrated by tribal culture. The root cause for its occurrence is the definite mindset that by killing kiths and kin their act can be undo and the family, community and society can get back their honour.

Today, where the societal standards are continually changing there is dependably a tiff between the antiquated works on being taken after and the advanced liberal feeling of the adolescent. India is a law based nation and its subject has different flexibility and rights conceded under the Constitution of India. The individual dwelling in India have a right to assemble peacefully and also have right to form an organization accept not to violate the others rights. Article 21 of the Indian constitution assures the right to life and personal liberty with dignity to every person.

We can definitely observe that Indian laws has been prepared on the premise of a few customs and traditions, however some disgusting practices has been bared by substantial laws or by specific laws and a few has been given the coupling power under the shadow of law. However, now after acquiring freedom we have different laws to control human acts and conduct but some issues are there to be consider to make our society fearless as “Honour Killing”.

A proposed legislation in India which intends to check honor killings is The Prohibition of Unlawful Assembly (Bill of Freedom of the Matrimonial Alliances) Bill, 2011. It aims to criminalise the intimidation of consenting adults by kangaroo courts for same-gotra marriages, inter-caste, inter-community and inter-religious marriages. The first draft was presented by the Law Commission of India on 20 January 2012. The commission had also released a consultation paper on khap panchayats and honour killings, and sought public opinion on it. The proposed bill seeks to prohibit any person or group of persons to gather and adjudicate or condemn any marriage, which is not prohibited by law, on the claims that it brings dishonour of a caste, locality or community. Indeed it was a commendable attempt to regulate offence related to honour killing, however the bill is still lacking in various aspects to curb the inhuman act of honour killing. Therefore there is the need to review the proposed bill.

Then again giving choice through Khap Panchayats which are not lawfully perceived, regardless of whether this training is in the infringement of officially settled law identifying with the property and wedding matters. In the event that the Khap Panchayat will arbitrate every one of the issues identifying with wedding, then for what purpose the constitutional body in India like legislative body, judiciary and executive body is made. These constitutional body is for making law, for justice and for implementation and protection the rule of law. Now a days it is the issue is how the unconstitutional body like Khap Panchayats are performing and mitigating the rights of the individuals. According to the Khap Panchayat is concerned it is supported by the common

people of local areas, if so then government should make it legitimate institution otherwise government should not be like dumb watchman, it should be crushed in the favour of the humanity and in the perview of the modern and developed society in the ethos of the Indian constitution as well as UDHR.

1.5. Objectives of the Study

1. To know who are the Khap Panchayats? What is its constitutional validity?
2. To study the existing practices of Khap Panchayats and review them in the light of present legal system.
3. To identify the reasons which are responsible for decision of the honour killing by the Khap Panchayats?
4. To examine the decision of Khap Panchayats in the light of human right violation and to check its validity.
5. To make a detail case study relating to the topic and its impact on the society.
6. To analyse the role of judiciary in this area.
7. To suggest measures to improve the Khap panchayat system and lay down methods of monitoring and evaluation.

1.6. Hypothesis

1. Decision's of khap effecting day today life of the people.
2. The Khaps still exist even after decision of Apex Court.
3. Khaps working against the Personal laws relating to marriages.
4. We don't have appropriate law to curb the Honour Killing.
5. Adequacy of the punishment for Honour Killing.

On the basis of research work done in the thesis, hypothesis tested and resulted as under:

1. Decision's of khap affecting day today life of the people.

After going through the detailed historical development of khap it is clear that the *Khap Panchayat* is an old aged organisation, having its establishment in the first phase of the medieval period, and it has deep influence on the day to day life of the people. The pronouncements and their functions are discussed in detail by the researcher and on the basis of which it is quite clear that their decisions are affecting the normal life of the people. The political and juridical power that the khaps have affects the life of many to a great extent. In order to act according to the elders of the villages tried to control the youngsters in the society. Some disciplines are also forced to have particular timings for the boys and girls for the education; or girls are not allowed to go to school at all. Having fear about their daughters would run away with her lover. Most of the guardians marry them at the minor age. People have blind faith in the adjudication of khap. The subject of rights for women does not subsist anywhere in the area ruled by Khaps. That girls are seldom sent to schools is especially harmful because education can empower various sections of society, and women in particular, more than anything else. In general, women are not well off under the rule of khap panchayats. In some other parts of India where there are Khap Panchayats, women are considered by them as a commodity. The reproductive roles of women are highlighted under this fold. They are not given any rights and expected to obey their fathers before they are married and fulfill their duties as a wife and as a homemaker after they get married. It can be easily understood the reason why khap panchayats have been drawing all the local media exposure in the negative sense regarding killings of youngsters? Now a days, there have been many informations of honour killings in different forms which are less or more being recognized to the khap dominance. Therefore the related hypothesis stands proved.

2. The Khaps still exist even after decision of Apex Court.

Only a legally constituted body that is judiciary has the right to adjudicate the offenses committed by the citizens. The constitution of India gives this power to judiciary but the 'khap panchayats' violated the law of the land. The Supreme Court of India called these 'Khap Panchayats' as *Kangaroo Courts or Katta Panchayats*³³. In the name of khap a segment of people of one specific caste declared itself as the representative of the society and culture, denying to recognize the traditions and customs opted by others in their own neighborhood. It is also evident from the 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. Therefore, it is required that much more awareness should be spread among all the different members of the society. Therefore the related hypothesis stands proved.

3. Khaps working against the Personal laws relating to marriages.

In Hinduism marriage within the same gotra is prohibited, where a gotra is believed to be the group of descendants of a sage who lived in the remote past. Two persons in the same gotra cannot marry even if they come from different linguistic areas. However, same-gotra marriages have been legal under Indian civil law since the Hindu Marriage Act of 1955. Additionally, marriages within certain degrees of consanguinity are considered sapinda and banned in Hinduism. Hindu law givers differ in the definition of sapinda: at one extreme, according to some sources marriages are prohibited within seven generations on the father's side and five on the mother's side. In contrast, other sources allow cross cousins to marry, including first cross cousins. The Hindu Marriage Act bars marriage for five generations on the father's side and three

³³ *Arumugam Servai v. State of Tamil Nadu* and *Ajit Kumar and others v. State of Tamil Nadu*, (2011) 6 SCC 405

on the mother's side, but allows cross-cousin marriage where it is permitted by custom. The khaps are forcing the peoples to follow the rules in strict sense. Therefore the related hypothesis is proved.

4. We don't have specific law to curb the Honour Killing.

Despite the fact that in India, woman has attained some rights under various laws including the equality rights under the Constitution of India, but there are still several instances of discrimination and violence committed against her. Some of those are reflected in the phenomenon of killing women on the milieu of the honour of the family. The murders come under the general categories of homicide or manslaughter. Sometimes the honour killings are also done by a mob and so when a mob has carried out such attacks, it becomes difficult to pinpoint a culprit. The collection of evidence becomes tricky and eyewitnesses are never forthcoming. But 'Honour Killings' are against International Law on Human Rights and against United Nation agendas. But still even though we don't have any law to deal with it specifically in India but we have judicial precedence over it. There is a bill (The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill 2011) which is in the latent stage against the honour killings, which are planned to be introduced in the parliament sooner. Hence the related hypothesis stands proved.

5. Adequacy of the punishment for Honour Killing.

The powers of the khap panchayats need to be curtailed by appropriate Legislation. In India, there is no specific criminal law to deal with the offence of honour crimes. Need is there to either enact a special law or to add specific provisions in order to curb this menace in the Indian Penal Code, 1860 for example 304-C. Cases relating to honour killings should be trialed under fast track courts. There should be amendment in section 113 of in order to shift the burden of proof on accused the Evidence Act, by which to make them accountable and to prove their innocence for committing such killing by

putting it under a new Section namely 113-C. We need a special law that specifies what needs to be looked at during the investigation and prosecution of an honour killing case and that it is not tried broadly as a murder. There need to be detailed examinations; the forensic evidence needs to be collected keeping the motive of honour killing in mind and so on. They need to check what preceded the murder. Hence the related hypothesis is proved.

1.7. Research Methodology

Keeping in view the nature of problem analytical, descriptive and evaluative methods are adopted. The materials for the present study have been collected from primary as well as secondary sources. The present study also relied on relevant provisions of the constitution as well as laws and government national policies related with the topic. The basic international documents including Universal Declaration on Human Rights have been consulted. The study has also relied on the judgments of the apex court and the high courts.

1.8. Scheme of the work

The Ph.D. thesis “Honour Killing and Role of Khap Panchayats in India: A Study with special reference to Emerging Legislative and Judicial Trends” is divided into Seven chapters. The **chapter 1** is the “Introduction” of research work. At the initial stage, the selected area of research work has been identified. After identification of research problem, a synopsis of research work and its basic structure were developed. The main objectives of research study are put forth in this chapter. A review of literature is also put forth in this chapter. A paragraph of hypothesis is constructed in which five assumptions are made. On the basis of research observations, utilizing qualitative and quantitative research method techniques of research methodology, all assumptions are proved. Further, the selection of research problem, statement

of research problem, significance of research study, scope of research study are also briefly mentioned in this chapter.

Chapter 2 titled “Historical Development of the Khap institutions and its legal status”. In this chapter researcher after giving a brief introduction of the subject matter of the chapter tries to explain the concept of the Panchayat. For the purpose of better understanding of the term researcher mentioned the Ancient historical development, medieval period development, development during British Rule and the independent India understands of the term panchayat. There after researcher moves on to the historical background of the Khap Panchayats. Researcher finds that the institution Khap is well imbedded in the society in northwest and slightly in north east areas. Researcher then makes a comparison between Panchayats and Khap Panchayats and finds that khap basically based or working in accordance with the gotra, religion and caste. It is found that the Institution of khap is deeply rooted in our society and its decisions are highly effective.

In **Chapter 3** “Status of Marriages under different Personal Laws” the researcher has mentioned in detail about marriages in India. In order to know at what point these Khap’s view goes against the laws relating to marriages as provided under the Constitution of India and other personal laws including special marriage act Honour Killing usually done against the marriages in the name of honour. Therefore it becomes necessary to go through the matrimonial laws which are available in our country legalizing the marriages in India. Researcher for that purpose make a detail study of different marriage institutions mentioned in different religions. Researcher finds that the offence of honour killing is usually done against the marriages concluded against the will of parents. This chapter further dealt with an important question of “consent” in marriages which are very important question as there is controversy regarding age of consent to marry in India. As a conclusion the researcher has submitted that there is a need to make the uniform age for consenting the marriage i.e. 18 year for male and female both.

While the **chapter 4** i.e., “Honour Killings, Human Rights and Khap Panchayats”. This chapter directly deals with the honour killing. It has been found that honour killing resulted from the decisions of the Khap Panchayats. This chapter deals in detail all those instances that has occurred relating to the honour killing in different part of the country and this chapter also examined the legality of Khap’s decisions regarding honour killing and found that they are held illegal by the courts.

Chapter 5 titled Legal Frame Work for the Protection of Women and Judicial Response to Honour Killings in India”, This chapter starts with the provisions relating to protection of women in the U.N. charter and in other different International Documents. It is found that none of the provision directly provides protection to women against Honour Killing. Further in this chapter provisions relating to women protection in India is discussed in detail. In this chapter researcher further evaluate the role of Judiciary relating to Honour Killing. It was concluded that there are so strong influence of these Panchayats and self determined as quasi legal bodies among villagers and once in a while even among instructed class alike that the State apparatus a large portion of the circumstances neglects to react opportune to their unjustifiable diktats which are only unadulterated joke of rule of law.

Chapter 6 i.e., “The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011: An Analysis”. This chapter is the main operative part of this thesis as in India there is no special law dealing directly with the problem of honour killing. As we know honour killing is the blot on our society and it should be removed and punished with special law. Considering the importance of this matter the parliament has tried to make a law which specially dealt with interference with the freedom of matrimonial alliances. The main aim of this proposed bill was to curb the honour killing. In the present chapter researcher has gone through deeply in every provisions of this proposed bill and has come out with suggestions which will make the proposed bill much stronger.

In the last **chapter 7** i.e., “Conclusion and Suggestions”, This chapter is prepared on the basis of this research study, certain conclusions are drawn and some suggestions are also placed for consideration. On the basis of findings of this research study, it is inferred that the problem of Honour killing needs to be addressed urgently.

On the basis of study it is concluded 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. Therefore, it is required that much more awareness should be spread among all the different members of the society.

It can be concluded that the Honour killing and Khap Panchayats are complementary to each other. Thus there is urgent need first to curb these Khap panchayats then only the offence of Honour killing may be dealt.

There are so strong influence of these Panchayats and self determined as quasi legal bodies among villagers and now and again even among cultured class alike that the State apparatus at the time of reaction, neglects to react to their unreasonable decisions which are only contempt of Rule of law and justice. Be it the dictating of gang rape of ladies for having an unsanctioned romance with a man of other caste or the forbidding of cell phone use by young ladies, the effect of decisions of khap panchayats is significant on their existing regions. The political class for the dread of losing their vote bank, attempt their best to refuse to take notice the brutal diktats which stun the voice of any humanized individual.

The thing that made the Khap Panchayat so effective is that each Khap controls over pack of towns by which they reinforce the political pioneers. They know these Khaps have intense vote banks which are unequivocal in races. Khap Panchayats holds the nerves of ordinary citizens which demonstrate the State's unwillingness or powerlessness to intercede in such cases.

Regarding the proposed law it is submitted that the Bill needs to focus more on prohibiting acts rather than punishing them. As this is a piece of social legislation, it will be very difficult to implement it if its emphasis is on criminalisation. Social legislations which have been proved to be effective focused on prohibition rather than criminalization. The colonial experience in Bengal by which Sati and Female infanticide could be considerably reduced offer models for emulation. It was through a concerted action of the administration supported by law that success could be achieved. The method was intense, whenever there was a death of a male member, appropriate authorities cause to send officials both police and administrative to make sure that sati is not performed by overseeing the funeral. These were measures taken at the grass root level and were so effective that the number of incidents of sati reduced drastically. Female infanticides were controlled by periodical visits by the local authorities to assess the well being of the girl child born when information is passed on by designated authorities.

The phrase ‘unlawful assembly’ present throughout the Bill, creates vagueness as it is already defined in Section 141 of the IPC with its own essentials. Therefore, this phrase needs to be swapped with a neutral expression. Even the word ‘association’ may not be appropriate as an association has a feature of permanence, organization and administrative nucleus, which is missing in a Khap Panchayat. Therefore, the most viable option is to amend Section 141 IPC to incorporate the assembly indicated in this Bill³⁴.

³⁴ Prevention Of Interference With The Freedom Of Matrimonial Alliances (In The Name Of Honour And Tradition): A Suggested Legal Framework. Report No.242, Law Commission Of India, Government Of India, August 2012, Available at: <http://lawcommissionofindia.nic.in/reports/report242.pdf> (last visited on 23 June. ,2015).

Chapter-2



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 girls¹, 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 and 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 society².

¹ The Hindu, August 9, 2014, UP khap panchayat bans jeans, mobile phones for girls, *Available at:* <http://www.thehindu.com/news/national/other-states/uttar-pradesh-community-panchayat-bans-jeans-mobile-phones-for-girls/article6298539.ece>, (last visited on Mar.26, 2015).

² Report Submitted by- Jamia Millia Islamia University, Discriminative and Derogatory Practices against Women By Khap Panchayats, Kangaroo Courts and Shalishi Adalats in India: An Empirical Study in the States of Haryana, Uttar Pradesh(West), West Bengal & Rajasthan, *Available at:* <http://ncw.nic.in/pdf/Reports/ReportbyJamiaMilia.pdf> (last visited on July 8, 2016).

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 tha 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

³ *Ibid.*

⁴ *Ibid.*

situation where the reality of land is not like that which is being introduced in the local media⁵.

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 so⁶.

2.1. The Concept of Khap Panchayat

The word Khap is probably derived from Latin word corpus which means an organization of individuals⁷, 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 Nayanasi 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 gotras⁸ 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'.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Juhi Gupta, Caste, Culture And Khap: No Honour, Only Killings, Impact: International Journal Of Research In Humanities, Arts And Literature (Impact: Ijrhal) ISSN(E): 2321-8878; ISSN(P): 2347-4564 Vol. 2, Issue 7, Jul 2014, at page-40, Available at: file:///C:/Users/hp/Downloads/2-11-1404736927-5.%20Humanities-Caste,%20Culture%20and%20Khap%20No%20honour-Juhi%20Gupta%20(4).pdf (last visited on feb 20 2015).

⁸ *Suprnote* at 2 (Report Submitted)

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 society⁹.

The Panchayat word is originated from the word “Pancha”, which indicates to a group of five (Panchavanusthitah), is available in the Mahabharata (Shanti-Parva), and panchavanusthitah are semantically close to panchayat¹⁰. 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 formed¹¹. ‘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 caste¹². 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 to the personal rights. It is generally assumed that they came to exist sometime

⁹ *Ibid.*

¹⁰ Raj Singh, *Panchayat Raj Manual: A Socio-Historical Cum Legal Perspective*, Anmol Publications, New Delhi, (1996), at page 10

¹¹ Kavita Kachhwaha, *Khap Adjudication in India: Honouring the Culture with Crimes*, International Journal of Criminal Justice Sciences, Vol. 6, Issue 1 & 2 at page 297, January 1, 2011, ISSN: 0973-5089, Available at: <https://www.questia.com/library/journal/1P3-2651871621/khap-adjudication-in-india-honouring-the-culture> (last visited on August 8, 2015).

¹² Manbir_bhinder, *Khap Panchyats: Adjudicating Cultural Dishonour?*, (legal Services India, articles), Published on December 14, 2013, Available at: <http://www.legalservicesindia.com/article/article/khap-panchyats-adjudicating-cultural-dishonour-1610-1.html> (last visited on August 12, 2015).

around 600 AD. It is assumed that the upper castes 'Jats' have started to strengthen their position and power in the community¹³.

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 an assembly of five chosen 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 chosen 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, wife, sisters, mother and all women in high regard and are ready to give extreme forfeit for the protection of their respect¹⁴. 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 functions under them¹⁵. 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

¹³ Vijender Beniwal, An Appraisal of Khap Panchayats: Issues and Concerns, (academia.edu. article), Available at: http://www.academia.edu/14500761/An_Appraisal_of_Khap_Panchayats_Issues_and_Concerns (last visited on August 12, 2015).

¹⁴ *Suprnote* at 2 (Report Submitted)

¹⁵ R. Mullick, & N. Raaj, Panchayats turn into kangaroo courts, TheTimes of India, September 9,2007, Available at: http://timesofindia.indiatimes.com/Opinion/Sunday_Specials/Panchayats_turn_into_kangaroo_courts/rss_articles/show/2351247.cms, (last visited on jan.15,2015).

usually categorized on the basis of its local control. When the community living in more than one village is headed, then it becomes Kheda¹⁶ 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 villagers¹⁷.

2.2. History of Panchayats

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 Mahabharata¹⁸.

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

¹⁶ *Supranote* at 11 (Kavita Kachhwaha,)

¹⁷ *Ibid.*

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. Panchayat¹⁹.

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 republics²⁰.

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 Bc 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 Council²¹.

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.

¹⁹Supranote at 10 (Raj Singh,)

²⁰Rathna Ghosh, Alok Kumar Pramanik, Panchayat System in India. Historical, Constitutional and Financial Analysis, Kanishka Publication, New Delhi, 1999, 1st Edn, ISBN 10: 8173912815, at page 208.

²¹Supranote at 18 (Adr: Village)

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 unity²².

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 administration²³.

2.2.2. Panchayats in Medieval Period

During the medieval and Mughal period, village bodies were the center of the ruler. 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

²² Mathew George, Panchayati Raj in India, An Overview. Status of Panchayati Raj in the states and union territories of India, Concept publishing co., 1st Edn., New Delhi, 2000, at page 3.

²³ Dr. Rajendra Siddaling, Women And Political Awareness: A Sociological Study Of Representatives Of Local Self Governments, ISBN 9781329481220, Publisher- Laxmi book Publication. 1st Edition, September 1, 2015, at page 5, Available at: <https://books.google.co.in/books?isbn=1329481224> (last visited on August 8, 2016).

between the village panchayat and the high regulatory authority²⁴. The Emperor Akbar acknowledged this framework and made it a basic part of the civil administration. During this period, every village had its own particular Panchayat elders. It was independent in its area and exercised the power of local tax collection, administrative control, justice and punishment²⁵. 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 gripped by Mughals, its collapse was resulted in to the establishment of Britishers in India²⁶.

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 British²⁷, 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

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

²⁵ Ratna Ghosh, Panchayati System in India. Historical and Constitutional Perspective, in Panchayati System In India. Historical, Constitutional And Financial Analysis, 1st edn., 1999, New Delhi, at page 209-10.

²⁶ *Supranote* at 18 (Adr: Village)

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 element²⁸.

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 decentralization²⁹.

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 them³⁰.

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 magnacarta 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 institutions³¹.

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.³² However, as far as the democracy is concerned to the panchayats it has creates a lot of institutional and monetary limitations³³.

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

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

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 vanished³⁴.

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 1948³⁵.

Gandhi ji firmly condemned the draft 1948 on the part of Panchayats and asked for direct attention. So, after that panchayat sytem got a place in the Constitution as DPSP, part IV. Article 40³⁶ 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 governments³⁷.

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 people³⁸.

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-

³⁷ *Supranote* at18 (Adr: Village)

³⁸ *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 responsibility³⁹.

The committee visualized three tier 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 governance⁴⁰.

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

³⁹ *Ibid.*

⁴⁰ *Ibid.*

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 peoples 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 panchayats⁴³.

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 Balwantraji Mehta Committee earlier recommended for the decentralization of Panchayati Raj institutions and power at all levels and its Constitutional protection⁴⁴.

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 them⁴⁵.

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. 64th 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, 1993⁴⁷.

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 khap⁴⁸.

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 society⁵⁰. 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 tribe⁵¹.

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/>

KHAP_PANCHAYATS_A_SOCIO_HISTORICAL_OVERVIEW._this_article_was_published_in_EPW._The_editor_of_magazine_edited_the_article_in_such_manner_that_it_almost_reverse_my_views_on_Khap._This_is_original_article_which_i_had_sent_to_EPW. (last visited on december 3, 2015).

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.⁵²

2.3.1. Khap Panchayat in Ancient Period

In Magadh during 5th 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 monarchies⁵³. 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

⁵²Supranote at 49 (Ajay Kumar.....)

⁵³ Supranote at 48 (Ajay Kumar.....)

system. The emergence of the state meant the abandoning of clan-based institutions from the society and the polity⁵⁴.

In Haryana too, clan-based tribal republics such as Yuddhyeya, Arjunayan, Agra and Kunid etc. got disintegrated by the 5th 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 resources⁵⁵. 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 it⁵⁶.

2.3.2. Khap Panchayats in Medieval Period

The Jats who now inhabit Haryana reached this region between the Sutlej and the Yamuna in 11th 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

⁵⁴ *Ibid.*

⁵⁵ *Supranote* at 49 (Ajay Kumar.....)

⁵⁶ *Ibid.*

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.⁵⁷

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 rainfall⁵⁸. This region presently falls under the Rohtak, Sonapat, Panipat, Karnal, Jhajjar, 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.⁵⁹

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 areas⁶⁰.

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

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 peasants⁶³.

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.⁶⁴

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.⁶⁵

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

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

the extent of becoming a part of the Mughal army in order to quell the rebellion under Banda⁶⁶.

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 *status-quo* in agrarian relations as per the needs of landlords⁶⁷.

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 region⁶⁸.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

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'⁶⁹.

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 support⁷⁰.

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 institutions⁷¹.

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 castes⁷².

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 society⁷³.

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

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 high⁷⁴.

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 existence⁷⁵.

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. The land of the indebted peasants is being bought over at nominal price by the big landlords and usurers in lieu of the lent amount⁷⁶.

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

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 business⁷⁷.

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 country⁷⁸.

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,

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 powerful⁷⁹.

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,⁸⁰ 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 approaches⁸¹. 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

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)

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 dishonor⁸², 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 withdrawal⁸³.

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.⁸⁴.

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 severly 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 viciousness⁸⁵. 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.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *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 individually⁸⁶.

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 family⁸⁷.

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 association⁸⁸. 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

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid*, at page 21.

few matters that is known as a Khap Panchayat ⁸⁹. Therefore Khap is different form of normal Panchayat.

2.5. Reasons For Persistent Survival, 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 Panchayats⁹⁰.

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 system⁹¹.

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

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 demographic⁹². 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"⁹³.

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"⁹⁴.

2.5.3. Judicial Delays and Distrust of System

Postponement in pronouncement 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.....)

⁹⁴ *Ibid*, at page 9.

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 pronouncement⁹⁵.

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 life⁹⁶. 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 view point 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 diminish⁹⁷.

⁹⁵ *Ibid.*

⁹⁶ The Times Of India News, Ishita Mishra, Girls' welcome papayat panchayat dowry on dowry, say they can live on ban on jeans, [TNN | Mar 26, 2014, 10.00 PM IST, Available at: <http://timesofindia.indiatimes.com/city/kanpur/Girls-welcome-khap-panchayat-diktat-on-dowry-say-they-can-live-with-ban-on-jeans/articleshow/32738501.cms> (last visited on Jan 1, 2016).

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

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 Shamsheer 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 development⁹⁹. 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

⁹⁹ Mohamed Thaver, Karachi 'Uncle' Is A Dawood Man?, Tuesday, March 16, 2010, *Available at:* [http:// aus.politics.narkive.com/OB5hrrKt/karachi-uncle-is-a-dawood-man](http://aus.politics.narkive.com/OB5hrrKt/karachi-uncle-is-a-dawood-man) (last visited on Jan 1, 2016).

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 mishandle¹⁰¹.

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 mazority. 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 Panchayats¹⁰².

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 villages¹⁰³. There are following some acts of the khap panchayats which they performs includes as:

¹⁰¹Khap 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).

¹⁰²*Ibid.*

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 decisions¹⁰⁴. 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"¹⁰⁵. 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. Novertheless, honour offences are in no way, shape or form restricted to these conditions, as an extensive variety of exercises can trigger doubt of disrespeckable result and movement in ensuing assaults or killings to the sufferer¹⁰⁶.

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 marriage¹⁰⁷. It doesn't mean that all

¹⁰⁴ *Suprnote* at 2 (Report Submitted

¹⁰⁵ Integration of the human rights of women and the gender perspective: Violence Against Women and "Honor" Crimes, Human Rights Watch, Item 12, Oral Intervention at the 57th Session of the UN (published on April 5, 2001) Commission on Human Rights, *Available at*: <https://www.hrw.org/news/001/04/05/item-12-integration-human-rights-women-and-gender-perspective-violence-against-women>, (last visited on October 8, 2016).

¹⁰⁶ Mazna Hussain, Take My Riches Give Me Justice ': A Contextual Analysis of Pakistan's Honor Crimes Legislation, *Harvard Journal of Law & Gender*, Vol. 29, 2006, at page 225, *Available at*: <http://www.law.harvard.edu/students/orgs/jlg/vol291/hussain.pdf> (last visited on December 24, 2016).

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 where 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.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 very own relationship decision, accordingly leaving no extent of disrespect by dismissing a match decided for them by the family¹⁰⁹.

Khaphs 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 harassment¹¹⁰. Some detailed occurrences of Forced weddings by khaphs 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

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

¹⁰⁹Suprnote at 2 (Report Submitted)

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 burning¹¹¹.

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 mobiles¹¹², 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 tecnologies 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 society¹¹⁴.

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

¹¹¹*Ibid.*

¹¹² ExpressIndia, 2008, Panchayat bans love marriage, bars women below 40 from shopping,, *Available at:* http://expressindia.indianexpress.com/karnatakapol08/story_page.php?id=973963, (last visited on August,25, 2016).

¹¹³*Suprnote 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 phones¹¹⁵.

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 cenario 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 circumstance¹¹⁶.

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 status¹¹⁷. Additionally, in a move supporting the retrogressive orders of Panchayats, ladies of a group of villagess 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 Muzaffarnaga¹¹⁸. 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 khap body of the nation had chosen to coordinate every one of the individuals in the

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

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).

¹¹⁸ Muzaffarnagar: Khap Panchayat bans jeans, mobile for girls, ABP News, Last Updated: Wednesday, 19 November 2014 11:43 AM , Available at: <http://www.abplive.in/india-news/muzaffarnagar-khap-panchayat-bans-jeans-mobile-for-girls-52619> (last visited on August,28, 2015).

nation to incorporate senior ladies of their particular zones while examining ladies relating issues¹¹⁹. 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 villagepradhan 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.¹²⁰

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 talkwith their family members and friends, its is banned to talk with girls or loved ones. He further told that We

¹¹⁹PTI, UP sarv khap panchayat launches drive against female foeticide, March 03, 2015, *Available at:* <http://www.freepressjournal.in/headlines/up-sarv-khap-panchayat-launches-drive-against-female-foeticide/541903> (last visited on August,18,2015).

¹²⁰ The Times of India, Pervez Iqbal Siddiqui, All-women mahapanchayat of western UP to burn jeans, tops, | TNN | Jul 20, 2012, 03.47 AM IST, *Available at:* <http://timesofindia.indiatimes.com/city/lucknow/All-women-mahapanchayat-of-western-UP-to-burn-jeans-tops/articleshow/15049768.cms> (last visited on December 9, 2015).

have likewise made blacklist the families who are demanding and accepting dowry, however the media has not anticipated all facts about our panchayats.¹²¹

Where as the UP government stays equivocal about the diktat of khap 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.¹²² The sudden rise of all-lady Panchayats in western UP as far as the Baghpat village khap 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 practice¹²³.

2.6.4. Property Rights

Other than favoring honor killings, restriction on freedom, as in passed years, khap Panchayats have mounted a movement opposing the Hindu Succession (Amendment) Act 2005 that provides parallel in-heritance rights to females. July, 2013, a khap 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 inheitage right in the family's genetic land. The thinking being that it would encourage different young females to go with the same pattern¹²⁴.

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

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ The Hindu News, Retrograde avatar of repressive traditions, Updated: February 11, 2014, Available at: <http://www.thehindu.com/opinion/op-ed/retrograde-avatar-of-repressive-traditions/article5674489.ece> (last visited on January, 11, 2016).

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 insulting¹²⁶.

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'¹²⁷ 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).

*Courts or Katta Panchayats*¹²⁸. 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.¹²⁹. Assaults on youthful couples, progressive-minded and Dalits individuals have become recurrent¹³⁰.

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)¹³¹. Among the numerous examplless of khaps issuing fatwas in Ludana, Singhwal, Maham-kheri, Dharana, Asanda, Hadaudi, Jaundhi

¹²⁸ *Arumugam Servai v. State of Tamil Nadu* , 2011, Available at: <https://indiankanoon.org/doc/1337458/>, (last visited on October,10,2015)and *Ajit Kumar and others v. State of Tamil Nadu*, (2011) 6 SCC 405.

¹²⁹ Human Rights Watch 2006, India – World Report, 18 January , Available at: <http://www.hrw.org/english/docs/2006/01/18/india12272.htm> (last visited on October 7,2016).

¹³⁰ The Hindu, Jagmati Sangwan, Khap panchayat: signs of desperation? Jul 28, 2011, Available at: <http://www.thehindu.com/opinion/lead/khap-panchayat-signs-of-desperation/article424506.ece> (last visited on November20, 2016).

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'.¹³².

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 Marriages Act should be amended to ban 'same village' marriages and disallow the recognition given by the Arya Samaj to the weddings of "eloping couples" conducted in temples¹³³. 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 India¹³⁴. Since the crime of badgering, dangers and brutality against young fellows and ladies who wed outside their caste, are increasing day by day¹³⁵. It became necessary for the judiciary to combat the problem and provide the protection to the youths who

¹³²Supranote 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.

¹³⁵ *Lata Singh v. State of Uttar Pradesh and others* (2006 (5) SCC 475)

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 confidence¹³⁶.

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 society¹³⁷.”

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.

¹³⁶ Honour Killings | Law Resource India, Posted in Fundamental Rights, Gender, Honour Killings, Human Rights, NNLRJ, India, on August 7, 2010, Available at: <https://indialawyers.wordpress.com/tag/honour-killings/> (last visited on November 20, 2015).

¹³⁷ Supranote at 128 (Arumugam)

Therefore, it is required that much more awareness should be spread among all the different members of the society.

Chapter-3



CHAPTER 3

STATUS OF MARRIAGES UNDER DIFFERENT PERSONAL LAWS

3.1. Introduction

It is said that marriages are made in heaven and celebrated on earth. The popular belief is true to many extents, because it is a special bond shared between two souls, who tie the wedding knot after promising to be companions for a lifetime. It is the physical, mental and spiritual unison of two souls. It brings significant stability and substance to human relationships, which is otherwise incomplete. It plays a crucial role in transferring the culture and civilization from one generation to the other, so that the human race is prospered. The institution of marriage is beneficial to the society as a whole, because it is the foundation of the family, which in turn is the fundamental building block of the society. While the concept of marriage remains the same across the globe, the way of solemnizing it differs extensively¹.

Different laws have been formulated to legalize the ceremony, which proves to be an important turning point in one's life. Apart from the laws of marriages², the rituals following during the ceremony are in total contrast to each other. Something that is seen in the western countries cannot be witnessed in other nations in the developing world, primarily due to the contrast in the lifestyle and religious beliefs³.

One of the prime reasons for the paramount status of marriage is that it is the license for two individuals to live together in a society, without

¹ Dr. Vimal Kumar, Kpc Mindtrack Marital Relation, *Available at:* http://www.Delhypsychiatrist.com/images/kpc_marriage.pdf (last visited on Dec.05.2015).

² Prof. Kusum, Family Law Lectures "Family Law 1", lexis nexis butter worth wadhwa pub., 3rd edn., 2003, at page1.

³ Ria Gupta, Mental health and marriage, by *Available at:* http://www.academia.edu/3709103/mental_health_and_marriage (last visited on Dec.06.2015).

much limitation. Coming to the subcontinent of India, marriage encompasses a number of meanings, apart from being a legalized way of uniting two people. It bears a lot of social significance⁴. This is primarily because in India, marriage has been considered a way to bring the families of two individuals closer. Since the ancient times, marriages have been celebrated as ceremonious occasions, just like the religious festivals, wherein a number of rituals and customs are followed. A number of ceremonies are observed before, during and after wedding⁵.

Marriage is an important occasion in the personal, religious and social life of man. Perhaps, the institution of marriage came into existence to control free sexual relationship in the society. The institution of marriage was already established in the Vedic age. In the Vedic texts, we do not find mention of a society where there are free sexual relations. With marriage, the married couples legalise their living together till the end of their lives⁶.

In customary societies, marriage is basically a private sphere concerning the community and the family⁷. A marriage managed by making pressure on one or both the parties and without their full consent and free will is measured to be a forced marriage. This does not mean that where matrimonies are arranged, there within all the ethnics, there might be a possibility of dishonor, can be killed, somewhat it is atrocity which is the menace within the ethnic where ... The consent of the person is not important than the wishes of the guardians along with their relatives. Its establishes the institutional form of marriage where the marriage treats get-together of two people as a merger of two families. In this context it can be seen or believed that a person can be forced into marriage against his/ her consent or choice with keeping in mind the attention to his/ her family. it

⁴ *Ibid.*

⁵ Stephen Castles and Raul Delgado Wise, *Migration Development: and Perspectives from the South*, International Organization for Migration, ISBN: 978-92-9068-417-6, Year: 2008, Available at: file:///C:/Users/DHR%204.HP-PC/Downloads /south-perspectives.pdf (last visited on Dec.07.2015).

⁶ Westermarck says: "The most general social object of marriage to give publicity to the union."

⁷ *Supranote* at 2 (Prof. Kusum.....)

may be measured adequate to force an individual into marriage against their determination⁸.

3.2. What is Marriage?

The legal status, condition, or relationship that results from a contract by which one man and one woman, who have the capacity to enter into such an agreement, mutually promise to live together in the relationship of Husband and wife in law for life, or until the legal termination of the relationship. Marriage is a legally sanctioned contract between a man and a woman. Entering into a marriage contract changes the legal status of both the parties, giving husband and wife new rights and obligations⁹. Public policy is strongly in favor of marriage based on the belief that it preserves the family unit. Traditionally, marriage has been viewed as vital to the preservation of morals and civilization. Marriage is a sacred institution; it is the very foundation of a stable family and civilised society. There are, however, certain prerequisites and conditions for a valid marriage. All personal laws lay down some conditions which need to be complied with to enter into or solemnize a legal marriage; but before the conditions the question is, does everyone have an absolute right to marry¹⁰?

3.3 Right to marry

The right to marry is a component of the right to life under Art. 21 of the constitution of India¹¹ which confers about right to life of the individual. This right has been recognised the same even under Article 16 of the Universal Declaration of Human Rights, 1948¹²:

⁸ *Ibid.*

⁹ *Ibid*, at page 3.

¹⁰ *Ibid.*

¹¹ The constitution of India, Art. 21- guarantees right to life and liberty to every person in India.

¹² The Universal Declaration of Human Rights, 1948, Article 16 .

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

In the context of the right to marry, a mention may be made of a few Indian cases.

*Mr. 'X' v. Hospital 'Z'*¹³, is a significant, though unfortunate in the facts and circumstances of the case judgment. The Apex Court held that right to marry is not an absolute right. The appellant, a surgeon in the Nagaland state Health Service donated blood to a surgery patient in a hospital in Madras. His blood sample taken by the respondent hospital revealed that he was HIV+. This was in June, 1995. In August, 1995, the Mr. 'X' had proposed marriage to Ms. 'Y' which was acknowledged and marriage ceremony was going to be held in December, 1995. There was nothing to indicate that he was even aware of his HIV+ status when he proposed. The marriage, however, was called off because of the disclosure of his blood report. why, when, how and to whom the disclosure was made is also not clear. However, cancellation of his marriage and disclosure of his HIV+ status obviously caused a lot of embarrassment and agony to the appellant. He was ostracised by the community and had to leave his home state¹⁴.

He approached the consumer disputes redressal commission claiming damages against the hospital for disclosing his blood test reports and

¹³ AIR 1999 SC 495

¹⁴ *Ibid.*

breaching confidentiality. The same was dismissed. He then approached the Supreme Court. On the point of ethics of confidentiality, duty to maintain secrecy and the patient's right to privacy, the court held that these were not absolute. The court emphasized that mental and physical health of spouses is very important in marriage, and that is the reason why all divorce laws entitle a spouse to obtain divorce if the other party is suffering from any communicable disease. The right to marry, according to the court, is not absolute and remains suspended until the afflicted person is cured. Referring to the provisions of the Indian Penal Code, 1860, the court observed that had the appellant married the lady, he would have committed offences under sec. 269 along with sec. 270 of the IPC, which prohibits to spread any types of contamination of any syndrome to save life from any risk to it, and spiteful act likely to contaminate infectivity of syndrome which is hazardous to the individuals life. The Judgment on whole was very insensitive to the victim, and also inexpedient and unwarranted. True, public health policy considerations do warrant measures and provisions to prevent the spread of any disease, but a blanket ban and suspension of the right to marry cannot solve the problem. The judgment also overlooks the fact that divorce laws entitling a spouse to relief on the ground of the respondent's medical condition do not debar a person from entering into a marriage. They only entitle the non-afflicted person to seek dissolution of the marriage if he/she so desires. Thus if parties, with full knowledge and informed consent and without concealment of the fact enter into a marriage, there is no-law which can prevent them from doing so¹⁵.

Fortunately, a-three-judge bench of the Supreme Court partly overruled this judgment in *Mr. 'X' v. Hospital 'Z'*¹⁶ in 2003. The issue whether there can be complete bar for marriage if a healthy Spouse gives an informed consent to marriage with a spouse found to be HIV+? The court held that the two-judge Bench in the 1999 judgment had gone further that

¹⁵ *Ibid.*

¹⁶ AIR 2003 SC 664

was warranted by declaring generally that in the event such persons marry, they would commit an offence under law or as to suspension of the right to marry, during the period of illness. Thus, it is implied that the right to marry is not taken away; any afflicted person can marry a non afflicted person, or any two afflicted persons can marry each other without any legal bar, provided there is knowledge and informed consent for the same. Needless to say, such partners need to adopt precautions and safe practices in the interest of children, the society and also in their own interest¹⁷.

In *Lata Singh v. State of Uttar Pradesh*¹⁸, the Supreme Court viewed the right of marriage as a component of right to life under Art. 21 of the Constitution of India¹⁹. The facts that gave rise to the litigation were violent reactions following an inter-caste marriage between two adults. There were complaints, arrests, threats and criminal cases against the girl's husband and his family members. Then a petition was filed by the girl (wife), to issue a writ of mandamus and / or certiorari under the Article 32 of the Constitution of India for cancellation of the trials in the lower courts, against her husband and his relatives. The petition was allowed and the police/ administration was directed to protect them from harassment, threats or acts of violence, and take stern action against those-who do so, by instituting criminal proceedings against them²⁰. The court observed and suggested as (in other words)-

“India is a democratic and independent nation, when any individual becomes adult, can marry with any adult individual whatever she or he wishse to do so. If their guardians did not agreed to such marriages which are out of religion or out of caste they can maximum do that they can eliminate familiar relations with their daughter or son but they cannot

¹⁷ *Ibid.*

¹⁸ AIR 2006 SC 2522

¹⁹ The constitution of India, Art. 21- guarantees right to life and liberty to every person in India.

²⁰ *Lata Singh v. State U.P. And others, Writ Petition (Crl.) 208 of 2004* Available at: <https://indiankanoon.org/doc/1364215/> (last visited on Dec.09.2015).

*harass or bother and cannot do any act of atrocity to the person who goes through out of religion or out of caste*²¹”.

Both the partners in the case were adults and so free to marry of their choice. The court further observed that under Hindu Marriage Act 1955 or any other laws there is no restriction for inter-caste marriages. Though, it is believed that inter caste marriages are indeed in the interest of the nation because they would give result to the destruction of caste system in India²².

3.4 What is Age of Consent?

The age of consent is the age at which an individual is treated as capable of consenting to sexual activity. Consequently, anyone who has sex with an underage individual, regardless of the circumstances, is guilty of a crime. Narrowly concerned with sexual violence, and with girls, originally, since the 19th century the age of consent has occupied a central place in debates over the nature of childhood, adolescence, and adulthood, and been drawn into campaigns against prostitution and child marriage, and struggles to achieve gender and sexual equality²³.

*Jyoti Alias Jannat and Another V. State of UP and Others*²⁴ the Court held that As per Indian Majority Act 1875, vide section 3 of the Act expresses, if a person obtained the age of 18 years, The law assumes that as a major, who can be aware of her / his interests. So that, someone can like to move or to stay or to reside with anyone with their choice. India is a democratic, independent and peaceful country. Therefore, if anybody is prominent then their guardians can not obstruct that individual. He has all liberty to solemnize marriage as per his/her choice, and no one, even the

²¹ *Ibid.*

²² *Ibid.*

²³ Supranote at 2 (Prof. Kusum.....)

²⁴ 2003 (4) AWC 2844.

parents can't use any mean to torture the either of couples. Liberty of the Individual under Article 21 has the highest position in the Constitution²⁵.

3.4.1 Age of Consent In Early India

There were spectacular barbarities in the everyday customs of India, including Sati, female infanticide, enforcement of celibate and ascetic widowhood and pre- pubertal marriages. Their iconic stature renders irrelevant any criticism of or inquiry into women's actual social condition. Tradition severed from social reality finds fulfillment in an emotional and aesthetic imaging of a heroic mother goddess. But the reality was far away from this image. Manu the Ancient Lawgiver declared, she must never acquire rights in her own person and that she must, rather be ruled by father, husband and son at the different stages of life. The marriage system was the key to men's control over women. Hindu Law maintained that consent for marriage was immaterial since parents were better equipped to handle the vital question of security than an immature girl. Security also largely depended upon the perfect integration with the husband's family, so the sooner the process began, the better it was for the girl²⁶.

Orthodox Hindu tradition says, as long as women embraced custom, faith and culture would live in her. Marriage was performed before the girl entered puberty. Once puberty sets in, she had to go through a life cycle of ritual cohabitation with her husband, without which her womb would remain polluted and the sons of the womb could not make pure offerings to ancestral spirits. To ensure the performance of this rite, marriage was essential in early infancy²⁷.

For colonial rulers, the atrocities practiced against Indian women became a confirmation of the rulers' modernity and the moral ground on

²⁵ *Jyoti Alias Jannat And Anothers. v. State Of U.P. And Anothers.* Available at: <https://indiankanoon.org/doc/387611/> (last visited on Dec.09.2015).

²⁶ *Supranote at 2* (Prof. Kusum.....)

²⁷ *Ibid.*

which their “civilizing” mission could be launched. As outsiders they could claim the role of protector of Indian women, interceding on their behalf against brutal patriarchal practices. The restraint upon child marriage appeared to be the symbolic space through which the notion of “consent” could be introduced into Hindu marriage using the premise of Western Liberalism. The nineteenth century saw massive debates on the abolition of widow immolation, the legalization of widow remarriage, and the increase of the age of cohabitation within marriage. Hence, one of the earliest reforms introduced after the power of administration was transferred from the Company to the Crown in 1858, was The Age of Consent Act of 1860, which stipulated a minimum age of 10 years for sexual intercourse in order to prevent infant marriages²⁸.

Section 375 of the Indian Penal code 1860²⁹ defines the offence of rape, and enumerates six descriptions of the offence. The description "secondly" speaks of rape "without her consent". Thus, sexual intercourse by a man with a woman without her consent will constitute the offence of rape. However in case of marriage sexual Intercourse is an offence only where the

²⁸ Chapter-I, Introduction, The Indian Women's Question In Postcolonial Perspective: A Discourse Analysis, Page no.5, Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/149901/4/04_chapter_01.pdf (last visited on Dec.10.2015).

²⁹ The Indian Penal code 1860, Section 375. Rape—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

(First) — Against her will.

(Secondly) — Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be law-fully married.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age. Explanation.— Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) — Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

wife is under 16 years of the age, two years younger than the age of consent³⁰.

3.5 Present Status for a Valid Marriage under different personal laws

- 1. Special Marriage Law**
- 2. Hindu Marriage Law**
- 3. Muslim Marriage Law**
- 4. Sikh Marriage Law**
- 5. Christian Marriage Law**
- 6. Parsi Marriage Law**

3.5.1 Special Marriage Law

In order to fulfill the constitutional dream of establishing uniform civil code³¹, The Indian Parliament has passed The Special Marriage Act, 1954.

Section 4 of the Special Marriage Act, 1954 lays down conditions for solemnisation of special marriages. It states³²:

Sec.4.Conditions relating to solemnization of special marriages.-

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this act if at the time of the marriage the following conditions are fulfilled, namely:

³⁰ *Supranote* at 2 (Prof. Kusum.....)

³¹ The Constitution of India, Article 44- Uniform civil code for the citizens The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India

³² The Special Marriage Act, 1954, Section 4- Conditions relating to solemnization of special marriages.- “Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled,

.....

- (a) neither party has a spouse living;
- [(b) neither party-
 - (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (ii) though capable to give a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be not fit for marriage and the procreation of children; or
 - (iii) has been subject to continuing attacks of insanity.]³³
- (c) the male has completed the age of 21 years and the female the age of 18 Years;
- [(d) the parties are not under the degrees of prohibited relationship: provided that where a tradition governing at least one of, the parties permits of a marriage between them. such marriage may be solemnized, notwithstanding that they are under the degrees of prohibited relationship: and]³⁴
- [(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India resides in the territories to which this Act extends]³⁵.

[Explanation.-In this section, "custom", in relation to a person belonging to any Tribe, community, group or family, means any rule which the State Government may specify by notification in the Official Gazette, on this behalf as applicable to members of that tribe, community, group or family: Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied³⁶-

- (i) that such rule has been continuously and uniformly observed for a long time among those members;
- (ii) that such rule is certain and not unreasonable or opposed to public policy; and

³³ The Special Marriage Act, 1954, Section 4, Subs. By Act 68 of 1976

³⁴ The Special Marriage Act, 1954, Section 4, Subs.by Act 32 of 1963

³⁵ The Special Marriage Act, 1954, Section 4, Subs.by Act 33 of 1969

³⁶ The Special Marriage Act, 1954, Section 4, Ins. By Act 32 of 1963

- (iii) that such rule, if applicable only to a family, has not been discontinued by the family]³⁷.
- a. Under the Special Marriage Act, 1954, a marriage is null and void under Sec. 4 read with Sec. 24³⁸, if:
 - (iv) it is in violation of the minimum age requirement, which is 21 years for a boy and 18 years for a girl;
 - (v) there is another spouse living;
 - (vi) (iii) the parties are within prohibited degrees of relationship, unless custom or usage permits such marriage;
 - (vii) any of the parties is incapable of giving valid consent due to unsoundness of mind, or though capable of giving consent, is suffering from mental disorder of such kind as to be unfit for marriage or procreation of children, or has been subject to recurrent attacks of insanity;
 - (viii) The respondent was impotent at the time of marriage and at the time of filing of the suit³⁹.

A marriage under Section 25 of the Special Marriage Act, 1954 is voidable if the same has not been consummated owing to wilful refusal of the respondent, or the respondent was pregnant by some person other than

³⁷ *Ibid.*

³⁸ Special Marriage Act, 1954, Sec. 24- Void marriages.—

(1) Any marriage solemnized under this Act shall be null and void [and may, on a petition presented by either party thereto against the other party, be so declared] by a decree of nullity if—
(i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled; or
(ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit.
(2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15: Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final.

³⁹ The Special Marriage Act-1954, Available at: <http://www.legalserviceindia.com/helpline/marriage.htm>, (last visited on Dec.11.2015).

the petitioner, or the consent of either party to the marriage was obtained by coercion or fraud.⁴⁰

3.5.2 Hindu Marriage Law

If two Hindus want to perform a Hindu marriage, then they have to perform it under the Hindu Marriage Act. Hindu Marriage Act, 1955 has reformed Hindu law of Marriage. It is a landmark in the history of social legislation. It has not simply codified the Hindu law of marriage but has introduced certain important changes in many respects. The Hindu marriage contemplated by the Act hardly remains sacramental. The Act has brought in some changes of far reaching consequences which have undermined the sacramental nature of marriage and rendered it contractual in nature to a great extent. Under the Hindu Marriage Act, 1955, the following are the conditions for a marriage⁴¹:

⁴⁰ Special Marriage Act, 1954, Sec. 25- Voidable marriages.—Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity if,—

- (i) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or
- (ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or
- (iii) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872): Provided that, in the case specified in clause (ii), the court shall not grant a decree unless it is satisfied,—
 - (a) that the petitioner was at the time of the marriage ignorant of the facts alleged;
 - (b) that proceedings were instituted within a year from the date of the marriage; and
 - (c) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree: Provided further that in the case specified in clause (iii), the court shall not grant a decree if,—
 - (a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or
 - (b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.

⁴¹ Lakshyender Kumar, Salient features of the Hindu Marriage Act, 1955, (legal Services India, articles), Available at: <http://www.legalservicesindia.com/article/article/salient-features-of-the-hindu-marriage-act-1955-558-1.html>, (last visited on Dec.12.2015).

Section 5 of the Hindu Marriage Act, 1955, provides Conditions for a Hindu marriage⁴² where a marriage may be solemnised between any two Hindus if the following conditions are satisfied if-

- (i) Non of the party has a spouse aliving at the time of the marriage;
- (ii) at the time of the marriage, Non of the party-
 - (a) is incapable to give a valid consent to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a type or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity
- (iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not Sapindas of each other, though the custom or usage governing each of them permits of marriage between the two⁴³;

It is significant to note that the Hindu Marriage Act, 1955 applies to any person who is a Buddhist, Jaina or Sikh by religion⁴⁴. The term "Hindu"

⁴² Hindu Marriage Act, 1955, section 5- Conditions for a Hindu marriage. —A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

- (i) neither party has a spouse living at the time of the marriage;
- 2 [(ii) at the time of the marriage, neither party—
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity 3 [***];]
- (iii) the bridegroom has completed the age of 4 [twenty-one years] and the bride, the age of 5 [eighteen years] at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

⁴³ *Ibid.*

⁴⁴ The Hindu Marriage Act, 1955, Sec. 2(1) (b)- to any person who is a Buddhist, Jaina or Sikh by religion,

is comprehensive and includes Buddhists, Jains and Sikhs. Infact, our Constitution, which provides for freedom of religion, elucidates that the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina and Buddhist religion⁴⁵. In this context, a reference may be made of a Public Interest Litigation (PIL) filed by a Sikh seeking amendment in the Constitution to declare that the Sikh community as separate religious identity should be out Of the purview of the Hindu Marriage Act, 1955. The Supreme Court Bench, Headed by Chief Justice K.G. Balakrishnan, however did not entertained the petition. The court held that it cannot entertain the subject as it has to be looked into by the appropriate authority in the government⁴⁶.

Ceremonies for a Hindu marriage. Section 7 of the Act provides that-

- (1) A Hindu marriage may be solemnized according to the customary rites and ceremonies of either party thereto.
- (2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the-bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken⁴⁷.

It is not, however, necessary to prove the performance of ceremony of Saptapadi or any other ceremony, in order to determine the validity of a Hindu marriage, In *Chandrabhagbai Ganpati v. S.N. Kanwar*⁴⁸, the issue whether Saptapadi was mandatory for a legal marriage arose in connection with a property dispute. The parties had got married in customrary form following certain ceremonies but not Saptapadi. After the death of the husband property disputes emerged between the widow and her children on one side and the husband's brother on the other who challenged the very

⁴⁵ The Constitution of India, Explanation II to Article 25- In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

⁴⁶ SC rejects plea for separate religious identity for Sikhs, October 29, 2010, *Available at*: http://sikhsangat.com/index.php?/profile/25876-akaur2/content/&type=forums_topic_post& page=10 (last visited on 29.11.2015).

⁴⁷ The Hindu Marriage Act, 1955, Sec. 7- Ceremonies for a Hindu marriage.

⁴⁸ 2008 MLR 21 (Bom.)

validity of the marriage between the widow and his deceased brother on the ground that there was no Saptapadi. While the trial court upheld the challenge, the first appellate court as well as the High Court held that the marriage was legal notwithstanding the fact that the marriage ceremonies did not include Saptapadi. However, Kanyadana is not mandatory ceremony for a valid marriage⁴⁹

A marriage is presumed to have been duly solemnized if it is shown that performance of some of the ceremonies usually observed on the occasion of marriage has taken place. In other words, if the marriage is shown to have in fact taken place, ceremonies are presumed to have been duly performed⁵⁰, provided of course that neither force nor fraud was practiced. Where all witnesses deposed in the same manner about the performance of the marriage and the wife herself gave a vivid description of the ceremonies, certain discrepancies in evidence of witnesses in regard to *Saptapadi* or *Kanyadan* were held not to be significant enough to displace the presumption of a valid marriage⁵¹. However, mere fact of joint living for a long time without any ceremonies would not constitute a valid marriage⁵². An intimate relationship without any ceremonies, entered into between a man and a woman by a registered agreement before a statutory authority like sub-registrar, was held not to constitute a valid marriage⁵³.

For a valid marriage under the Act, both the parties need to be Hindus at the time of marriage. Thus, where a non-Hindu by birth (a Christian lady by birth in this case) converts to Hinduism before marriage, and all facts and circumstances indicate that the converted spouse practiced Hinduism, the plea of absence of proof of conversion or *shudhi karan* ceremony cannot be raised to seek declaration of nullity of marriage on the ground that the other spouse was a non-Hindu⁵⁴.

⁴⁹ *Laxmi Devi v. Satya Narayan* (1995) 1 DMC 298

⁵⁰ *Bai Diwali v. Moti* 22 (Bom.) 509 (1898), *Kastoori Devi V. Chiranji Lal* AIR 1960 All. 446

⁵¹ *Ranjan Kumari v. Santosh Kumar Singh*, AIR 2010 Ori. 62

⁵² *Surjeet Kaur v. Garja Singh*, AIR 1994 SC 135

⁵³ *S.M. Syed Abdul Basith v. Asst. Commr. Of Police, Ernaculam*, AIR 2009 (NOC) 2413 (Ker)

⁵⁴ *Madhvi Naresh Dudani v. Ramesh K. Dudani*, AIR (2006) Bom 94

Likewise, in *T. Perumal V. R. Nesammal*⁵⁵, a husband's suit for declaration that his marriage was illegal since the wife was a Christian and not a Hindu at the time of marriage was dismissed in the absence of any documentary or oral evidence in support of husband's case. A marriage between a Hindu woman and a Christian male converted to Hinduism is also a valid marriage under the Hindu Marriage Act, 1955, as both were Hindus at the time of marriage⁵⁶.

*Surendra Bhatia v. Poonam Bhatia*⁵⁷, was a property dispute. One 'S' left behind substantial properties. His widow 'P' and daughter Smita, obtained a succession certificate. This was challenged by the brother and sister of 'S' on the ground, inter alia, that the marriage between, 'S' and 'P' (the widow) was void, as the mother of 'P' was a Muslim married to a Hindu. It was contended that the marriage being void, the daughter Smita was an illegitimate child, hence neither 'P' nor the daughter had any right on the ancestral properties of the deceased 'S'. under the Hindu law. The court, however, did not accept this argument. It held that as per cl. (b) of explanation to s. 2 of the Hindu Marriage Act. 1955, she / he would be a Hindu, although one of the guardians of a child is a Buddhist, Jain, Sikh or Hindu for the purpose of Hindu Marriage Act, 1955, and marriage solemnized of such child, with a Hindu would be a Hindu. Therefore, irrespective of the truth that P's mother was a Muslim lady, P's marriage with the deceased was held to be valid and the daughter legitimate⁵⁸.

In *Vijay Kumari v. V.K. Devabalan*,⁵⁹ however, the issue involved was whether a son born to a Hindu converted to Christianity and a Christian lady could become a coparcener in the joint Hindu family. It was held that the marriage of the parents was not valid under the provisions of the Hindu Marriage Act, 1955 as both the parties were not Hindus at the time of

⁵⁵ AIR 2004 Mad 37

⁵⁶ *Neeta Kirit Desai v. Deena Samuel George*, AIR 2003 Bom 7

⁵⁷ AIR 2006 Raj 128

⁵⁸ "*Surendra Bhatia v. Poonam Bhatia And Ors.* AIR 2006 Raj 128," Available at: <https://indiankanoon.org/doc/1528658/> (last visited on Dec.13.2015).

⁵⁹ AIR 2003 Ker 363

marriage, and so the son born to them, would not be governed by the concept of coparcenership under the Hindu law⁶⁰.

Likewise in *Gullipilli Sowria Raj v. Bhandaru Pavani*,⁶¹ a marriage between a Hindu and a Christian was held to be void by the Apex Court. A man professing Christian faith and a Hindu girl married in a temple by exchange of *thali* and then got the marriage registered under section 8 of the Act⁶². A few months later, the wife filed a petition for nullity alleging that the consent was obtained by fraud qua his religion. The husband admitted that he was a Roman Catholic but that such marriage could be solemnized under the Hindu Marriage Act, 1955. The family court accepted the husband's argument and held such marriage to be valid but on wife's challenge to the High Court, the order was reversed. On husband's SLP before the Supreme Court it was argued that the phrase, "may be solemnized between any two Hindus" is merely directory and not mandatory and indicates permissibility of a marriage between a Hindu and a non Hindu. This argument however was dismissed and the court held that the term 'may' refers to marriage and not to party's religion and therefore, the marriage is a

⁶⁰ *K. Devabalan And Ors. v. M. Vijayakumari And Ors.* on 16 August, 1990, Equivalent citations: AIR 1991 Ker 175, I (1991) DMC 323, Author: P Shamsuddin, Bench: P Shamsuddin, Available at: <https://indiankanoon.org/doc/1716845/>, (last visited on Dec.14.2015).

⁶¹ AIR 2009 SC 1085

⁶² The Hindu Marriage Act, 1955, Section 8- Registration of Hindu marriages. –

- “(1) For the purpose to provide the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.
- (2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.
- (3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.
- (4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.
- (5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.”

nullity; even registration under section 8 of the Act would not cure the defect of this otherwise impermissible marriage, the court ruled⁶³.

So, also in *Margaret Palai v. Savitri Palai*,⁶⁴ where a marriage between a Hindu male and a Christian female was alleged to have been performed vide a "deed of marriage agreement", the court held that it was not a valid marriage as per Hindu law as there was no evidence to prove that the wife had converted to Hindu faith before the alleged marriage⁶⁵.

3.5.2. Application of the Act

Under Sec. 1(2), the Act extends and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories⁶⁶. Section 2(1)(a), (b) and (c) states⁶⁷: the Act applies 'to any Hindu by religion in any of its forms or developments,' and 'to any person who is a Buddhist, Jaina or Sikh by religion and to any other person

⁶³ M. S. Thirumalai, A Supreme Court of India Judgment, Hindu-Christian marriage is Invalid, Dec. 1, 2008, Available at: <http://www.globeserve.org/hindu-christian-wedlock-is-invalid-a-supreme-court-of-india-judgment/> (last visited on Dec.15.2015).

⁶⁴ AIR 2010 Ori 45

⁶⁵ *Margaret Palai v. Savitri Palai*, decided on Friday, August 21, 2009.[In the High Court of Orissa, F.A. No. 71 of 1993.] 21/08/2009, Judge(s) : Kumari Sanju Panda, Available at: <http://www.lawyer-services.in/Margaret-Palai-Versus-Savitri-Palai-2009-08-21>, (last visited on Dec.16.2015).

⁶⁶ The Hindu Marriage Act, 1955, Sec. 1(2)- "It extends to the whole of India except the State of Jammu and Kashmir" and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

⁶⁷ The Hindu Marriage Act, 1955, Sec. 2(1)- This Act applies-

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
(b) to any person who is a Buddhist, Jaina or Sikh by religion, and
(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

"Explanation - The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion; (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and (c) any person who is a convert or re-convert to the Hindu, Buddhist, jaina or Sikh religion."

domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion.

Vinaya Nair v. Corporation of Kochi,⁶⁸ was a case, where the issue involved was as to the applicability of the Hindu Marriage Act, 1955 to a marriage where all conditions for a valid marriage as laid down in Sections 5 and 7 of the Hindu Marriage Act, 1955 were complied with but the husband had a Canadian domicile. The parties belonged to Nair community and the marriage was solemnized in accordance with the provisions of the Hindu Marriage Act, 1955. The husband was employed in Canada and the wife was a native of Kannur District in Kerala. The husband was born in Canada and acquired Canadian citizenship and domicile by birth. His application for registration of the marriage under the Hindu Marriage Act, 1955 was refused on the ground of his Canadian domicile. Hence, he approached the high court. The court held that the petitioners had complied with all the conditions for a valid marriage. Sub-section (2) of S. 1 read with cls. (a) and (b) of S. 2(1) was held to be applicable in this case. According to the court the test to be applied was whether both parties were Hindus by religion in any of its forms, and whether conditions under Sections 5 and 7 were satisfied. Since everything was found to be in order, the Cochin Corporation was, accordingly, directed to issue marriage certificate⁶⁹.

Domicile or citizenship of the opposite party is immaterial when marriage is solemnised under Hindu law in accordance with Hindu rites and customs, thus the fact that the husband has migrated to New Jersey and obtained U.S. Citizenship is immaterial for purposes of jurisdiction and applicability of the Hindu Marriage Act.⁷⁰ The Hindu Marriage Act, 1955 would also apply to a person who, though a Hindu at the time of marriage ceases to be so thereafter, by conversion to another religion.⁷¹ In a petition

⁶⁸ AIR 2006 Ker 275

⁶⁹ *Vinaya Nair v. Corporation Of Cochin*, AIR 2006 Ker 275, 2006 (3), Available at: <https://indiankanoon.org/doc/706719/>, (last visited on Dec.17.2015).

⁷⁰ *R. Sridharan v. Presiding Officer*, (2010)II DMC 190 (Mad-DB)

⁷¹ *Vilayat Raj v. Suneeta*, AIR 1983 Del 351

for declaring a marriage null and void on the ground that the wife was already married to a Muslim man, the court held that in such a situation, the wife being converted to Islam and no longer a Hindu, the Hindu Marriage Act, 1955 will have no application and the petition under section 11 cannot be entertained⁷².

In *Ga Arife Alias Arti Sharma v. Gopal Dutt Sharma*,⁷³ where the appellant wife failed to prove her conversion from Islam to Hinduism before marriage it was held that she could not claim divorce under the provisions of the Hindu Marriage Act, 1955. When a marriage is solemnized abroad in accordance with customs and traditions prevalent in that country, can the parties avail of the provisions under the Hindu Marriage Act, 1955 simply because they are Hindus? The answer is "no"⁷⁴.

In *Minoti Anand v. Subhash Anand*⁷⁵ two Hindus married in Osaka, Japan, in 1972 in accordance with Japanese rites and customs in a temple. After that they got the marriage registered with the Consulate General of India under the Foreign Marriages Act, 1969. Thirty-one years later the husband filed divorce under the Hindu Marriage Act, 1955 on grounds of cruelty and for division of spousal property in a family court in Bombay. While the trial court entertained the petition and passed order, on appeal against it by the wife the Bombay High Court held that a marriage officer can register a marriage under Sec. 17 (1) of the Foreign Marriages Act, 1969⁷⁶, if marriage is on a foreign soil in accordance with law of that

⁷² *Ms. Bhavana Wasif v. Flg. Off. Rajeev*, AIR 2010 (NOC) 444 (P&H)

⁷³ (2010) II DMC 424 (Del)

⁷⁴ *Ga Arife @ Arti Sharma v. Gopal Dutt Sharma* on 13 August, 2010, Author: Kailash Gambhir, MAT. Appeal No. 69/2010, Available at: <https://indiankanoon.org/doc/164934083/>, (last visited on Dec.17. 2015).

⁷⁵ *Minoti Anand & Anr v. Subhash Anand & Ors*, on Feb. 9, 2011, CRA No.113 of 2004, with Writ Peti. No.912 of 2004. Available at: <https://indiankanoon.org/doc/688980/> (last visited on Dec.18.2015).

⁷⁶ The Foreign Marriages Act 1969, Sec. 17, "Registration of foreign marriages.-

(1) Where-

(a) Marriage Officer is satisfied that a marriage has been duly solemnized in a foreign country in accordance with the law of that country between parties of whom one at least was a citizen of India, and

country and upon such registration the marriage would be deemed to be a marriage solemnized under the Foreign Marriages Act, 1969 and the matrimonial reliefs would be available to parties only under the Special Marriage Act, 1954⁷⁷ and not the Hindu Marriage Act, 1955 even if the spouses are Hindus⁷⁸.

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- (b) a party to the marriage informs the Marriage Officer in writing that he or she desires the marriage to be registered.
 - (2) No marriage shall be registered under this section unless at the time of registration it satisfies the conditions mentioned in section 4.
 - (3) The Marriage Officer may, for reasons to be recorded in writing, refuse to register a marriage under this section on the ground that in his opinion the marriage is inconsistent with international law or the comity of nations.
 - (4) Where a Marriage Officer refuses to register a marriage under this section the party applying for registration may appeal to the Central Government in the prescribed manner within a period of thirty days from the date of such refusal; and the Marriage Officer shall act in conformity with the decision of the Central Government on such appeal.
 - (5) Registration of a marriage under this section shall be effected by the Marriage Officer by entering a certificate of the marriage in the prescribed form and in the prescribed manner in the Marriage Certificate Book, and such certificate shall be signed by the parties to the marriage and by three witnesses.
 - (6) A marriage registered under this section shall, as from the date of registration, be deemed to have been solemnized under this Act.

⁷⁷ The Foreign Marriages Act 1969, Sec. 18- - Matrimonial reliefs to be under Special Marriage Act, 1954.

Explanation.—In its application to the marriages referred to in this sub-section, section 24 of the Special Marriage Act, 1954 (43 of 1954) shall be subject to the following modifications, namely:-

- (i) the reference in sub-section (1) thereof to clauses (a), (b), (c) and (d) of section 4 of that Act shall be construed as a reference to clauses (a), (b), (c) and (d) respectively of section 4 of this Act, and
- (ii) nothing contained in section 24 aforesaid shall apply to any marriage—
 - (a) which is not solemnized under this Act; or
 - (b) which is deemed to be solemnized under this Act by reason of the provisions contained in section 17: Provided that the registration of any such marriage as is referred to in sub-clause (b) may be declared to be of no effect if the registration was in contravention of sub-section (2) of section 17.
- (2) Every petition for relief under Chapter V or Chapter VI of the Special Marriage Act, 1954 (43 of 1954) as made applicable to the marriages referred to in sub-section (1), shall be presented to the district court under the local limits of whose ordinary civil jurisdiction—
 - (a) the respondent is residing at the time of the presentation of the petition; or
 - (b) the husband and wife last resided together; or
 - (c) the petitioner is residing at the time of the presentation of the petition, provided that the respondent is at that time residing outside India. Explanation.—In this section, "district court" has the same meaning as in the Special Marriage Act, 1954 (43 of 1954)
- (3) Nothing contained in this section shall authorise any court—
 - (a) to make any decree of dissolution of marriage, except where—
 - (i) the parties to the marriage are resided in India at the time of the presentation of the petition; or

A marriage solemnized in contravention of the following conditions is void under the Hindu Marriage Act, 1955⁷⁹, when:

- (i) either party has a spouse living at the time of marriage;
- (ii) parties are within the degrees of prohibited relationship, unless custom or usage governing them permits such marriage;
- (iii) the parties are Sapindas of each other, unless custom or usage permits such marriage.

A marriage is voidable under the Hindu Marriage Act, 1955⁸⁰, under the following Conditions, viz:

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- (ii) the petitioner, being the wife, was domiciled in India immediately before the marriage and has been residing in India for a period of not less than three years immediately preceding the presentation of the petition;
 - (b) to make any decree annulling a voidable marriage, except where—
 - (i) the parties to the marriage are domiciled in India at the time of the presentation of the petition; or
 - (ii) the marriage was solemnized under this Act and the petitioner being the wife, has been ordinarily resident in India for a period of three years immediately preceding the presentation of the petition;
 - (c) to make any decree of nullity of marriage in respect of a void marriage, except where—
 - (i) either of the parties to the marriage is domiciled in India at the time of the presentation of the petition; or
 - (ii) the marriage was solemnized under this Act and the petitioner is residing in India at the time of the presentation of the petition.
 - (d) to grant any other relief under Chapter V or Chapter VI of the Special Marriage Act, 1954 (43 of 1954) except where the petitioner is residing in India at the time of the presentation of the petition.
 - (4) Nothing contained in sub-section (1) shall authorize any court to provide any relief under this Act relating to any marriage in a foreign country not solemnized under it, if the provision of relief in accordance to such marriage (whether on any of the grounds specified in the Special Marriage Act, 1954 (43 of 1954) or otherwise is provided for under any other law for the time being in force.

⁷⁹ Hindu Marriage Act, 1955, Sec. 11- Void marriages. —Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto 11 [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5 (read with Sec.5).

⁸⁰ Hindu Marriage Act, 1955, Sec.12- Voidable marriages .—

- (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-
 - [(a) that the marriage has not been consummated owing to the impotence of the respondent; or]
 - (b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or
 - (c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner 13 [was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian

- (i) the marriage has not been consummated owing to the impotence of the respondent; or
- (ii) any of the parties is incapable of giving a valid consent because of unsoundness of mind, or though capable of giving consent, has been suffering from mental disorder to such an extent as to be unfit for marriage and procreation of children, or has been subject to recurrent attacks of insanity;
- (iii) the consent to the marriage has been obtained by force or fraud;
- (iv) the respondent was pregnant at the time of marriage by some person other than the petitioner.

3.5.3. Muslim Marriage Law

Free consent of the parties is absolutely necessary for a valid marriage. If there is no free consent a Muslim marriage is void. Under the Muslim Law, a marriage of a Mohammedan who is of sound mind and has attained puberty is void; if it is brought about without his consent the marriage of a girl who has attained puberty and is of sound mind would be void if her consent is not obtained. When the consent to the marriage has been obtained

was obtained by force ¹⁴ [or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent]; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage—

(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if—

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied—

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence age of 15.

by force or fraud, the marriage will be invalid, unless it is ratified. When a marriage was consummated against the will of the women, the marriage is void. The person who has been defrauded can repudiate the marriage. 'The legal age' to consent for marriage, it means the concerned marriage laws have been codified at least regarding the minimum permissible age for the marriage of a Muslim girl. It is submitted that the age factor as an essential element of a Muslim marriage is linked up with "Puberty". Puberty means the age at which a person becomes capable of performing sexual intercourse and procreating children. Puberty and Majority are in Muslim Law One And The Same Thing. The presumption is that a person attains majority at the age of 15 but the Hedaya lays down the earliest period for a boy is 12 years and for a girl 9 years. However, Majority under the Hanafi's law is on the completion of 15 years in the case of both males and females, unless there is any evidence to show that puberty was attained earlier. In the case of a SHIA girl the age of puberty begins with Menstruation. The recent news item puts the minimum age of a Muslim girl for marriage as 15 years. This is true to some extent in the case of Hanafi school⁸¹. Under the Muslim law, a marriage, which is not sahih i.e., valid, may be either batil, i.e., void, or fasid, i.e., irregular.⁸²

Batil

Such marriage being void, does not create any rights or obligations, and the children born of such union are illegitimate⁸³. A marriage will be void if it is with a mooharin, i.e., prohibited by reasons of: (a) consanguinity,

⁸¹ Legal age of muslim girl to get married? Available at: <http://www.lawyersclubindia.com/forum/Legal-age-of-muslim-girl-to-get-married--62108.asp#.VW6569Kqqko> (last visited on Dec.11. 2016).

⁸² Aqil Ahmad, Mohmmedan Law, The Shia law does not recognised the distinction between irregular or void marriage. A marriage is either valid or void. Marriage is irregular under the Sunni law, is void under the Shia law, 21st edn. 2004, Central Law Agency, Allahabad., at page.124 &125

⁸³ Anwasha Tripathy, Illegitimacy: And illegitimate concept, Family Law Project Report Submitted To and Guided By: Dr.Shaiwal Satyarthi Associate Professor, Faculty of Law, Chanakya National Law University Patana, Available at: <https://www.scribd.com/document/177966615/Illegitimacy-And-illegitimate-concept>, (last visited on Dec.19.2016).

(b) affinity, or (c) fosterage. A marriage with the wife of another man or remarriage with a divorced wife when the legal bar still exists, is also void. Such marriage being void, there are no rights and obligations between the parties. A wife has no right to dower unless there has been consummation, in which case she is entitled to customary dower. Besides, if one of the parties dies, the other is not entitled to inherit from the deceased.

Fasid

Such marriage is irregular because of the lack of some formality, or the existence of some impediment which can be rectified⁸⁴. Since the irregularity is capable of being removed, the marriage is not unlawful in itself. Marriage in the following circumstances is fasid, viz., a marriage that is:

- (i) without witnesses;
- (ii) with a fifth wife by a person having four wives;
- (iii) with a woman undergoing iddat;
- (iv) prohibited by reason of difference of religion;
- (v) with a woman so related to the wife, that if one of them had been a male, they could not have lawfully intermarried.

In the above situations, the prohibition against such marriages is temporary or relative or accidental, and can be thus rectified:

- (i) by subsequent acknowledgement before witnesses;
- (ii) by divorcing one of the four wives;
- (iii) by expiration of the iddat period;
- (iv) by the woman becoming a convert to Islam, Christianity or Jewish religion, or the husband adopting Islam;

⁸⁴ *Ibid.*

- (v) by the man divorcing the wife who constitutes the obstacle⁸⁵.

In the case *Chand Patel v. Bismillah Begum*⁸⁶ the issue was whether a person professing Muslim faith who contracts second marriage with wife's sister during the subsistence of the earlier marriage is obliged to pay maintenance to such woman under the provisions of Sec. 125 of the Cr.P.C. The court held that such a marriage was not void but only irregular; it is a temporarily prohibited marriage and could always become lawful by death of first wife or by husband divorcing the first wife. "Since a marriage which is temporarily prohibited may be rendered lawful once the prohibition is removed, such a marriage is in our view irregular (*fasid*) and not void (*batil*)", the court observed⁸⁷.

An irregular marriage may be terminated by either party, either before or after consummation. It has no legal effect before consummation. If, however, consummation has taken place, then:

- (i) the wife is entitled to dower, prompt or specified, whichever is less;
- (ii) she is bound to observe *iddat*, the duration of which, in case of both divorce or death, is three courses;
- (iii) children born of the marriage are legitimate.

It is significant to note that an irregular marriage, even if consummated, does not create mutual rights of inheritance between the parties.⁸⁸

⁸⁵ Aanshi Bhatnagar, Difference between Void (*Batil*) and Invalid (*Fasid*) Marriages, , Available at: <http://www.shareyouressays.com/117429/difference-between-void-batil-and-invalid-fasid-marriages>, (last visited on Dec.20.2016).

⁸⁶ AIR 2008 SC 1915

⁸⁷ *Ibid.*

⁸⁸ Mulla, Principles of Mahomedan Law, 17th edn.1972, N. M. Tripathi Private Ltd., Bombay, at page 261-263

3.5.4. Sikh Marriage Law

Registration of marriages: (1) For the purposes of facilitation of proof of marriage ceremony (commonly known as Anand Karaj) customary among the Sikhs, the State Government shall make rules to anything provided in the Hindu Marriage Act, 1955 without neglecting it or any other law to make in effect within the time, providing that the parties to any such marriage [whether solemnized before or after the commencement of the Anand Marriage (Amendment) Act, 2012], may have the particulars relating to their marriage entered, in such manner and subject to such conditions as may be provided in the said rules, in a Marriage Register kept in this behalf by such officer of the State Government or of a local authority authorised by the State Government, by notification in the Official Gazette. Thus, for Sikhs the valid age of giving consent for marriage is the bridegroom has completed the age of 21 years and the bride the age of 18 at the time of marriage⁸⁹.

3.5.5. Christian Marriage Law

In order to constitute a valid marriage under the Act, it is a requirement that either one or both parties are Christians. Unless one of the parties to the marriage is governed by its own personal law which forbids such a marriage on the grounds of prohibited degrees of relationship, thereby rendering the marriage as void and redundant under

⁸⁹The Anand Marriage Act, 1909, 7 of 1909 [AS ON 01.05.2014], Available at: <http://indiacode.nic.in/amendmentacts2012/The%20Anand%20Marriage%20Act.pdf>, (last visited on Dec.21.2016).

the act. To constitute a legitimate marriage under the act the following factors have to be complied with⁹⁰:-

Under the Indian Christian Marriage Act, 1872, the conditions for certification of a marriage of Indian Christians have been provided in Sec. 60 of the Act. These are:

- (1) the age of the man intending to be married shall not be under twenty one years and the age of the woman intending to be married shall not be under eighteen years;
- (2) neither of the persons intending to be married shall have a wife or husband still living;
- (3) in the presence of a person licensed under Section 9, and of at least two believable witnesses other than such person, each of the parties shall say to the other⁹¹-

“I call upon these persons here present to witness that I, AB, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, CD, to be my lawful wedded wife or husband' or words to the like effect⁹²”.

Under the Indian Divorce Act, 1869, a marriage may be declared null and void⁹³ on the following grounds, viz:

- (i) the respondent was impotent at the time of marriage and at the time of institution of the suit;
- (ii) the parties are within prohibited degree of consanguinity or affinity;
- (iii) either party was a lunatic or idiot at the time of marriage;
- (iv) the former husband or wife of either party was living at the time of the marriage and the marriage with such former husband or wife was then in

⁹⁰Christian Marriage and Registration Procedure in India, Available at: <http://www.helplinelaw.com/family-law/CTMRR/christian-marriage-and-registration-procedure-in-india.html>, (last visited on Dec.22.2016).

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ The Divorce Act, 1869, Sec. 18- Petition for decree of nullity. —Any husband or wife may present a petition to the District Court praying that his or her marriage may be declared null and void.

force⁹⁴.

3.5.6 Parsi Law

The requisites for a valid marriage under the Parsi Marriage and Divorce Act, 1936 are:

Sec. 3 Requisites to validity of Parsi Marriages.

(1) No marriage shall be valid if-

(a) the contracting parties are related to each other in any of the degrees of affinity or consanguinity set forth in Schedule I; or

(b) such marriage is not solemnized according to Parsi form of ceremony Called “Ashirwad” by a Priest in the existence of two Parsi witnesses other than such Priest⁹⁵; or

(c) in the subject of any Parsi (whether such Parsi has changed his or her religion Religion of domicile or not) whole, regarding male if he has not completed the age of 21years, and regarding female if she has not completed the age of 18years⁹⁶.

(2) Notwithstanding that a marriage is invalid under –any of the provisions of sub sec. (1), any child of such marriage who would have been legal if the marriage had been valid, shall be legal⁹⁷.

⁹⁴ The Divorce Act ,1869, Sec. 19- Grounds of decree. —Such decree may be made on any of the following grounds:—

(1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;

(2) that the parties are within the prohibited degree of consanguinity (whether natural or legal) or affinity;

(3) that either party was a lunatic or idiot at the time of the marriage;

(4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force. Nothing in this section shall affect the [jurisdiction of the District Court] to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

⁹⁵ Parsi Marriage and Divorce Act, 1936, Sec. 3, renumbered as sub Sec. (1) thereof by Act 5 of 1988

⁹⁶ Parsi Marriage and Divorce Act, 1936, Sec. 3, Clause (c) subs. By act 5 of 1988

⁹⁷ Parsi Marriage and Divorce Act, 1936, Sec. 3, Ins.by Act 5 of 1988

The Parsi Marriage and Divorce Act, 1936,⁹⁸ lays down that a second marriage without divorce in case of an earlier marriage is void. A marriage where consummation of the marriage is impossible from natural causes, may, at the instance of either party to the marriage, be declared null and void.⁹⁹

3.6 Registration of Marriage

There is no provision for compulsory registration¹⁰⁰ of a marriage under Section 8 of the Hindu Marriage Act, 1955. This section makes registration optional and Sec. 8(5) specifically states that validity of any marriage is not affected by failure to register it¹⁰¹.

Thus, in the case of *Kamal Kant Panduranga Chibde v. Susheela Panduranga Chibde*,¹⁰² the Bombay High court specifically held that any provision in the rules invalidating a marriage because of omission to enter the same in the marriage register would be repugnant to sub-Sec. (5) of Sec. 8 of the Hindu Marriage Act, 1955. However, all requisites for a valid marriage need to be complied with to recognise the validity of a marriage, registration notwithstanding. Also, it is significant to note that under this Act, the marriage is not solemnised by Registrar but certified to have been solemnised on the basis of application made to him. Requirement of physical presence of parties as laid down in Rules 3 and 4 of the Marriage Registration Rules, 1956 was held to be not mandatory in view of the advanced technology which provides suitable mechanism to facilitate requisite information from spouses who are separated-by long distances. The law needs to adapt to changing times and developments.¹⁰³ A plea for

⁹⁸ Parsi Marriage and Divorce Act, 1936 Sec.4

⁹⁹ Parsi Marriage and Divorce Act, 1936 Sec.30

¹⁰⁰ *Seema v. Ashwani Kumar* AIR 2006 SC 1158

¹⁰² (1989) 2 HLR 154(Bom) ; *Sanjay Mishra v. Eveline Jobe*, AIR 1993 MP 54

¹⁰³ *Charanjit Kaur Nagi v. Gov. of NCT, Delhi*, (2008) 1 DMC 45 (Del)

compulsory registration of marriages has been made by the courts in several cases¹⁰⁴.

In *Kangavalli v. Saroja*¹⁰⁵ the paternity of children born of a void marriage was challenged. The court lamented that the Hindu Marriage Act, 1955 neither lays down the procedure for solemnisation of marriage nor makes registration compulsory. Movies and visual media have added to this confusion and created an impression that exchange of garlands or tying of *thali* constitutes a valid marriage. This confusion, coupled with non-registration, has landed many women in a relationship which, while exacting from her all the duties of a wife, leaves her with neither the right under the law nor recognition in society. In divorce or bigamy proceedings, a Hindu male can admit or deny the first or second marriage depending on his whim and fancy. This puts the woman, who is denied the status, in a vulnerable position. Compulsory registration would check fraudulent marriages, apart from non-age and bigamous marriages¹⁰⁶.

This would also establish paternity of children. As observed by the court, 'if there is certificate of registration of marriage between his [child's] mother and father which though may not validate marriage otherwise void, will at least bear testimony to identify his biological parents'.¹⁰⁷

In a landmark judgment by the Supreme Court in *Seema v. Ashwani Kumar*,¹⁰⁸ the court has issued directions that the marriage of all those people having different religions of India, should be compulsorily registered

¹⁰⁴ Registration of marriage should be made compulsory: Law Commission, The Hindustan Times, HT Correspondent, New Delhi, Updated: Jul 04, 2017 Available at: <http://www.hindustantimes.com/india-news/law-panel-recommends-compulsory-registration-of-marriages-linking-them-to-uids/story-AguhzdSA85lOpZL21UMYjL.html> (last visited on July.22.2017).

¹⁰⁵ AIR 2002 Mad 73

¹⁰⁶ *Kanagavalli And 4 Others v. Saroja And 3 Others* on 23 July, 2001, Equivalent citations: AIR 2002 Mad 73, II (2001) DMC 603, (2001) 3 MLJ 360, Bench: P Sridevan, Available at: <https://indiankanoon.org/doc/948494/>, (last visited on Dec.23.2016).

¹⁰⁷ Ritu Singh, Marriage And Registration Under Special Marriage Act: A Socio – Legal Study, Law Mantra, Think Beyond Others (International Monthly Journal, I.S.S.N 2321 6417) Journal.lawmantra .co.in www.lawmantra.co.in, Available at; <http://journal.lawmantra.co.in/wp-content/uploads/2015/05/110.pdf> (last visited on Dec.29.2016)

¹⁰⁸ AIR 2006 SC 1158

in their particular states, where the marriage is performed. If the marriage is registered, the dispute concerning solemnisation of marriage is avoided; it protects the women's rights relating to marriage to a greater extent; it has substantial evidentiary importance in the subject to the custody of children and rights of born children from the parties after the marriage performed¹⁰⁹.

The Supreme Court has directed the states and Central Government to take concrete steps in this direction. While the Special Marriage Act, 1954, provides for registration of marriages, Sec. 16 thereof, which refers to procedure for registration does not require publication of the factum of marriage in a newspaper for the purpose of registration.¹¹⁰ Under section 15 of this Act parties are required to have completed the age of 21 at the time of registration of the marriage. The Registrar cannot refuse to register a marriage on the ground that the marriage of the parties was solemnised when one of the parties was below the age of 21. If the parties are 21, the Registrar has to register it¹¹¹.

3.7. Void, Voidable, Irregular Marriage

A marriage, which is not valid, may be void or voidable. A void marriage is one which has no legal status. The courts regard such marriage as never having taken place and no rights and obligations ensue. It is void ab initio, i.e., right from its inception. Hence the parties are at liberty to contract another marriage without seeking a decree of nullity of the first so-called marriage. A voidable marriage on the other hand, is a marriage which is binding and valid, and continues to subsist for all purposes until a decree is passed by the court annulling the same. Thus, so long as such decree is not obtained, the parties enjoy all the rights and obligations which go with the

¹⁰⁹*Smt. Seema v. Ashwani Kumar* (on 14 February, 2006), Available at: <http://mynation.net/judgments/?p=746>, (last visited on Dec.24.2016).

¹¹⁰*Lorna Williams v. Dy. Com.-cum- Marriage officer*, AIR P&H 2007,62 (NOC)

¹¹¹*Baljit Kaur Boparai v. State of Punjab*, (2009) 1 DMC 28 (P&H-DB)

status of marriage. A remarriage by any of the parties without a decree of nullity is illegal as it would amount to bigamy¹¹².

3.8. Distinction between Void and Voidable Marriage

The distinction between a void and voidable marriage, in a nutshell, is:

- (i) A void marriage has no legal status right from the beginning, whereas a voidable marriage has all the rights and obligations of matrimony until it is annulled by court.
- (ii) A void marriage may be declared a nullity at the instance of either party, whereas, in a voidable marriage, the court can pass a decree of annulment at the instances of the aggrieved party¹¹³.

3.9. Minimum Age for Marriage

A minimum age for marriage is prescribed under the Hindu law, Parsi law, Christian law as also under the Special Marriage Act, 1954. While a marriage, with a partner below the prescribed age is void under Sec. 24 read with Sec. 4(c) of the Special Marriage Act, 1954, and invalid under Sec. 3(c) of the Parsi Marriage and Divorce Act, 1936, such marriage under the Hindu Marriage Act, 1955 is neither void nor voidable. It is only punishable under Sec. 18 of the Act and under the prohibition of child Marriage Act, 2006 (6 of 2007). This Act is applicable to all irrespective of the personal laws. In the context of the status of non age, marriage, a reference may be made of a few cases under Hindu law¹¹⁴.

¹¹² Anubhav Singh, Void and Voidable marriages (sections 11 and 12), Available at: [http://dullb.com/Downloads/Semester1/105%20FAMILY%20LAW_SEMESTER1%20\(2\).pdf](http://dullb.com/Downloads/Semester1/105%20FAMILY%20LAW_SEMESTER1%20(2).pdf) (last visited on Dec.24 .2016).

¹¹³ *Supranote* at 83 (Anwasha Tripathy.....)

¹¹⁴ *Supranote* at 41 (Laksheyender Kumar)

In the case *P. Venkataramana v. State*,¹¹⁵ the issue was whether a Hindu marriage governed by the provisions of the Hindu Marriage Act, 1955, where the parties to the marriage or either of them are below the prescribed ages set out in cl.(iii) of Sec. 5 is void-ab-initio. A wife filed a complaint against the husband and ten others, alleging that the husband had committed an offence under Sec. 494 of the Indian penal-code 1860 (viz., bigamy) by marrying another girl. The husband's defence was that his marriage with the complainant was void since he was 13 years and she was only 9 year old at the time of their marriage. This marriage being void, no offence was committed by his marrying another girl again, the husband argued. The Trial Court held the first marriage as legal and hence convicted the husband. The convictions were confirmed in appeal, though with slight modification¹¹⁶.

Revision was filed against conviction. Ultimately, in view of the significance of the issue involved, the matter was referred to the Full Bench. After a detailed analysis of the statutory provisions and case law, the court came to the conclusion that such marriage is not void. Had the law makers intended that they would not have given to a wife a right to repudiate her marriage solemnized before the attainment of the age of 15 years. This indicates that the violation of cl. (iii) of Sec. 5 of the Hindu marriage Act, 1955 would not render the marriage either void or voidable. Also, if violation of each of the clauses in Sec. 5 were to have the effect of rendering a marriage void, the law makers would not have made different provisions for violation of different clauses. Neither under Sec. 11 nor under Sec. 12 of the Hindu Marriage Act, 1955, there is any mention of a marriage in contravention of Sec. 5(iii)¹¹⁷.

¹¹⁵ AIR 1977 AP 43(FB)

¹¹⁶ *Pinninti Venkataramana And Anr. v. State* on 9 August, 1976, Equivalent citations: AIR 1977 AP 43

Author: B Divan, Bench: B Divan, A Kuppuswami, Mukhtar, Available at: <https://indiankanoon.org/doc/131121/> (last visited on Dec.26.2016).

¹¹⁷ *Ibid.*

In the case *V. Mallikarjunaiah v. H.C. Gowramma*,¹¹⁸ a husband sought declaration that his marriage was void since he had not completed the age of 21 at the time of marriage-that he was 20 years, one month and 12 days old. The issue whether such marriage was valid, void or voidable was discussed at great length. The trial judge dismissed the husband's petition on the ground that there was no cause of action. Hence, the husband filed an appeal. His argument was that Sec. 11 (void marriage) should be read with Sec. 5 and any marriage in breach of conditions laid down in Sec. 5 should be declared as null and void. It was further contended that the law should not be so interpreted so as to defeat its provisions. On the other hand, for the wife it was argued that the legislature specifically excluded Sec. 5(iii) from the purview of Sec. 11 (void marriage), Sec. 12 (voidable marriage) and Sec. 13 (divorce), and this exclusion was neither accidental nor by oversight, but deliberate¹¹⁹.

After detailed arguments, the court came to the conclusion that the law does seek to discourage marriage of under-age boys and girls, but not to the extent of making them void or voidable. The socio-cultural conditions of the society and the consequences of invalidating such marriages on the girls specially were highlighted. The court observed:¹²⁰

Having regard to the strata in which such marriages were likely to take place, the legislature was cautious of the fact that such provision should not have the result of rendering a large number of girls or young women virtually unmarried or destitute. The only security that a girl or woman in such a situation is entitled to is within the framework of the marriage and if the marriage can be loosely undone or if it is not recognised by the law, it would result in disastrous social consequences which is the

¹¹⁸ AIR 1997 Kant 77

¹¹⁹ *V. Mallikarjunaiah v. H.C. Goowramma* on 30 July, 1996, Equivalent citations: I (1997) DMC 10, ILR 1997 KAR 964, 1997 (1) Kar LJ 570 Bench: M Saldanhan, Available at: <https://indiankanoon.org/doc/1189024/>, (last visited on Dec.26.2016).

¹²⁰ *Ibid.*

only reason why this section was specifically excluded from sections 11 and 12 of the Act¹²¹.

The court, however, suggested that in order to discourage such marriages, there is a need to provide for harsher penalties, particularly for those responsible for this. In the case *Gajar Narain Bhura v. Kanbi Kunverbai Parbat*,¹²² where a husband sought to defeat a wife's claim for maintenance on the ground that the marriage being in contravention of the minimum age requirement; was void, the court held that child marriage by itself is not invalid nor a nullity, unless there has been fraud or force, in which case provisions of Sec. 12(1)(c) of the Hindu Marriage Act, 1955 would be attracted¹²³.

In the judgment of the Delhi High Court viz., *Ravi Kumar v. State*,¹²⁴ on non age marriage evoked mixed response and debate on the issue of validity of marriages solemnized in contravention of Sec. 5(iii) of the Hindu Marriage Act, 1955. Two girls, both about 16 years (below 18) married boys of their liking. The families of both filed criminal cases of kidnapping and enticement against the boys, and criminal proceedings against them commenced. The girls, one of whom was in the family way, refused to go to their parents so they were sent to the *Nari Niketan* much against their wishes. They filed applications for quashing the criminal cases filed against their husbands and for allowing them (the girls) to join their husbands. The two significant issues in the present context were¹²⁵:

(i) whether on account of the minority of the spouse, the marriage entered into is illegal and void-ab-initio; and

¹²¹ *Ibid.*

¹²² AIR 1997 Guj 185, See also *Harvinder Kaur v. Gursevak Singh* (1998) AIHC 1013 (P&H)

¹²³ Kusum, Hindu Law, Available at: http://14.139.60.114:8080/jspui/bitstream/123456789/3827/1/013_1997-1998_Hindu%20Law.pdf (last visited on Dec.27.2016).

¹²⁴ (2005) I DLT 124

¹²⁵ *Ravi Kumar v. The State And Anr.* [Along With ... on 5 October, 2005, Equivalent citations: 124 (2005) DLT 1, II (2005) DMC 731, Author: M Sarin, Bench: M Sarin, M Goel, Available at: <https://indian kanoon.org/doc/666625/>, (last visited on Dec.28.2016).

(ii) whether young girls, who get married and have reached the age of discretion but not attained majority can be sent in protective custody to a remand home against their will¹²⁶?

The court referred to, inter alia, *Seema Devi Alias Simran Kaur v. state of Himachal Pradesh*¹²⁷ where the petitioner girl aged 15 married the accused of her own accord. Criminal cases of kidnapping, etc, were registered against the accused. The additional chief judicial magistrate remanded the girl to protective custody in view of her minority and his nurturing doubts on the validity of the marriage. The High court held that the marriage in contravention of the prescribed age was neither void nor voidable. These contraventions did not fall within the scope of Sec. 11 or Sec.12 of the Hindu Marriage Act, 1955 (i.e. void and voidable marriage, respectively). It held that such a marriage would only be in contravention of Sec. 18 of the Hindu Marriage Act, 1955 which provides punishment. The observations of the additional chief judicial magistrate that the marriage was not a legal marriage, was held to be unwarranted and unsustainable¹²⁸.

Likewise, in the case *Gindan v. Barelal*,¹²⁹ was relied upon, wherein it was held that a marriage solemnized in contravention of the age mentioned in Sec.5 (iii) Hindu Marriage Act, 1955, was only punishable under Sec.18 of the Act and would remain valid, enforceable and recognisable in courts of law. In view of all this, the Delhi High Court, in *Ravi Kumar's case*¹³⁰ held that the marriage was neither void nor illegal on account of the spouse being less than 18 years of age and being over 15 years of age. The minor girls, in these circumstances, could not be directed to be detained in a remand home against her wishes, the court ruled. The criminal cases against the husbands were quashed and the girls were free to join their husbands. This judgment

¹²⁶ *Ibid.*

¹²⁷ (1998) 2 crimes 168

¹²⁸ *Seema Devi Alias Simaran Kaur v. State Of H P*, Laws (Hph)-1997-7-2, High Court Of Himachal Pradesh, Decided on July 25, 1997, Available at: <http://www.the-http/laws.com/Encyclopedia/Browse/Case?CaseId=707991050000> (last visited on Dec.28.2016).

¹²⁹ AIR 1976 MP 83, see also *Neetu Singh v. State*, (1999) II Apex Decisions (Del)37

¹³⁰ (2005) 1 DLT 124

was perceived in certain quarters as 'reducing the age of marriage', 'reducing age of consent' and 'declining to nullify marriages of minors'¹³¹.

The Delhi High court, in *Manish Singh v. State Govt. of NCT*,¹³² hastened to clarify that they never did nor could have reduced statutory age of marriage. Neither there was a prayer nor such marriages could have been nullified in view of existing factual and legal position. Reference to 'age of discretion', the court clarified, was in the context of girls having left on their own without inducement or enticement for the purpose of the charge of kidnapping and not to suggest any approval of the errant conduct. The court observed¹³³:

*What we judges are ordained to do, is to interpret the law as it stands, and that is precisely what we have done. We have added the above clarification since erroneous or misreporting of judicial pronouncements on vital issues affecting large sections of the Population may erode public confidence in judiciary, essential for the-very preservation of rule of law*¹³⁴.

It is pertinent also to note that the applicability of the Delhi High Court order in *Ravi Kumar's case*¹³⁵ was stayed by the Supreme Court in *National Commission for Women v. Government of NCT*¹³⁶, without disturbing the relief granted to the petitioners by the Delhi High Court order.

In the case *Makemalla Sailoo v. Suptd. of Police Nalgonda*,¹³⁷ the court held that even though there is a prohibition of child marriage under the Act, such marriage is neither void nor illegal and the husband is entitled to the wife's custody as her natural guardian. Similar view was taken in

¹³¹ *Gindan And Ors. v. Barelal* on 5 December, 1975, Equivalent citations: AIR 1976 MP 83, Author: Tankha Bench: A Sen, R Tankha, Available at: <https://indiankanoon.org/doc/929217/>, (last visited on Dec.30.2016).

¹³² AIR 2006 Del 37

¹³³ *Manish Singh v. State Govt Of Nct And Ors.* on 7 December, 2005, Equivalent citations: AIR 2006 Delhi 37, 126 (2006) DLT 28, I (2006) DMC 1, Author: M Sarin, Bench: M Sarin, M Goel, Available at: <https://indiankanoon.org/doc/1950248/>, (last visited on Jan.03.2016).

¹³⁴ *Ibid.*

¹³⁵ (2005) 1 DLT 124

¹³⁶ *Sunil Kumar v. State NCT of Delhi*, 139(2007) DLT, 198 I(2007) DMC 786

¹³⁷ AIR 2007 DOC 135 (AP)

*Kokkula Suresh v. State of A.P.*¹³⁸ on a writ petition by a husband challenging the order of a magistrate whereby his minor bride was ordered to be sent to a State Home. The High Court held that such marriage being neither void nor voidable but valid, the husband was her legal guardian as per the law and hence entitled to her physical custody¹³⁹.

It is pertinent to point out here that the prohibition of Child Marriage Act, 2006, vide section 3, provides that a child marriage shall be voidable at the option of the contracting party who was a child at the time of marriage. Marriage of a minor is void under section 12 of this Act if deceit or forceful means are used or if a minor is sold for the purpose of marriage¹⁴⁰.

3.10. Conclusion:

Right Age of Consent to Marry

This becomes the subject of explanation and it may vary from law to law. In the sixth descriptions of Section 375 of the Criminal Law (Amendment) Act, 2013, A man is said to commit “rape”¹⁴¹- “If he

¹³⁸ AIR 2009 AP 52

¹³⁹ *Kokkula Suresh v. State Of Andhra Pradesh*, Laws(Aph)-2008-10-36, High Court Of Andhra Pradesh, Decided on October 20, 2008, Available at: <http://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=408002258000>, (last visited on Jan.03.2016).

¹⁴⁰ *Ibid.*

¹⁴¹ Indian Penal Code (1860), Sec. 375- Rape- A man is said to commit "rape" if he-

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any parts of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

under the circumstances falling under any of the following seven descriptions:-

First- Against her will.

Secondly- Without her consent.

Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

without or with her consent, when she is under the age of 18 years”... but according to Indian Penal Code, Exception 2 of the section 375, marital rape is punishable only when his own wife is below fifteen years, two years younger than the age of consent, in accordance to POCSO¹⁴².

According to Human rights activist and Senior advocate B.T. Venkatesh¹⁴³ the situation in which the consent was granted should be kept in mind but it should also measure that case-by-case queries or findings can be generate a place for misuse¹⁴⁴. It is not that youth have a appropriate consent, they may agree with the consent for sex only, but on the other hand law provided that the boy can be penalise for that act if the young girl or her family has filed the case against the consent. What about instances where a twelve or thirteen year old girl agrees for sex? What will be validity of consent? And what about the instances where the consent of girls are fabricated, as in most cases of sexual abuse of children? These issues automatically alarmed when some thing like that happen in the society.

Fourthly- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly- With or without her consent, when she is under eighteen years of age.

Seventhly- When she is unable to communicate consent.

Explanation 1- For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1- A medical procedure or intervention shall not constitute rape.

Exception 2- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

¹⁴²Apoorva Ramaswamy, Anti Rape Laws In India: A Review, Available at: file:///C:/Users/DHR%204/HP-PC/Downloads/EssResearchPaper_2016112213911_26387.pdf, (last visited on Jan.05.2017).

¹⁴³Malavika Velayanikal, What is the right age of consent? | Wed, 28 Aug 2013, Available at: <http://www.dnaindia.com/bangalore/report-what-is-the-right-age-of-consent-1881022>, (last visited on January 28. 2017).

¹⁴⁴ Ibid.

According to Shakun Mohini, women rights activists, if a minor girl has sex with consent and the law expressly considered it rape, on the ground that people under the age of 18 where law presumes them minor, are not enough to know right and wrong, then it can be ask tha what about the child rapists? For example, in the case of Nirbhaya rape, where one of the main offender found minor. It is the fact that everyone cried for his blood.

Though observing that the sexual rights of boys and girls below 18 years of age are also valid. Now ball is in the part of the rights activists to inform "What is the crystal-clear age for "consent"¹⁴⁵.

It is high time that the state machinery or legislative body, its authorities, law experts, women groups and NGOs make a resolute and constant endeavour to fix the age of consent for the marriage.

¹⁴⁵ *Ibid.*

Chapter-4



CHAPTER 4

HONOUR KILLINGS, HUMAN RIGHTS AND KHAP PANCHAYATS

The United Nations is committed to the principle of equality of men and women, meaning equality in their dignity and worth as human being as well as equality in their rights, opportunities and responsibilities. In its work for the advancement of women, the entire united Nations system has dedicated itself to ensuring the universal recognition, in law, of equality of rights between men and women and to exploring ways to give women, in fact equal opportunities with men to realize their human rights and fundamental freedoms.

United Nations¹

4. Introduction

Possession and control of the woman by the man to whom she belongs has nurtured in legal notions of adultery, seduction, and enticement. Fathers are seeking to retrieve their daughters from the men the daughters choose to live with, resort to charging the other man with kidnapping, abducting and inducing the daughters to compel them into marriage². "Honour" killings of women can be defined as acts of murder in which "a woman is killed for her actual or perceived immoral behaviour" (Hassan, 1999). These killings result from the perception that defence of honour justifies killing a person whose behaviour dishonours their clan or family³.

¹ Legal perspective of gender equality in India: a critical analysis, Chapter Second, International Commitments Against Gender Bias, at page 19, Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/10227/9/09_chapter%201.pdf (last visited on January 6, 2016).

² Lynn Welchman, Sara Hossain, 'Honour': Crimes, Paradigms, and Violence Against Women Publisher Zed Books, 2005, ISBN 1842776274 , at page 308.

³ Anand Kirti, Prateek Kumar and Rachana Yadav, The Face of Honour Based Crimes: Global Concerns and Solutions, International Journal of Criminal Justice Sciences (ass="quote">IJCJS) – Journal of the South Asian Society of Criminology and Victimology (SASCV), 2011, ISSN: 0973-5089 January - December Vol. 6 (1&2)": at page 343, Available at: http://www.sascv.org/ijcjs/pdfs/kirtieta_licjs2011i&iind.pdf (last visited on January 6, 2016).

Human Rights Watch (2001) defines honour killings follows as: A woman can be under attack by her family for various causes, as refusing to perform the institutional marriage, being victim of sexual harassment, seeking a divorce - even an abusive husband or (suspected) to commit adultery, being the victim of a sexual assault⁴. The only notion is that "a woman has conducted in a manner that 'disobeys' is enough for her family to trigger an attack on her life.

Other behaviours that challenge male control (staying out late, smoking, chatting, going to a pub etc.) can also be reasons for 'honour crimes'. Ruggi (1998) states that honour killing is: a complex issue which imbedded deep cuts into the record of Arab society. What control in a patriarchal society? does the male of the tribe, clan or family, its the reproduction power. The females were particularly considered a machine for creating males of the tribes. Honour killing is not a means of controlling sexual power or conduct. What is the problem behind this' is it fertility or reproduction power⁵.

Amnesty International (2001) attaches that the administration of honor is waiving. Women who have fallen into doubt are not given a chance to save themselves, and family members do not have socially approvable options. Though, to get rid of the blot on their honour by attacking the woman. Araji (2000) states that⁶:

The conception of honour used to rationalize abuse and killing of women is founded on the idea that one person's honour depends on the behaviour of others; behaviour that must be controlled. Thus, an essential component of one's self-esteem and community status becomes dependent on the behaviour of others. This conception is distinct from the notion that honour depends only on an individual's own behaviour⁷.

The human rights perform as a sound guardian for safeguard and basic rights for every people as right to education, housing and food can be claimed

⁴ Urmila Bhardwaj, Nothing Honourable in "Honour Killing" A Social Stigma, (legal Services India, articles), Author : Published on : October 29, 2014, Available at: http://www.legalservicesindia.com/article/print.php?art_id=1721 (last visited on July 14, 2016).

⁵ *Supranote* at 3 (Anand Kirti.....)

⁶ *Ibid.*

⁷ *Ibid.*

human rights as well as specified legal rights for solution within all the nations around the world, because of its universality. Significantly, this exact universality is to be found within the national perspective too. The Human rights in all states should be introduced, who have signed the conventions⁸.

Human rights are faced by the traditional values in groups, where the significance can be seen in the sense that the universality of human rights should be of their principles, standards and values which might be are more important to them, in which the writer / journalist / historian has highlighted on a very important aspect. According to laws and legislations, customary laws (Jus non scriptum or Lex non scripta, i.e. unwritten laws), village councils, national laws and legislations within families and specific tribes become more important for the persons than human rights. Though, in some situations some women hold the own group's ideals etc., However, human rights are present there⁹.

The UN has considered the matter of Honour violence in a very serious, manner. In its resolution 55/66¹⁰ on functioning towards the removal of offenses against female done in the name honour, the General Assembly requested the Secretary-General to submit a report to it at its fifty seventh session on the resolution including on initiatives by States to work towards the elimination of those crimes The present report, which has been prepared in response to that request, is the first report of the Secretary-General submitted to the General Assembly on the subject¹¹.

It is based, *inter alia*, on information contained in replies to a request of the Secretary-General for information on the issue received from Member States and United Nations entities, and is complemented by the report of the

⁸ Crimes of Honor - Females' Right for Support in the Multicultural Society, Malmo University Department of International Migration and Ethnic Relations IMER 61-90, Spring 2008 Bachelor Thesis Available at: <http://dspace.mah.se/bitstream/handle/2043/6820/?sequence=1> (last visited on feb.23, 2016).

⁹ *Ibid.*

¹⁰ Resolution adopted by the General Assembly, United Nations A/RES/55/66. General Assembly Distr.: General 31 January 2001, Fifty-fifth session Agenda item 107, on the report of the Third Committee (A/55/595) and Corr.1 and 2 Available at: <https://documents-dds ny.un.org/doc/UNDOC/GEN/N00/563/35/PDF/N0056335.pdf?OpenElement>, (last visited on May 13,2016).

¹¹ *Ibid.*

Secretary-General for elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly¹²; entitled “Women 2000: gender equality development and peace for the twenty-first century” (A/57/171)¹³, which has been prepared in response to General Assembly resolution 55/68¹⁴.

4.1. United Nations Organization Violence against Women on the Name of Honour

4.1.1. By General Assembly

Crimes committed in the name of honour were addressed by the General Assembly in its resolutions 55/111 and 55/68. In resolution 55/68¹⁵, the Assembly expressed deep concern at the persistence of various forms of violence and crime: against women in all parts of the world, as well as offenses committed in the name of pride and violence done, in the name of honour; stressed that all forms of violence against women, including crimes identified in the outcome document, were obstacles to the advancement and empowerment of women; and reaffirmed that violence against women both violated and impaired or nullified the enjoyment by women of their human rights and fundamental freedoms. In its resolution 55/111¹⁶, the General Assembly called upon Governments to investigate promptly and thoroughly homicides committed in the name of honor or in the name of pride, to bring

¹² Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly entitled “Women 2000: gender equality, development and peace for the twenty-first century” Report of the Secretary-General, United Nations A/57/171, General Assembly Distr.: General 2 July 2002, Fifty-seventh session Item 104 of the preliminary list* Advancement of women, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/466/64/PDF/N0246664.pdf?OpenElement>, (last visited on May 13, 2016).

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Resolution adopted by the General Assembly [on the report of the Third Committee (A/55/602/Add.2 and Corr.1)] 55/111. Extrajudicial, summary or arbitrary executions, United Nations A/RES/55/111, General Assembly Distr.: General 12 March 2001, Fifty-fifth session Agenda item 114 (b), Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/55/111, (last visited on May 14, 2016).

those accountable to justice before an independent and impartial judicial; and to make sure that such killings were neither ignored nor allowed by government personnel or officials¹⁷

4.1.2. Human Rights Treaty Bodies

Human rights treaty bodies have raised the issue of crimes of honour in their general comments/ recommendation, their review of States party's reports, their constructive dialogue with States parties and in their concluding observations/comments on States party's reports. In its general recommendation on violence against women adopted at its eleventh session, in 1992, the Committee on the Elimination of Discrimination against Woman recommended that measures necessary to overcome family violence include legislation to remove the defence of honour its concluding comments¹⁸, the Committee: expressed concern that the provisions of the Turkish Penal Code allowed less rigorous penalties for honour - killings, .and urged that such killings be appropriately addressed under the law: expressed concern about honour killings in Israel and suggested that the State party take necessary steps to eliminate such practice : expressed concern that several provisions of the Jordanian Penal Code discriminated against women, in particular Art. 340, and urged the State party to support the speedy repeal of that Art. and to undertake awareness-raising activities that made honour killings socially and morally unacceptable; expressed concern at violence against women perpetrated through honour killing in Iraq, and urged the State party to condemn and eradicate honour killing and ensure that those crimes were prosecuted and punished; expressed concern that several provisions of the Egyptian Penal Code discriminated against women, in particular in the case of murder following the crime of adultery, and urged the State party to eliminate discriminatory penal

¹⁷Khan Rao Arif Ali, *Honour Killing Roots And Remedies- A Global View*, Mittal Publication (2011), ISBN 81-8324-405-X , at page 356

¹⁸Human Rights Treaty Bodies, OHCHR, Glossary of treaty body terminology, *Available at*: <http://www2.ohchr.org/english/bodies/treaty/glossary.htm>, (last visited on May 15, 2016).

provisions; expressed concern about the limited information on ethnic and minority women's freedom from violence, including honour crimes, in the Netherlands, and urged the State party to provide information on the implementation of the Convention with respect to different ethnic and minority groups; and expressed concern at Art. 328 of the Uruguayan Penal Code, which provided that protecting honour may be a factor mitigating sentence in cases of induced abortion, and called on the State party to give priority to the repeal of that Art¹⁹.

In its concluding observations the committee on the rights of the child expressed concern about the violation of the right to life with reference to the practice of honour killing in certain regions in Turkey, and recommended that the state party review its legislation and eliminate provisions allowing the reduction of sentence if crimes were committed for honour purposes; developed and implement awareness raising and education campaigns; and provide training and resources to law enforcement personnel²⁰.

The law against torture and the Committee on the Elimination of Racial Discrimination raised the issue of honour killing during a constructive dialogue with Israel. The Committee on Economic, Social and Culture Rights welcomed the removal of crime of honour in Tunisia, and expressed concern about discrimination against women in Syrian society, in particular as reflected in more severe punishment of women for adultery and honour crimes, and recommended that the States address the problem.²¹

At its sixty-eighth session, in 2000, the Human Rights Committee adopted general comment on article 3 of the ICCPR, in which it stated that honour crimes which remained unpunished constituted a serious violation of

¹⁹ Shariah: The Threat To America An Exercise In Competitive Analysis Report Of Team 'B' I I, Available at: http://www.voltairenet.org/IMG/pdf/Shariah_-_The_Threat_to_America_Team_B_Report_.pdf, (last visited on May 15, 2016).

²⁰ Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Turkey, United Nations CRC/C/TUR/CO/2-3, Convention on the Rights of the Child Distr.: General 20 July 2012, Committee on the Rights of the Child Sixtieth session 29 May–15 June 2012, Available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_TUR_CO_2-3.pdf, (last visited on May 17, 2016).

²¹ *Supranote* at 17 (Khan Rao)

the Covenant, and that laws which imposed more severe penalties on women than on men for adultery or other offences also violated the requirement of equal treatment. In its concluding observations, the Committee expressed concern about cases of honour crimes involving girls and women of foreign extraction in Sweden, and recommended that the State party continue its efforts to prevent and eradicate such practices²².

4.1.3. Human Rights Commission

The Commission on Human Rights expressed concern over the large number of murders made in the name of honor or passion reported in the resolution of 2000/31 on the illegitimate, arbitrary execution or summary, and the Governments were called to investigate well, to bring people responsible for justice, and to ensure that such killings were neither approved nor accepted by government officials or any authority, and to bring those accountable to justice²³.

The Commission accepted alike resolutions (2001/45)²⁴ and (2002/36)²⁵. In its resolution 2001/45 on Elimination of Violence Against Women, the Commission has defined "gender violence" as any act of gender violence, resulting in physical or sexual or psychological harm or the consequence of suffering with women. In the name of honour or passion. Where the crimes has been committed and the states are asked to smash violence against women, and

²² General Comment No. 28 Article 3 (The equality of rights between men and women) (Replaces general comment No. 4), HRI/GEN/1/Rev.9 (Vol. I), Office of the High Commissioner for the Human Rights, HUMAN RIGHTS COMMITTEE Sixty-eighth session Adopted: 29 March 2000 (1834th meeting), Available at: <file:///C:/Users/hp/Downloads/HRC%20General%20Comment%2028.pdf>, (last visited on May 18, 2016).

²³ National Legal Research Desk on Violence Against Women and Children, Law Resource India, Available at: <https://indialawyers.wordpress.com/category/honour-kilings/>, (last visited on May 19, 2016).

²⁴ ECOSOC Resolution 2001/45 Restructuring and revitalization of the Group of Experts on the United Nations Programme in Public Administration and Finance, Available at: <http://www.un.org/en/ecosoc/docs/2001/resolution%202001-45.pdf> (last visited on May 19, 2016).

²⁵ Commission on Human Rights resolution 2002/36. The Commission on Human Rights,. Recalling the Universal Declaration of Human Rights, Available at: ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2002-36.doc (last visited on May 19, 2016).

said not to solicit the tradition and customs in order to avoid its obligations to eliminate such violence²⁶, the Commission adopted the resolution in 2001 (Resolution 2001/49)²⁷ and 2002 (Resolution 2002/52)²⁸ in the name of religion. Sub Commission on the Promotion and Protection of Human Rights dealt with the crime of honor. In the resolutions of 2000 (2000/10)²⁹ and 2001 (2001/13)³⁰, on traditional practices affecting the health of women and the girl child, the special correspondent of the sub-commission noticed feared to the concerns on the customary practices affecting women's health and the girl child to maintain some damaged customs including honour crimes and ask public opinion of all the states to make aware about harmful effects of all kinds of harmful traditional practices and to uphold efforts to make people aware, to maintain all the beneficial traditional practices through training, information and education in order to attain the total abolition of such practices³¹.

²⁶ Honour Killings / Honour Crimes And The Need For New Law, Law Resource India, *Available at*: <https://indialawyers.wordpress.com/tag/honour-killings/>, (last visited on May 19, 2016).

²⁷ Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly entitled "Women 2000: gender equality, development and peace for the twenty-first century" Report of the Secretary-General, United Nations A/57/171, General Assembly Distr.: General 2 July 2002, Fifty-seventh session Item 104 of the preliminary list* Advancement of women, *Available at*: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/466/64/PDF/N0246664.pdf?OpenElement>, (last visited on May 13, 2016).

²⁸ *Ibid.*

²⁹ The right to food Commission on Human Rights resolution 2000/10 The Commission on Human Rights, Recalling the Universal Declaration.....including food, *Available at*: ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2000-10.doc (last visited on May 20, 2016).

³⁰ ECOSOC Resolution 2001/13 Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds, *Available at*: www.un.org/en/ecosoc/docs/2001/resolution%202001-13.pdf (last visited on May 20, 2016).

³¹ Honour Crimes And The Law, Law Reports India, Blog on issues connected to the Indian Legal System -Ravi Kant (President Shakti Vahini & Advocate Supreme Court Of India), *Available at*: <https://lawreports.wordpress.com/2011/04/29/honour-crimes-and-the-law/>, (last visited on May 20, 2016).

4.1.4. International Human Rights Foundations

The Convention on the Political rights of Women, 1953³² desires to implement the principle of equality of rights for men and women. It also recognized that every has the right to participate in the government of his country directly or indirectly through freely chosen representatives and has the right to equal access to public service in his country, and desiring to equalize the status of men and women in the enjoyment and exercise of political rights. The Convention on the Nationality of Married Women, 1957 was prepared by the commission of status of women, it would assure women of equality with men especially with respect to the right to a nationality, and prevents them becoming stateless upon marriage or its dissolution.³³

The General Assembly of the United Nation adopted the declaration on Elimination of Discrimination Against Women on 7th November, 1967. It provides equal rights in the fields of economic and social life. In order to prevent discrimination against women, on account of marriage or maternity and to ensure their effective work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave with guarantee of returning to former employment and to provide the necessary social service, including child care facilities.³⁴ To fulfill these purposes it was adopted the Convention on Elimination of All Forms of Discrimination against Women, 1979³⁵. It was noted in the Convention that State parties to the International Covenants on Human rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights. There are also resolution, declaration and recommendation adopted by the United Nations and specialized agencies

³² Convention on the Political rights of Women, 31st March 1953, *Available at:* http://www.un.org.ua/images/Convention_on_the_Political_Rights_of_Women_eng1.pdf (last visited on May 20, 2016).

³³ Kapoor S.K., *International Law & Human Rights*, Published by Gyan Books Pvt. Ltd., at page 852-53 (17th Edn. 2009)

³⁴ Myneni S.R., *Women & Law*, Published by Asia Law House, at page 23 (1st Edn. 2002)

³⁵ U.N. Document No. A/Res/34/180 The United Nations, *Available at:* www.un.org/documents/ga/res/34/a34res180.pdf, (last visited on August 30 2016).

promoting equality of rights of men and women. However, despite all these instruments, extensive discrimination continues to exist against women it infringes the principle of equality of respect and rights for human dignity.³⁶

Article 1 of the UN Declaration on Elimination of Violence Against Women, Defines “Violence against women, as a result of any act of gender-based violence, is likely to result in psychological, physical or sexual harm or together with threats of such acts, arbitrary deprivation of liberty or coercion, whether happening in private or public life.”³⁷

The Convention on the Elimination of Discrimination of All Forms Against Women (CEDAW) concludes that member of states ought to take all suitable actions to alter the social and cultural standards of behavior of women and men, elimination of prejudices and all other practices, which are based on the ideas relating to gender to show superiority or the conservative roles for women and men³⁸.

CEDAW General Recommendation clarifies that traditional public and private ideology that regard women as “subordinate to men” and seeks to “validate sex-based violence in the form of protection or control the women”, deprived of their mental and bodily integrity³⁹.

The Platform for Action on human rights of women, from the UN 4th World Conference on Women calls upon states, it is said that to take required action to scuffle and eliminate violence against women, which is a abuse of human rights consequently from harmful customary or traditional practices,

³⁶ Department of Economic and Social Affairs Division for the Advancement of Women, *Hand Book for Legislation on Violence Against Women*, United Nation New York, 2010, Available at: <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>. (last visited on August 30 2016).

³⁷ “Declaration on the Elimination of Violence against Women” Resolution 48/104 of 20 December 1993, UN Issuing Body: Secretariat Centre for Human Rights, Proclaimed by the General Assembly, UN Document Series Symbol: ST/H/, Available at: <http://www.un.org/documents/ga/res/48/a48r104.html>. (last visited on Nov.29,2015).

³⁸ Convention on the Elimination of All Forms of Discrimination against Women, United Nations Entity for Gender Equality and the Empowerment of women, UN Women, Available at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>, (last visited on May 20, 2016).

³⁹ Puneet Kaur Grewal, Honour Killings and Law in India, IOSR Journal Of Humanities And Social Science, ISBN: 2279-0845, ISSN: 2279-0837,. Volume 5, Issue 6 (Nov. - Dec. 2012), PP 28-31 [Www.iosrjournals.org](http://www.iosrjournals.org), (last visited on Mar.23,2016).

cultural extremism and prejudices⁴⁰.

The International Covenant on Civil and Political Rights (ICCPR) has claimed that "every person has the inherent rights of life" in addition to "the right to liberty and security of persons"⁴¹.

4.2. Traditional Panchayat in Various Areas

The civilization history of mankind shows that in Greece and Rome the gens, equivalent to gotrasra, determined the foundation of social order. This base of blood ties played a crucial role in keeping the families together by prescribing marriages rules forming tribal organizations and other socio-political and economic relations⁴².

Some anthropologists have dealt this subject under Totemism. The numerous social groups of the tribes developed communistic organizations for adjudicating disputes. With the passage of time different civilizations grew and evolved social groups and popular assemblies, which may not be the replica of the Khap Panchayats but performed, more or less, similar functions by delivering administrative and judicial services. These were phratries and gentes among Indian tribes of America, agora and phratries among Grecian Gens, curia among Romans and genealogiae (village community) and commune in Germans⁴³.

⁴⁰Culture of Discrimination: A Fact Sheet on "Honor" Killings, Honor Killings - Amnesty International USA, Available at: https://www.amnestyusa.org/sites/default/.../honor_killings_fact_sheet_final_2012.doc, (last visited on May.23,2016).

⁴¹CEDAW, Part 4, Article16 (1979), Available at: http://sim.law.uu.nl/SIM/Library/HR_instruments.nsf/ec7e20097a57a8f2c1256900004b35db/7a2bc4a2abc904b3c125663a0036afc7?OpenDocument, (last visited on Mar. 23, 2016).

⁴²Monogamy and polygyny in Greece, Rome, and world history, Available at: <https://www.princeton.edu/~pswpc/pdfs/scheidel/010903.pdf> (last visited on Mar.23,2016).

⁴³A UGC Major Project On- Dynamics of Justice Delivery Mechanism of Kinship Based Community Organizations: A Study of Khap Panchayats in Modern Indian Democracy, Department of Public Administration, Ch. Devi Lal University, Sirsa (Haryana), Research Project on Khaps by Raj Kumar Siwach, Available at: https://www.jatland.com/home/Research_Project_on_Khaps_by_Raj_Kumar_Siwach, (last visited on June 2 2016).

To be specific about other regions, during later period, Zirga in Pakistan, Loya Zirga in Afghanistan, kinship clubs in Arab Countries, cousin clubs in USA and Dozoku in China acted as primitive community associations. The documentary evidences of African tribal system of community governance provide revealing insights into the working, procedures and judicial powers of these traditional bodies. These ecclesiastical courts have, besides other issues, over zealously addressed the customary rules of mate selection through matrimonial alliances. They resort to regressive penalties for enforcing the decisions in the name of honor. The victims are served severe punishment in the forms of beheading, death by pelting of stones, chopping off the limbs such as the nose, ear and legs, acid attacks and gang rapes⁴⁴.

According to UN, 5000 deaths per year are reported in Dharki, North West Frontier Province, Baluchistan, Multan, Punjab (Pakistan), Jordan, Afghanistan, Egypt, Gaza and West Bank. The root of these traditional panchayat is century old and date back to pre Islamic era called Jahiliyah (time of ignorance before Mohammed). During that time men were encouraged to bury their infant daughters alive to avoid the possibility that they would dishonour the family⁴⁵. The practice of honour killing is nothing to do with Islam or the Holy Koran. The prophet Mohammed called for an end to it. Instead the practice has grown and spread throughout the world. There have been hundred of reports in the Arabic countries of Pakistan, Afghanistan, Iran, India and Bangladesh, West Bank of Israel and Jordan. Although not as common, honour killing has been also reported in many non Arabic countries like Brazil, Ecuador, Uganda and Britain⁴⁶.

An investigative report by Amnesty International states that honour killing are the widest spread in Pakistan where the concept of women as an object and commodity is deeply rooted in the tribal culture. The ancient custom

⁴⁴ *Ibid.*

⁴⁵ "Honor" Killings, Available at: http://sappk.org/wp-content/uploads/publications/reports/Honour_Killing/Honour_Killing.pdf, (last visited on July 3, 2016).

⁴⁶ Rabia Ali, The Dark Side Of 'Honour', Women Victims In Pakistan, Special Bulletin 2001, Available at: <http://hbv-awareness.com/wp-content/uploads/2011/06/REPORT-BY-SHIRKAT-GAH-The-Dark-Side-of-Honour-Women-Victims-in-Pakistan.pdf>, (last visited on July 3, 2016).

of honour killing is well defined in and condoned throughout society. In Pakistan women are considered property of the males in their family and, like livestock or property, they have monetary value. Women are almost always married by arrangement between families. The tribal customs dictate the property is to be kept within the family so women are often married to cousins or uncles, usually on the paternal side⁴⁷.

Upon marriage the women is exchanged for a 'vulver' or bride price which is paid by the groom to the father of the bride. It varies according to the status, health, beauty and age of the women. Sometimes the bride price involves another woman. Men can exchange the daughters, even unborn granddaughters to obtain new wives for them. Women are seen to embody the honour of the men to whom they belong. The culture casts the males as the sole protector of the female so he must have total control over her. While that is specifically relates to sexual relation, many men have interpreted this to include control over a women's earnings, attire and her social relationships with others. If its protection is violated he loses 'ghairat' or honour because he failed to protect her. His 'izzat' or standing in society is diminished⁴⁸.

A woman who engages in 'Zina' or unlawful sexual relations is branded 'Kari or black'. In order to cleanse the honour of the man who owns her she must be killed. A man who kills for reason of honour is '*ghairatmand*' both morally and legally supported by his tribesmen. The killing are often performed openly. A man who is unable to cleanse his family's honour is *beghairat* or without honour and considered socially impotent. After the women are killed there bodies are often thrown in to rivers or buried in hidden graveyards, no one is permitted to grieve for them or honour their memory⁴⁹.

The man who engaged in sexual relations with the woman is branded 'Karo' which also means black. His family is not dishonoured instead they have gained social standing by captivating mother man's wife or daughter,

⁴⁷ *Supranote* at 45 ("Honor" Killings.....)

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

Tribal law dictates that he should also be killed but usually the ‘Karo’ has the opportunity to flee while his family negotiates with the dishonoured family to save his life. A ‘faisla’ or agreement is setup by the ‘sardars’ or tribal council leaders. The compensation not only includes ‘khoon baha’ or blood money but can also involve the trade of another woman to the dishonoured family⁵⁰.

The Amnesty International reports states that this system does provide opportunities for personal profit. There are many cases of fake honour killing where rumours about a daughter or wife are circulated so that they can be killed just to obtain blood money or a new wife. News reports from May 2004 indicate that as many as 449 individuals, have been murdered as Karo – Kari in 2004 the News (Jang Group). 18 May 2004 some 28 individuals are said to have been killed under the pretext of “honour” in Nabab Shah and its suburbs in Sindh province in one month alone⁵¹.

In 2002, the Human Rights Commission of Pakistan stated that 376 cases of “honour killing” were recorded over the year in the province of Sindh. These reports all indicate that the practice is by no means waning. It is important also to remember that reported incidents represent a fraction of those the total number of cases⁵².

Once declared Kari a woman who survives attempts on her life, finds few safeguards under Pakistani law that enable her to seek shelter, legal aid and justice from constant threats, intimidation and incidents of targeted violence. Many women are hunted down as Kari months, even years after they suppose they ‘shamed’ their family. A legal loophole that many perpetrators of "honour" killings escape punishment from is the Qisas and Diyat law. Under this law the ' family of the victim are allowed to pardon the perpetrator of the killing, and the individual is then free from legal proceedings and sentencing⁵³.

In many instances “honour” as an excuse to perpetrate crimes that stem from inter family, land, and personal disputes. Since virtual impunity has

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

existed from these crimes they are an easy cloak to hide behind without having the fear of criminal proceedings being brought.

4.2.1 South Asia

In Pakistan honour killing are known locally as karo kari. Amnesty International's reported that the inability of the authorities to stop these killings was recorded by investigating and punishing criminals in recent cases, as like, three young girls who had been burnt alive while disobeying and refusing marriage. Second case was of Taslim Khatin Solangi (17) of Hassana Shah village in Khairpur district, on 7th march who was widely told after the graphic account of her father Gul Sher Solangi (57), blamed his daughter having pregnant of eight months was brutally harassed and murdered on the orders of her father-in-laws who alleged her of carrying a infant conceived without marriage stating about degrading their honour in the society. As per available data's, honour killing have high level of support in Pakistani society, regardless of prevalent disapproval by the groups of human right. In the year 2002, more than 382 people, about 245 women and 137 men became victims of the Sindh state of Pakistan, over a period of six years, more than 4,000 women have become victims to this practice in Pakistan from 1999-2004. In the year 2005, the whole nations data rises up to more than 10,000 per year calculating the average annual number of honour killings⁵⁴.

As per woman rights advocates, Women as a property perception in this respect, is so deeply rooted in the political, social and economic structure of Pakistan therefore the administration generally overlook usual incidents of murdering women and and mutilated by their family members. Often, killing women in the name of honor have been murdered, recorded as died in accidents or having committed suicide⁵⁵.

⁵⁴ Honor killing, Main article: Honor killing in Pakistan, Available at: https://en.wikipedia.org/wiki/Honor_killing, (last visited on July3, 2016).

⁵⁵ *Ibid*.

Third was in May of 2005 in Islamabad, Pakistan, a conference held, which addressed whether Pakistani Governments, Law and International agencies were having any helpful impact in dipping honour killing in Pakistan. They found that more women are having the courage to come forward and more cases of honour killings are being reported, but it was found seven deficiencies of proper execution of laws and affirmations, which did not give light punishments to men who had committed such murders. In the conference, there was a defect in Pakistan's living laws, which put women in loss, unhappy and low status, it also, to prove her purity on the clemency of men⁵⁶.

In the United Kingdom, honour killing is frequent in the Pakistani Diasporas and within the Muslim community, with approximately 10-12 cases occurring each year. However it is noted by sociologists that honour killing do not necessarily having Cultures in different areas, or not having with religion, where religions occur. Savitri Goonesekere qualifies this claim, however, by stating that Islamic leaders in Pakistan employ religious explanations for allowing honour killings⁵⁷.

4.2.2. Middle East

In April 2008 it came to light that some months prior, a Saudi woman was killed by her father for chatting on Face book to a man. The murder only came to light when a Saudi cleric referred to the case in an attempt to demonstrate the strife that the website causes. A report in June 2008 by the Turkish Prime Ministry's Human Rights Directorate speaks that there is one honour killing found in Istanbul alone every week, and over 1,000 reports were reported in the last five years. It has been said that due to the rising Kurdish migration in metropolitan cities, many of these places were in place due to the rising of Kurdish migration in metropolitan cities, in many places these from the East. A

⁵⁶ Honour Killings Under The Rule of Law In Pakistan, *Available at:* <http://hmazeem.blogspot.in/2015/02/honour-killings-under-rule-of-law-in.html>, (last visited on July3, 2016).

⁵⁷ Honor killing or honour killing, South Asia, Pakistan, *Available at:* <http://theconservativethinkers.blogspot.in/2010/09/honor-killing-or-honour-kil.html>, (last visited on July3, 2016).

Turkish news agency in year 2009, reported that an honour killing had happened to a two day old newborn boy was born without marriage, was murdered for so called respect. The new born baby's grandmother, together with six other persons, along with a doctor, who had allegedly received the bribe for not to report the birth of that baby, were sent to jail. The grandmother has been accused of suffocating newborn to die. The baby's mother, 25 year old, was also sent to jail, but she said that her kins had decided to kill the baby⁵⁸.

There are no precise official numbers about honour killings in Lebanon as many honour killings there are arranged to look like accidents. It is believed that 40-50 women are killed each year in Lebanon in honour related killings. In year 2007. The Amnesty International submitted a report where it was states that in 2001 Lebanon's Lebanese media found 2-3 deaths per month in Lebanon regarding honour killing, however the lawyer has supposed the number must be more. Most deaths found in Gaza Strip and West Bank, it is believed that 3-4 women per month are killed in honour killings. Most of the honour killings are carried out by villagers and is extremely rare in the Palestinian cities and larger towns. 'The Palestinian authority rules with Jordanian law, which awards men bargain punishment for murdering a woman or her relatives if she has done something which carried shame on their family. Due to Palestinian demonstrations, Mahmood Abbas, President of the Palestinian governance, assured to change the inequitable law through the year 2010⁵⁹. He has not fulfilled his promise, however, and the law still valid. In year 2006.....in the Iraquian city of Basra, 133 women were murdered, where 79 murdered for infringement of "Islamic teachings" and 47 murdered for infringement of honour, according to IRIN, the United Nations Office for Coordination of Humanitarian Affairs. Amnesty International asserts honour killings are also carried out by the soldiers not the government, it applies upon those too who

⁵⁸ Honor killing or honour killing, Middle east, *Available at:* <http://theconservativethinkers.blogspot.in/2010/09/honor-killing-or-honour-kil.html>, (last visited on July3, 2016).

⁵⁹ Honor killing or honour killing, The Honor Killing In Syria, *Available at:* <http://theconservative thinkers.blogspot.in/2010/09/honor-killing-or-honour-kil.html>, (last visited on July4, 2016).

did not follow a strict dress code and although she is a politically active women, as well as women who are demonstrated as human rights protectors⁶⁰.

Jordan, considered to be one of the most liberal countries in the Middle East, are still examples of honor killings. Jordan has very less sex discrimination, and women are allowed to vote, but if men murdered their wives or any of the female member who has dishonoured the family, then men are punished less. Families often have sons who are considered minors, under the age of 18, to commit the honour killing. A loophole in the Juvenile law permitted guilty children to be given time to serve in a juvenile prevention center and and they be free with a clear criminal record at the age of 18. Rana Hussaini, a prominent journalist on the issue of honor killings, says that under the current law, people are found liable to the act of murder in the name of honour, frequently gets a light sentences of six months in prison⁶¹.

There has been much outcry in year 1999, in Jordan for the amendments of Article 340 and Article 98. King Abdullah formed a council to evaluate the gender discriminations in the country. The Council came back with a proposal to cancel Art. 340. The Council accepted the proposal, this measure was introduced twice (November 1999 and January 2000) in the Parliament and in both occasion, although it was accepted by the Upper House, it not succeed to pass by the lower house. In year 2001, after the Parliament was dissolved, numerous of provisional law were made which were formed to parliamentary approval. One amendment was that "husband was no longer being acquitted for murdering disloyal wives, but in its place the circumstances would be considered as evidence for Lessening punishment". Also to continue with the efforts to create gender equality. Being guilty of the offence, women were given a reduction in punishment. But Parliament returned to power in 2003 and after two successful readings in Upper House, new amendments were discarded

⁶⁰ Honor killing, Iraq, *Available at:* https://en.wikipedia.org/wiki/Honor_killing, (last visited on July4, 2016).

⁶¹ Honor killing, Jordan, *Available at:* https://en.wikipedia.org/wiki/Honor_killing, last visited on July5, 2016).

by lower house⁶².

4.2.3. Europe

In year 2005, The report (by Der Spiegel) stated that in the last four months, six Muslim ladies living in Berlin have been cruelly killed by her relatives. This article was written to cover the instance of Hatun Surucu, who had killed by her sibling, for refusing to stay with the spouse she was compelled to wed, and want to spend life in German style. Exact insights on what number of ladies bite the dust each year in such honour killings are difficult to find, the same number of violations report never stated, Maria Bohemek further mentioned in the reported about the group of Tuebingen-based ladies group namning “Terre Des Femmes”, that group tries to save Muslim girls and women from cruel families, In Germany since year 1996, 40 cases has listed of honor killings by Turkish woman organization “Papatya”. In year 2006, German court punished Hatun Surucu's sibling imprisoned for a period of only three months, was accused kill her. In March of the year 2009, Gulsum S., a Turkish migrant was punished for a relationship without the permission of her family's arrangement for a masterminded marriage⁶³.

Consistently in the UK, twelve ladies are victims of honour killing, happening solely to date with in Asian and Middle Eastern families and regularly cases are uncertain because of the refusal of family relatives and groups to insist. BBC reported for the Asian Network in the UK in the survey, in year 2006, found that 1 of every of the 500 youth of Asian countries analysis believed that they could stop such killings those who insulted their society or the family. However it is the matter of awareness. In December 2005, in the UK, Nazir Afzal, director of West London's London Crown Prosecution Service, found that in the United Kingdom in the year between 2004 and 2005

⁶² *Ibid.*

⁶³ Honor killing, Germany, Available at: https://en.wikipedia.org/wiki/Honor_killing, (last visited on July8, 2016).

it must be the incident of honour killings which would be not less than twelve. While it is hard to collect the exact figures regarding the offences as well as offender. There "Diana Nammi" is a social foundation of the Iranian and Kurdish Women's Rights Organization of UK is accounted for to have stated: "around 66% are Muslim, yet they can likewise be Hindu, Sikh and even eastern European"⁶⁴.

4.2.4. North America

Canada, 2007, A study by Dr Ameen Muhammad and Dr. Sujay Patel of the Memorial University of Canada, highlights how Islamic honour killing have been conveyed to Canada. He stated: "When individuals come and settle in Canada they can bring their conventions and strongly tail them. In a few societies, individuals feel a few limits are never to be crossed, and in the event that somebody would abuse those practices or conflict with it, at that point kill is advocated to them." He additionally noticed that there are many cases yearly in his local Pakistan. He included that "In various societies, they can escape without being rebuffed the courts really authorize them under religious settings" However, polygamy is also a crime in Canada⁶⁵, yet individual provinces are free, apparently to ignore the federal criminal code. Saskatchewan judicial authorities assist and sanction with the legal creation of multiple spouses (polygamy) by interpreting their family property laws to include multiple spouses simultaneously⁶⁶.

An article in the Spring 2009 edition of Middle East Quarterly contended that the United States is a long ways behind Europe in recognizing that honour killings are an exceptional type of abusive behavior at home, requiring unique preparing and uncommon projects to ensure the young ladies and young ladies

⁶⁴ Honor killing, United Kingdom, *Available at*: https://en.wikipedia.org/wiki/Honor_killing, (last visited on July8, 2016).

⁶⁵ Honor killing, Canada, *Available at*: https://en.wikipedia.org/wiki/Honor_killing, (last visited on July8, 2016).

⁶⁶ Saskatchewan, Family Property Act, Sec..51. *Available at*: <http://www.qp.gov.sk.ca/documents/english/statutes/statutes/F6-3.PDF>, (last visited on July8, 2016).

destined to be the casualty of such. The article recommends that the dread of being named "socially unfeeling" forestalls US Government authorities and the media both recognizing and precisely detailing these occurrences as "honour killing" when they happen.⁶⁷

4.3. Indian khap panchayats on honour killing

Customarily, there are a variety of rules and practices and degrees of prohibited relationships⁶⁸ observed in respect to marriage in different regions of

⁶⁷ *Supranote* at 17 (Khan Rao)

⁶⁸ The Hindu Marriage Act, 1955, Section 3 Definitions. Under this Act, unless the context otherwise requires,—

(a) the expressions “custom” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy; and Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(b) district court means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

(c) full blood and half blood two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;

(d) uterine blood, two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation. In clauses (c) and (d), ancestor includes the father and ancestress the mother;

(e) prescribed means prescribed by rules made under this Act;

(f) (i) sapinda relationship with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;

(ii) two persons are said to be sapindas of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them;

(g) degrees of prohibited relationship two persons are said to be within the degrees of prohibited relationship”—

(i) if one is a lineal ascendant of the other; or

(ii) if one was the wife or husband of a lineal ascendant or descendant of the other; or

(iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or

(iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Explanation, For the purposes of clauses (f) and (g), relationship includes—

India. This is specially marked in the north/south divide. Customary marriage rules in most parts of north India uphold caste endogamy and adopt the rule of gotras⁶⁹.

Most castes groups, upper or lower, follow three or four gotras. A person is not permitted to marry into his or her own gotras, nor with the mother's, nor with the father's mother, nor usually with the mother's mother. The last bar is, however, not universal and the restriction is apparently declining. In effect, the gotras rules prohibit marriage with the first cousins of either the parallel or the cross variety. In certain instances, the principle of gotras is enlarged by clustering several other gotras represented in the same village into an exogamous bloc⁷⁰.

4.3.1. Marriage between these gotras is prohibited or restricted.

In extension of the principle of 'kinship exogamy', there is a rule of territorial exogamy. Most caste groups, such as the Jats, expressly forbid marriage within the same village, and every village which shares a border with the natal village, or in which other clans of one's village are well represented. The combined effects of these rules of exogamy is that, apart from the three or four gotras mentioned above, a large number of gotras have to be kept outside the purview of marriage. The inhabitants of a particular village cannot inter-marry in a large number of villages, especially adjacent villages or those that fall in the khap area. In all these villages, the tradition and customs of the dominant gotras are followed by all gotras. If the dominant gotras observes the tradition of avoiding certain gotras for purposes of marriage, all other gotras in

(i) relationship by half or uterine blood as well as by full blood;
 (ii) illegitimate blood relationship as well as legitimate;
 (iii) relationship by adoption as well as by blood;
 and all terms of relationship in those clauses shall be construed accordingly.

⁶⁹ Prem Chowdhry, Redeeming 'Honour' Through Violence: Unraveling The Concept And Its Application, Section I- Intra-Caste Marriages, Available at: <http://cequinindia.org/images/Resources/Item/Pdf/Honour%20killings%20by%20Prem%20Choudhury.pdf>, (last visited on July 9, 2016).

⁷⁰ *Ibid.*

these villages will also follow this avoidance pattern. The inclusion of village exogamy observed by virtually all caste groups, high or low, and the existence of a large exogamous gotras bloc, introduces considerable complexity to the marriage prohibitions⁷¹.

Culturally translated, the principle of village exogamy means that all men and women of the same clan, the same localised clan and the same village are bound by the morality of brother-sister and therefore that both sex and marriage are prohibited between members of any of these units. This extends to the khap area involving more than one village and more than one gotras. Significantly, terms like brother and sister in villages are even used for persons who are not related to each other. Transcending ties of biological kinship, they embrace all males or females of the village of one's own generation, not withstanding caste affiliations. One of the important connotations of the term brother is that a sister's care and protection are entrusted to him. He is to safeguard her honour and not defile it. These prohibitions create the brotherhood which establishes equality between all and denies all hierarchy. This is the idealised community both that of the village and the caste which has full unity. Clearly, the most hallowed cultural concepts like aika, izzat, biradari and bhaichara are contingent upon maintaining the traditional marriage prohibitions. It is a breach in these prohibitions that provokes the biradari to use the traditional tools available to them in the form of caste or village or khap panchayats to stem such attempts⁷².

Customarily, the biradari uses the traditional panchayat or rather, one of a series of traditional panchayats to settle a variety of disputes regarding caste and inter-caste matters, transgressions, and questions of property rights, inheritance and disputes which threaten the peace of the village or the immediate region. Questions of marriage and sexual affairs form a significant proportion of such disputes, and it is in this sphere that the panchayat frequently intervenes to impose 'justice' according to its own definition.

⁷¹ *Ibid.*

⁷² *Ibid.*

Although very little is known about the working of traditional panchayats in contemporary times, but they remain an active force in rural north India. In cases of contentious marriage, it is the caste panchayat of the biradari concerned that is called upon to settle matters. Recent cases show the frequent use of the caste panchayat, which has no legitimacy in law, attempting to change relationships and impose one of their own liking, subsuming the individual/family will to that of the village/collective and prioritising the village and biradari's izzat over that of individuals. I shall very briefly mention some of the year 2010, intra-caste 'honour killings' in rural India⁷³:

January 2010: Kavita of village Kheri in Meham subdivision of Rohtak district was forced to leave her husband after her marriage with Satish was termed illegal by Benewal khap panchayat. The panchayat declared them brother and sister because they belonged to the same gotras. The couple had a son. Kavita lodged a complaint against the panchayat following which she was allowed to live with her husband but had to leave the village⁷⁴.

In March 2010 there were two prominent cases: In one, Phogat khap panchayat directed Randhir Singh of Samastipur village in Charkhi Dadri of Bhiwani district to sell his land and property, and leave the village for marrying his son Sribhaghwan to Anita of Makrana village of the same district. He was declared to have brought 'dishonour' to the village and community for breaching the time honoured prohibition of bhaichara by bringing about a marriage alliance between the two gotras. The second case was similarly that of the marriage of Ajay of Bedwa village near Meham with Poonam of Ludana village. The Meham khap panchayat ruled that they belonged to the same gotras and marriage between them should not have taken place⁷⁵.

In April 2010, Usha Rani Kashyap of Bhaiswan village of Gohana, Sonapat district, was hanged to death by her brother for her relationship with her neighbour, Rakesh Kashyap. The boy's body was found

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

hanging from a tree in the same village the next day. They belonged to the same gotras⁷⁶.

The most noteworthy case that shot into prominence in May 2010 was that of Manoj and Babli, mentioned above, who had been killed on the orders of the khap panchayat for marrying despite belonging to the same gotras. I shall now recount an in-depth study of an intra-caste case that occurred in village Jondhi of district Jhajjar⁷⁷.

The account that follows, based on my fieldwork, will throw light on the working of the caste panchayat and accentuate some of its more important features, which are indeed common to all the above stated cases, with slight variations in details⁷⁸.

Some of the **high profile** cases are those of:

- Bibi Jagir Kaur, as the first woman President of the SGPC (Shiromani Gurdawara Prabhandak Committee), Punjab, was a high profile minister in the then ministry of Prakash Singh Badal. Early in 2000, her pregnant daughter Harpreet, who married Kamaljeet, a mona (shaven) Sikh from a different caste, secretly and against her mother's wishes, was killed after a forced abortion, allegedly at the instance of Jagir Kaur. Bibi Jagir Kaur is held as an example of one who 'justifiably subscribed to violence against daughters if they transgressed boundaries'⁷⁹.
- Nitish Katara was abducted and killed by Vikas Yadav, the son of D.P. Yadav, a Member of Parliament from western Uttar Pradesh in 2002, for being friendly with his sister Bharati. The couple had planned to get married. Katara, belonging to a different caste, was totally unacceptable to the Yadavs. The killing was to preserve their 'honour'⁸⁰.
- Rizwanur Rahman, a 30-year-old computer graphic trainer, secretly married Priyanka Todi, daughter of an affluent businessman, in August 2007 in

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

Kolkata. The Todi family, under false promise, took their daughter home for a few days after the marriage. She never came back. Rahman, who tried to get her back, was severely harassed by the police and others. Within a month he was found dead near the railway track in Kolkata. ‘Honour’ had taken its toll⁸¹.

- Nirupama Pathak’s case, May 2010, is most recent and is still being investigated. From all accounts it looks like an ‘honour killing’, self or induced. Belonging to two different castes, Nirupama’s Brahmin family would not accept her wanting to marry Priyabhanshu, a fellow scribe, who belonged to a lower caste than her own. Also pregnant, she was found dead in her parental house in Jharkhand⁸².

- Some other instances of honour killings are as following:-

In March 1994, in village Nayagaon in Haryana (less than 25 kilometres from the national capital), Asha was hacked to death with an axe and so was her lover Manoj, who was from Balaur, an adjacent village, by her six out of seven uncles. Asha belonged to the numerically and economically strong Saini caste in the village. The Sainis are locally considered a higher caste in relation to the Ahirs—a caste group to which Manoj belonged. The boy was declared to be an ‘upstart’ by the Sainis. According to local accounts, Asha openly asserted her right to choose her life partner. She reportedly told her family members not to interfere. Manoj and Asha had become intimately involved as high school students and carried on for two years before Asha’s family discovered them. Asha was beaten and warned repeatedly but she continued to meet Manoj stealthily. Her defiance had brutal consequences. The uncles who perpetrated this crime surrendered to the police through a lawyer. It is unclear why they did it. An important reason that emerged out of the discussions was a sense of pride and achievement that they experienced for having punished the ‘guilty’. ‘Why should they hide it? They have done nothing wrong’ was the dominant sentiment. Their lawyer disclosed that the case was fought on the plea that it was not a premeditated murder and the deed was done in a fit of anger-cum-passion on

⁸¹ *Ibid.*

⁸² *Ibid.*

discovering the two in a ‘compromising position’. Although no witnesses came to testify, the culprits were given 20 years of imprisonment. This harsh punishment was totally unprecedented and was condemned outright by the villagers of Nayagaon, across caste and communities. The case was under appeal in the High Court when I was doing my fieldwork in 2000-01. The defending lawyer, when interviewed, was very confident of getting a mitigated sentence on appeal because of the grounds on which the case had been contested. This seems entirely plausible. It has been argued by legal experts on the basis of certain case studies that the Indian Supreme Court often mitigates the sentences in homicide cases on considerations of ‘justifiable grievance’ provided by ‘grave provocation’ (Dhagamwar 1992). Thus ‘loss of honour’ constitutes in their eyes a sense of grievance, which implicitly provides a ‘justified motive’. In other words, a man may kill with little or no reason if a woman’s character can be said to be bad or loose. Such reasoning is contrary to the stand of the Indian Constitution that recognises the right to life and the right to equality of all without exception. It is certainly not limited to virtuous men and women. In practice this seems to be the case⁸³.

According to the residents of Nayagaon, Asha’s uncle did what was necessary and what any one of them would have also done. The uncles, according to them, by eliminating the lovers restored not only their own izzat or honour but also that of the community and the village as a whole. This was declared to be the only timehonoured and traditional way of dealing with such cases. Several cases were cited in which members of these two caste groups took similar steps. The rural opinion is heavily in favour of punishing those who ‘violate social norms’ of rural society so that ‘others can learn a lesson’. The peer group (which includes netas and other social bigwigs) condones this attitude and action. They openly defend the right of the peasantry to punish anyone who breaks the caste rules and codes of honour. Regarding infliction of extreme violence in certain cases, caste members see the killings as

⁸³ *Ibid.*

‘executions’ and ‘just punishment’ awarded for breaking caste norms and boundaries of honour. In all such cases, the villagers in general and leaders in particular prioritise the village or caste izzat. Two of Asha’s uncles who were out on parole at the time when this fieldwork was done, were not treated as criminals but with due respect (izzat). A repeat of this can be noticed in the recent June 2010 case of a murder of an inter-caste married couple, where the killers have been hailed as ‘heroes’⁸⁴.

All that was emphasised, in both the villages, was that the girl was badmash (of loose and bad character). It was rumoured that she had two abortions. The girl was said to be enjoying herself or ‘maza loot rahi thi’, suggesting that the question of marriage was never raised or entertained by either of them. In Balaur village, Manoj was absolved of all the responsibility and only Asha was held responsible. The people’s verdict reveals patriarchal attitudes towards women and acceptance of the notion of honour as residing in the body and behaviour of women. Such an ideology provided justification for eliminating her if she were to tarnish this ‘honour’. There was also a feeling among the Ahirs that Manoj should not have been killed when the fault lay entirely with the girl. Asha was spoken of as someone with insatiable lust who was constantly throwing herself at a reluctant Manoj. Manoj’s father regretted that the Sainis did not take him into confidence in this matter. He was confident that he would have sorted it out with his son, something which, he taunted, ‘the Sainis were not able to do with their girl’. According to most people in the two villages, the killing of the girl was certainly justified but they question the killing of the boy, although for different reasons⁸⁵.

In Nayagaon, it is openly maintained that had it not been for the killing of the Ahir boy, the uncles would not be in prison. According to them, the question of their confessing and surrendering to the police would not have arisen as they were fully entitled to deal with their girl, as they liked and deemed fit. After all, it was a matter of their ‘honour’. No one would have

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

come to testify against them. In such instances, violence and death are considered preferable to condoning/accepting such a marriage. The acceptance of inter-caste marriage as a possible solution to the growing incidents of violence was lost in the ideology of lust, morality and honour. Indeed, it is a well known and openly stated fact that a large number of girls who are forcibly 'retrieved' in cases of elopement or marriage are either murdered or encouraged by family members and the community to commit suicide. A girl's death is seen as the only way in which the 'honour' of the family can be salvaged⁸⁶. To this may be added the financial burden of marrying off a girl who was said to have eloped. In the dowry economy of north India, such a girl is even more of a burden than is normally the case. It may be underlined that cases of breaches show a gendered response.

A number of instances show that women are more likely than men to become victims of violence. However, the Dalit men are an exception. They are invariably killed, making a mockery of the state-sponsored reward instituted and periodically increased for encouraging Dalit-non-Dalit marriages in Haryana. This gendered response of the upper castes for 'honour' in a bitter struggle with lower caste groups for assertion of their power and domination leading to violence has its parallel in other parts of India as well in May 2010, a high caste Reddy girl and her Dalit husband, married for just three months, were 'stoned to death for honour' in Krishanjiwadi village in Nizamabad, Andhra Pradesh⁸⁷.

In another case where after the marriage, the panchayat ordered to scrape the eyes of the youth who have not married in the dominated Ghori Bachara village of Thakkar, not long way from Delhi, the order was maintained before shooting them because it felt gone that it has brought shame on the

⁸⁶ *Ibid.*

⁸⁷ The Fear that Stalks: Gender-based Violence in Public Spaces, Available at: <https://books.google.co.in/books?isbn=9383074116> (last visited on Mar. 23, 2016).

whole village. The family was not surprisingly part of the Panchayat's decision⁸⁸.

A another stunning happening occurred, a man on finding his wedded sister living with a former lover, entered into the home where she was alone and pulled her in the street in the daytime and there it was terror on the watching people, then he brutally removed her head cut down by knife and screamed she had misdeed and had to be penalize like that. Then after he moved to the police station and put her head of his sister on the table, with the knife by which it was executed.⁸⁹

December 23, 2012, An incident occurred in Uttar Pradesh (Khoraori town of Kaushambi district), where a father murdered her daughter age of 17 year, for engaging in extramarital relations, with a 20-year-old from another religion from a similar town. However, in North India region such happenings for the existing reasons are not to hear⁹⁰,

Another happenings occurred in Sangameshwar town of Dharwad district (Karnataka). A young lady aged 19 years was purportedly burnt after murdered by her parents⁹¹.

In another case Jasbir, a 22 years young boy. the main earning person from his family. His hands and legs were cruelly slashed sharp-edged weapons as swords and others, then after killed by angry gathering of four furious Rajpoots without trying to hide by neighbours of the village. His mistake was related to the Jat group. Jasbir had set out to wed in next two months with his neighbour young lady Geeta, belongs to Rajpoot community. Both lover intended to marry which was not accepted by the society resulted into murdered. Jasbir found brutally murdered in the agricultural field his dead body

⁸⁸ Deccan Herald; February 12, 2012, 'Panchayat orders gouging lovers' eyes, Honour Killings / Crimes in India, Available at: <http://www.deccanherald.com/content/59009/panchayat-orders-gouging-lovers-eyes.html>. (last visited on Mar. 23, 2016).

⁸⁹ Aljazeera, "Honour Killings" Bring Dishonour to India, Report by Chaitra Arjunpuri, dated, December 27, 2012 Available at: <http://www.aljazeera.com/indepth/features/2012/12/2012121614107670788.html>. (last visited on July 13, 2016)

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

recovered and captured. Their fault was only that both intended to marry and were neighbours of different caste⁹².

In another occurrence that was conveyed to equity by official courtroom, five individuals from a family were condemned to death for the torment and cruel murder i.e. "honour killing" of young boy and girl belong to Delhi. The guardians, uncle, aunty and sibling of the young girl were murdered alongside her lover boy. Ramesh Kumar (J) additional sessions judge decided all the accused were altogether sentenced to death. A driver of cab, intended to wed the vegetable seller's daughter, yet the daughter's relatives were disagree to the organizing together on the grounds that the boy had a place with a lower standing. In India it has observed an increase in honour killings, which mostly include youngsters who wedded inter-caste, inter-religion or against the wishes of their family members and eventually they are murdered to guard which are seen against family's honour. Is murdered to protect. Here in the case Post-mortem examination reports was against the accused persons. Media news asserted that the post-mortem examination had uncovered that there was a thermo electric shock with twice kicked the bucket because of the thermoelectric stun." According to the official prosecutor, "all five accused were sentenced to death because it was demonstrated certain that they tormented and murdered the young couple only for they were influenced with each other and needed to wed was cruel and ruthless⁹³.

There have been reports of some horrible cases in various media from different areas of the nation, including Dharmendra Barak and Nidhi Barak, who paid a high cost to provoking their families and beginning to look all starry eyed at them. In the public view, victim's father and his relatives victimize young girl and boy when they attempted to run off from the village in the northern state of Haryana, then they were murdered after tormented and

⁹² The Hindu, Online edition, India's National Newspaper, Tuesday, Jan 13, 2004, Available at: <http://www.thehindu.com/2004/01/13/stories/2004011305091200.htm> , (last visited on July 7, 2016).

⁹³ AFP News, "Five condemned to death for India 'honour' killing," Report dated October 5. 2012, Available at: <http://tribune.com.pk/story/447432/five-condemned-to-death-for-india-honour-killing/>. (last visited on July 13, 2016).

distorted. A mate who was with them, the couple had trusted, released their plans to the young girl's family, who had assured them for their safety, just too professedly execute them in the remorseless generally conduct.⁹⁴

In yet another horrifying case of honour killing, a youth was burnt alive allegedly by two brothers of his lover in Faizabad district of Uttar Pradesh. Mangal Soni (20) succumbed to his injuries in district hospital last night. The incident took place on February 27 when Mangal went to meet the girl at her house. As he entered the house, the brothers of the girl allegedly caught him and thrashed him badly. They poured kerosene on him and set him afire. Police today took into custody the brothers Deepak and Mahesh. After the incident Mangal's family members rushed him to the district hospital and from there he was referred to the medical university in Lucknow. On Friday, he was again brought back from Lucknow to Faizabad, where he breathed his last. Daya Shankar Rai, Inspector at Kotwali city police station of Faizabad, said the youth had suffered 50 per cent burns. "A case has been lodged in the Kotwali police station. \Ve are waiting for the post mortem report," he said, adding the girl's brothers have been booked.⁹⁵

The love-struck techie Pachala Deepthi belonged to the politically-dominant kamma community while her husband A Kiran Kumar was a kapu. GUNTUR: Almost 24 hours after the spine-chilling murder of 25-year- old Pachala Deepthi, the accused parents are said to have surrendered before the Pattabhipuram police here on Monday and even admitted to having choked their elder daughter to death in a fit of anger. According to sources, the couple, Haribabu and Samrajyam, claimed that the killing was not premeditated. The police, however, refused to confirm the duo's surrender officially. "The father has confessed that they only wanted to counsel Deepthi and prevail upon her to annul the marriage. That is why they took her home. The murder was an

⁹⁴ Aljazeera, "Honour Killings- India's Crying Shame," Report by Nupur Basu, dated Nov 30, 2013, Available at: <http://www.aljazeera.com/indepth/opinion/2013/11/honour-killings-india-crying-shame-20131127105910392176.html>, (last visited on July 15, 2016).

⁹⁵ The Times of India, Youth burnt alive in honour killing case, 9 March. 2014, Available at: <http://timesofindia.indiatimes.com/city/allahabad/Youth-burnt-alive-in-honour-killing-case/article-show/31743770.cms> (last visited on 14 July. 2016).

accident after an argument broke out in the family because the girl was adamant about staying wedded,” said a source in the know of things. That it was a case of honour killing is, however, now amply clear. Turns out that the love-struck techie, who worked with HCL Technologies in Hyderabad, belonged to the politically-dominant kamma community while her husband of only two days, A Kiran Kumar was a kapu. In terms of assets though, Kiran Kumar’s family is way more endowed⁹⁶.

But while this ancient battle for supremacy between the two communities, which was at one time unabashedly on display across Andhra Pradesh, has considerably ebbed over the years, it has failed to relbm those like the deceased’s parents. Predictably, as sources pointed out, the two were worried about Deepthi’salliance with Kiran casting its shadow over the Wedding prospects of her younger sister Sruthi, an employee with a hank in Nellore. “The parents are also believed to have threatened to commit suicide if she did not relent to save the ‘honour’ of the family,” a source said, adding, “This tumedinto a heated argument following which the parents strangulated her. When they realized she was dead, they wrapped a dupatta around her neck and put her corpse on the bed before fleeing the house.” This “accident” theory, however, has failed to. amuse the victim’s husband who insisted that the murder was pre-planned. According to Kiran, the family hurriedly arrived in Hyderabad on Saturday with the sole intention of killing her once back in Guntur⁹⁷.

As has been reported, the couple, after a two-year-long wait for consent from Deepthi’s parents, finally tied the knot at Arya Samaj in Hyderabad over the weekend. The ceremony was attended by friends, colleagues and MNC employee Kiran’s parents. Now, with the shocking death of their just-wedded daughter-in-law, they have been enveloped in a pall of gloom. “We treated Deepthi like our own daughter. My wife was trying her best to ensure that she

⁹⁶ The Times of India, Andhra techie murder: Caste rears its ugly head, Times of India City, TNN | Mar 25, 2014, Available at: <http://timesofindia.indiatimes.com/city/hyderabad/Andhra-techie-murder-Caste-rears-its-ugly-head/articleshow/32629823.cms>, (last visited on July 16, 2016).

⁹⁷ *Ibid.*

did not miss her parents after marriage. It is shocking to know that the innocent girl was murdered,” said Nagasatyanarayana, Kiran’s father. They were informed about the affair six months ago. Members of the Kamrna community are equally startled. Especially because they thought that the long-time rivals had, by now, consensually buried the hatchet. ‘We are active members of the community but have never raised objection about our kin willing to marry outside our caste. The parents have disgraced us by not understanding and accepting the wish of dir daughter,” said local Kamma leader Guduru Venkateswara Rao. That this disturbing incident has come just before an important election is also soiriething community leaders cannot overlook. Analysts observe that the murder could well create ripples within the political class now. “In recent times, there has been a huge influx of kapu leaders into the kamma-dominated Telugu Desam Party (TDP), which is banking on kapu votes to come to the power in the Seemandhra region. A clash between the two communities at this time could well undermine the electoral fortunes of many TDP leaders,” an analyst explained. Meanwhile, Deepthi’s body was handed over to her husband after post-mortem. Her last rites were performed in Guntur in the presence of members of both families.⁹⁸

MADURAI: A woman who allegedly employed a mercenary gang to murder her pregnant daughter for honour was arrested along with her son and brothers in Ramanathapuram while the body of the victim was exhumed for further investigation, on Sunday. Vaideki (25) of Uchipulli in Ramanathapurain district was in love with her neighbour Suresh (25) from their school days. Her father Rajagopal was employed abroad and she was living with hermother Venkateswari and brother Vimalraj. The boy’s family had migrated to Madurai after his school education hut the couple continued their love affair⁹⁹. After the completion of their higher education, they got married despite opposition from

⁹⁸ *Ibid.*

⁹⁹ The Times of India, Honour killing: Pregnant woman killed by mother, relatives, Times of India City, TNN | Mar 31, 2014, Available at: <http://timesofindia.indiatimes.com/city/madurai/Honour-killing-Pregnantwoman-killed-by-mother-relatives/articleshow/32986194.cms>, (last visited on July 16, 2016).

both families as they hailed from different communities and registered it in August last year. They also surrendered before the all women police station in Madurai. The girl's family was summoned and the mother gave it in writing that she did not have anything to do with her daughter and left. The couple then left for Kerala where Suresh was working. A few weeks ago, Vaideki had called her mother and informed her that she was six months pregnant. Her mother had told her that she should come home for her first delivery following which Suresh had taken her to the Veerapandi Koumariamman temple and handed her over to her parents on March 16. But, when he tried to contact his wife the next day there was no response. He then filed a habeas corpus plea before the Madurai bench of the Madras high court. Ramanathapuram DSP Annamalai interrogated her uncle Janakiraman, who confessed to have killed vaideki with the help of a mercenary named Dharmar from Valladara. He also confessed that the woman's mother, brother and uncles- Packiaraj, Alagarsarny and himself had conspired to kill her as she refused to leave her husband, On March 17, when the victim was alone at home a gang of three led by Dharmar came into the house and stabbed the pregnant woman to death. They then wrapped the body in a gunny bag and disposed it near the Vaigairiver. Police arrested the mother, brother and three uncles of the girl and also exhumed the body. The incident has caused a flutter in Rarnanath apuram.¹⁰⁰

MADURAI: After the father and two relatives of a girl, who allegedly murdered her husband, surrendered on Friday in Tuticorin district, a man-missing case was altered to a murder case. The case refers to the killing of Sriram, 24, by his wife's relatives, police said. The girl, 19-year-old Sonia, is the daughter of Isakkimuthu, a resident of Alwarkatkulam in Tuticorin. Sonia and Sriram, son of one Ganeshan, eloped last year after a love affair of four years. They were distant relatives and both families had opposed their affair

¹⁰⁰ *Ibid.*

and warned them against it. Sriram is a resident of Era! in Thoothukudi district¹⁰¹.

The couple married at the registrar's office in Royapuram in Chennai on September 3, last year. Thereafter, they stayed with Sriram's sister Selvi in Madurai. On hearing this, Isakkimuthu filed a habeas corpus plea before the court and the couple were produced before the court on September 29. At the court, Soiiu expressed willingness to go with her parents. But, the couple continued to be in touch with each other through phone. Isakkimuthu and a few relatives asked Sriram to come to Vallanadu near their native place, promising to solemnise their wedding in the presence of their relatives. Sriram went to Vallanadu on October 8 and reportedly informed his sister about his arrival there. As Selvi lost contact with him while talking to him, she feared something amiss and filed a complaint with Srivaikuntam police the next day, expressing doubts about his safety. A man missing case was also registered, police said. But, the case took a new turn when Isakkimuthu and one Subramanian, a resident of Palayamkottai, surrendered before the magistrate in Sengottai on Friday. They confessed to murdering Sriram. In the evening, another man called Ramasamy surrendered before the village administrative officer in Sawyerpuram in Tuticorin. As they confessed that Isakkimuthu's son Srikanth had attacked Sriram with iron rods, police are on the lookout for him and investigations are on. They have been remanded to custody.¹⁰²

The bodies of a couple said to be in love against the will of their parents was recovered from the outskirts of the state capital on Thursday, police said. The 16-year-old girl was shot dead and Rajjan, 22, was found hanging from a tree in lalkheda village in lover-couple-found-dead-in Uttar-Pradesh Banthara area. A country-made pistol was recovered from the spot. While police suspect that Rajjan first killed the girl and then hanged himself, the family of the youth allege this is a case of honour killing, executed by the girl's family. Police

¹⁰¹ The Times of India, Three men confess to honour killing, The Times of Indian City, TNN | Feb 9, 2014, Available at: <http://timesofindia.indiatimes.com/city/madurai/Three-men-confess-to-honour-killing/articleshow/30069492.cms>, (last visited on July 6, 2016)

¹⁰² *Ibid.*

officer Harendra Kumar told IANS that Rajjan and the girl were in love for the past two years. Villagers told police that the girl's family resisted the relationship, saying she was a Class 12 student. Investigating officials said the bodies have been sent for an autopsy and they are interrogating the family members.¹⁰³

4.3.2. The gravity of the Issue

The United Nations Population Fund (UNFPA) (2000) report estimates that the annual worldwide total of honour-killing victims may be as high as 5,000. As per Warraich (2005) in 2002 alone, over 382 people, of whom 137 were men and 245 women, became prey of honour killings in the Sindh province of Pakistan. As per The Dawn (2005), the normal figure of honor killings for the entire country was said to be exceeded over ten thousands every year. In April 2008, it came to light that some months prior, a Saudi woman was killed by her father for chatting on Facebook to a man. The murder only came to light when a Saudi cleric referred to the case in an attempt to demonstrate the strife that the website causes (McElroy, 2008). In the Middle East countries, Jordan is considered one of the most liberal, families often have sons who are considered minors, under the age of 18, to commit the honour killings because a loophole in the juvenile law permits the child to be the part of juvenile custody under the probation in the center and they are released after getting the age of 18 with a spotless criminal history. Where it is need to check their activity properly and they should be treated as a common child. (Hassan & Welchman, 2006)¹⁰⁴.

Another well known case was of Heshu Yones (London in 2002), When her family had heard a love song devoted to her and it was suspected that she had a boyfriend in this connection she was killed by her father. In the Turkish

¹⁰³India Today News, Couple found dead in UP, honour killing suspected, Lucknow, February 20, 2014, Available at: <http://indiatoday.intoday.in/story/lover.couple-found-dead-in-uttar-pradesh/1/344611.htm>. (last visited on July 17, 2016).

¹⁰⁴ Supranote at 3 (Anand Kirti.....)

province of Sanliurfa, a young woman's "throat was slit in the town square because a love ballad was dedicated to her over the radio" (Turgut, 1998). It is unknown how many women are maimed or disfigured for life in attacks that fall short of murder¹⁰⁵.

Honour-based violence is a common occurrence within a variety of cultures and communities (Faqr, 2001). The term 'crimes of honour' encompasses a variety of manifestations of violence against women, including honour killing, assault or harassment, and on the issue of choice marriage, the openly recognized belief is permitted for a social order, in which it has been claimed that the concept of 'respect' needs to be protected in the male control over women and especially in the sexual conduct of women whatever it is Genuine, suspicious or probable¹⁰⁶.

A report was submitted (2002) the United Nations Commission on Human Rights, 58th session, (E/CN.4/2002/83), relating to cultural behaviour and awareness about violence against women. The report indicated that honour killings had been reported in Yemen, Lebanon, Egypt, the Syrian Arab Republic, Morocco, Turkey, Pakistan, Jordan, and other Mediterranean and Persian Gulf countries. In addition, the migrant communities in Western countries such as France, Germany and the United Kingdom, had also encountered honour killings. There are evidences that homo sexual relations can also be alleged as grounds for honour killing by family. Where in Jordan, a gay was attacked by his brother¹⁰⁷ and in Turkey Ahmet Yildiz, a homosexual student, was attacked later he died in the hospital, it was the result to publish 'Gay honour killing' by Sociologists¹⁰⁸.

It is historically persistent and highly topical. Media attention has been focused primarily on so-called honour killing. However, killing is not the only crime committed in the name of honour, but simply the most violent one. Honour-based crimes are motivated by a desire to preserve family or

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

community honour. The victims are predominately female and the perpetrators are usually male relatives (fathers, brothers, husbands, and occasionally sons).

Currently, there is no definition of honour-based violence that is appropriate or relevant cross-culturally. This is hardly surprising considering that any such definition would need to represent both cultural and outsider perspectives. However, the absence of a definition does not mean that honour crimes do not exist, or that they are restricted to only some societies. Female honour may be stained by a variety of unacceptable behaviours, such as relationships with persons of different faiths, relationships not sanctioned by the kin network, or pre-marital sex. The 'honour' invested in control over women and specifically women's sexual conduct, control over economic and social resources and property are often intimately linked in these equations¹⁰⁹.

It is clear that the concept of honour can be very broad and inclusive, containing an entire codex of concepts and behaviours. Coomaraswamy holds that 'honour' is usually observed as dwelling in the bodies of women. And as Gill states "Codes of honour define the boundaries of acceptable behaviour and even thought, and women must sometimes tread carefully to avoid transgression". Her social group, extended family, or community will decide if these mostly-informal codes of honour were breached. Violation merits punishment, which might mean isolation, a ban on going to college or university or work, beatings, and even death¹¹⁰.

Women believed that the family is the asset and property of men and boys in accordance they support the honour killing. On the other hand, female authorities might be spurred not by individual confidence in the misanthropic belief system of ladies as property, but instead by down to business counts. Once in a while a mother may bolster a respect executing of a "culpable" female relative with a specific end goal that to maintain the family regard first in the society. Where no one should claim about the character of the any female in the family, in this manner "cleaning" the family name by killing the

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

presumed female. Frequently cases are uncertain because of the unwillingness of family, relatives and groups to affirm. CEWLA (2006) and Shalhoub-Kevorkian (2006) note significance is attached to female virginity and the resulting imposition (or attached imposition) of virginity testing on females suspected of having 'violated' family honour. Siddiqi (2006), Hoyek et.al. (2006) and Sen (2006) state that the role of women family members in instigating or colluding with honour crimes, particularly in enforcing controls over marriage choices, and also in acts of violence cannot be ignored. In these specific circumstances, the privileges of ladies to control their own lives, to freedom or opportunity of articulation, affiliation, development and substantial respectability mean practically nothing ¹¹¹.

Wilkinson's (2005) research shows that there is a firm affirmative connection between cruelty against females, and females' social power requirement and impartiality; and a benchmark of improvement, related with entrée to fundamental assets, medicinal services, and human resources, as like, proficiency and ladies miss out not simply physically and financially, but rather essentially in light of the fact that men who feel subordinated will regularly attempt to recapture a feeling of their power thus by the over the top subordination of those beneath them, i.e. women. Welchman and Hossain (2006) interpret 'crimes of honour' within an understanding of violence against women. Coomarswamy and Kois (1999) 'accepts the fact that structures that perpetuate violence against women are socially constructed and that such violence is a product of historical process and is not essential or time bound in its manifestations'¹¹².

The practice of 'honour killings' is more prevalent although not limited to countries where the majority of the population is Muslim. In this regard it should be noted that a number of renowned Islamic leaders and scholars have publicly condemned this practice and clarified that it has no religious basis (United Nations General Assembly, 2010). Sunni and Shia Muslim concept of

¹¹¹ *Ibid.*

¹¹² *Ibid.*

‘Baghi’ (Rebel) relate to family honour and laws relating to the treatment of rebels are governed by Ibadi and non-Ibadi school¹¹³.

According to the Shariyat Act, 1937 Muslims belonging to different schools may inter-marry freely with one another and a mere difference of school of law such as Shiite or Sunnite, Hanafi, or Shafii, is entirely immaterial (Fyzee, 2005, at page 96). While honour killings find no sanction in the Quran, prophetic traditions, or law, these sources cannot be absolved of all responsibility for placing a greater share of the burden of maintaining societal chastity on women. Though the Quran commands both men (Verse - 24.30) and women (Verse -24.31) to “cast down their gazes” and to “protect their chastity,” it specifically regulates only women’s dress (Q. 24.31; 33.59). Yet it is a long stretch from these commands, which have the declared intention of protecting women from harassment (Q. 33.59), to the legal rules that allow men, especially husbands, to impose seclusion on women, forbid them from leaving the home, and limit their access even to other relatives. Human Rights Watch has observed: “In countries where Islam is practiced, they are called honour killings, but dowry deaths and so-called crimes of passion have a similar dynamic in that the women are killed by male family members and the crimes are perceived as excusable or understandable” (Brown, 2002; cited in Mayall, 2002; cited in Sen, 2006)¹¹⁴.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

Chapter-5



CHAPTER 5

LEGAL FRAME WORK FOR THE PROTECTION OF WOMEN AND JUDICIAL RESPONSE TO HONOUR KILLINGS IN INDIA

Half of the Indian population are women. Women has always been discriminated sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.¹

Misra, Rangnath (CJ)

5. Introduction

Though woman in India has achieved great advances in the academic and professional fields after independence, however she is still facing discrimination based on conservative ideas, especially in traditional societies. In those societies, the woman is still treated in a conventional manner, with neglect to her basic human rights. She is regarded as being inferior to man, and not deserving to enjoy the identical rights. This belief is based and built upon a long succession of customs and traditions. Despite the fact that in India, woman has attained some rights under various laws including the equality rights under the Constitution of India, but there are still several instances of discrimination and violence committed against her. Some of those are reflected in the phenomenon of killing women on the milieu of the honour of the family. Honour killing is considered to be a crime that threatens the unity and harmony of the community, and it acts as a barrier preventing woman from enjoying equal rights, equal opportunities and to live a dignified life with her counterparts of her choice². Killing of women on the basis of family honour is considered one of the forms of discrimination against woman and is a stern contravention to her basic human rights. Yet it is an observable fact that

¹ *Madhu Kishwar v. State of Bihar*, (1996) 5 SCC 145.

² Puneet Kaur Grewal, Honour Killings and Law in India, IOSR Journal Of Humanities And Social Science (JHSS), ISBN: 2279-0845, ISSN: 2279-0837, Vol.- 5, Issue- 6 (Nov. - Dec. 2012), Available at: <http://www.iosrjournals.org/iosr-jhss/papers/Vol5-issue6/F0562831.pdf?id=5903> (last visited on July 8, 2016)

continues in India. Honour killing dealt with a barbaric custom of murdering women for immoral activities, at the hands of male family members, including fathers, brothers, and even husbands, to maintain the purity of honour or restore the family honour³. The daughters who disobey their parents and decide to marry with a man of their choice are considered to bring dishonour upon their family—and commit an offence that could be purified only with blood⁴.

The Nation, in the Weber concept, can be characterized as an arrangement of institutions that control the legal use of rule, regulation and power making inside a given region. Imposing business model of physical power is the very basic existence on which the very presence of State rests. Such imposing business model supplies the Nation with force to make commanding as well as binding pronouncement and to execute other tasks or functions. The Nation can't be valued to be effective without having such power⁵.

A self-governing nation like India, banks on the proper working of the three organs of State *i.e.*, the Judiciary, the Legislature and the Executive. These organs of the State work in turn according to the rule of law and principles of natural justice. Kangaroo courts in the form of khap Panchayats, which are without any uncertainty exceptionally dominant in the regions they exist, by their weird decisions which apparently possess a approval of the masses and lot of social sanction, question the efficiency of the State with bold insolence⁶.

³ Mohamad K. Yusuff, Honor Killings in the Name of Religion, Posted March 9, 1999. This article was printed in the February/March 1999 issue of the Voice of Islam newsletter. (This newsletter is published by the Islamic Society of the Washington Area). *Available at:* http://www.irfi.org/articles/women_in_islam/honor_killings_in_the_name_of_re.htm, last visited on 1-11-16

⁴ Urmila Bhardwaj, Nothing Honourable in "Honour Killing" A Social Stigma, (legal Services India, articles), Published on October 29, 2014., *Available at:* http://www.legalservicesindia.com/article/print.php?art_id=1721, (last visited on July 8, 2016)

⁵ Andre Munro, State monopoly on violence, *Available at:* <https://www.britannica.com/topic/state-monopoly-on-violence>, (last visited on July 8, 2016)

⁶ Report Submitted by- Jamia Millia Islamia University, Discriminative and Derogatory Practices against Women By Khap Panchayats, Kangaroo Courts and Shalishi Adalats in India: An Empirical Study in the States of Haryana, Uttar Pradesh(West), West Bengal & Rajasthan, *Available at:* <http://ncw.nic.in/pdfReports/ReportbyJamiaMilia.pdf> (last visited on July 8, 2016).

5.1. Constitutional Protection to the women in India

A Constitution is the basic document of a country having a supreme legal sanctity which sets the framework and the principle functions of the organs of the government of a States and declares the principle governing the operation of these organs. The Constitution aims at creating legal norms, social philosophy and economic values which are to be affected by striking synthesis, harmony and fundamental adjustment between individual rights and social interest to achieve the desired community goals.⁷

The Constitution of India has been given the power to the State Government to enact laws which are focused on the women. It provides the various provisions which provides the equality and prohibits discrimination on the ground of race, sex, caste, religion, place of birth or any of them,⁸ though all of which some last years have been observed to some landmark judgements of the Apex court with directions and explanations regarding violence against women. The Constitution of India guarantees under Article- 14⁹, equality before the law or the equal protection of the laws within the territory of India as the right to equality to any person¹⁰ and ensures prohibition of discrimination on the grounds of race, religion, sex, caste or place of birth. Equality before the law is an aspect of what dicey calls the rule of law in England.¹¹ Rule of law requires that no person shall be subject to harsh, uncivilized, discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.¹² The rule of natural justice is also inherently implicit in the article 14 of the Constitution of India which provides the two rights: firstly no one can be judge of his own cause and secondly right to be heard. The word

⁷ S.R. Myneni., *Women And Law*, Asia Law House Hyderabad (1st ed., 2002) at page-64

⁸ Const. of India, part III, Art. 15(3).

⁹ Const. of India, part III, Art. 14.

¹⁰ *Chiranjeev lal v. Union of India* AIR 1951 SC 41

¹¹ Albert V. Dicey, *Introduction To The Study Of The Law Of The Constitution*, published by Macmillan and Co., Limited, London. (9th ed. 1964). at page- 202-203

¹² *Rubinder Singh v. Union of India*, AIR 1983 SC 65.

‘any person’, in Art. 14 of the Constitution denotes that the guarantee of the equal protection of laws is available to any persons it includes women also. The equality before the law is guaranteed to all without regard to caste, religion, race, colour or nationality.¹³

The Constitution of India also provides the special provisions for the well being of the women these special provisions do not violate the right to equality as guaranteed in the Constitution but it is one of the exceptions to the general rule laid down in Art. 14 or clauses (1) and (2) of Art. 15, Art. 15(3) empower the state to make special provisions for women¹⁴. Women require special treatment on account of their very nature. The basis is that female’s corporeal construction and the performance of maternal capacities put her off guard in the fight for survival and her physical prosperity turns into a question of public interest and care so as to safeguard the quality and power of the race¹⁵. Thus women worker can be given special maternity relief¹⁶ and this effect of law will not infringe right to equality. Again state are established educational institutions exclusively for women.¹⁷

The Constitution of India provides the protection of life and personal liberty¹⁸ to all persons and the persons includes women also. The right to live is not restricted to mere animal existence. It means something more than physical survival. The right to ‘live’ is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes “the right to live with peace with human dignity”, and all that comes under the right to life, namely, the bare requirements of human dignity, such as- clothing, shelter over head for living, sufficient

¹³ Uma Pal, Right To Equality- A Fundamental Right, (legal service india, print article) Published on : July 29, 2014, Available at: http://www.legalservicesindia.com/article/print.php?art_id=1688, (last visited on December 5, 2016)

¹⁴ Const. of India, part III, art. 15(3).

¹⁵ Richa Jhanwar, HNLU, The Need for Maternity Benefits for Women Employee, ACADEMIKE (ISSN: 2349-9796), November 16, 2014, Available at: <https://www.lawctopus.com/academike/the-need-for-maternity-benefits-for-women-employee/> (last visited on December 5, 2016).

¹⁶ Const. of India, part IV, Art. 42.

¹⁷ *Dattatraya v. state*, AIR 1953 Bom 311.

¹⁸ Const. of India, part III, Art. 21.

nourishment , amenities for writing, reading, studying and expressing ourselves in various forms, to move freely regarding and integrating and commingling with fellow human being.¹⁹ It also provides the gender equality and guarantee against sexual harassment. It guaranteed gender equality, which includes right to work with human dignity and the safeguard against sexual harassment.²⁰

Part IV of the constitution of India set out the aims and objectives to be taken by the states in the governance of the country. At one time it was mainly concerned with the maintenance of law and order and the protection of life, liberty and property of the subject, and in the era of welfare state the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy for this purpose the state shall promote justice- social, economic and political.²¹ The concept of ‘social-justice’ consist of diverse principles essential for the orderly growth and development of personality of every women. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, dalits, tribals and deprived section of the society and so elevate them to the level of equality to live a life with dignity of persons.

The concept of social justice enables equality to flavor and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of Law, therefore, is a potent instrument of social justice to bring about equality.²² It also provides equal pay for equal work for both men and women²³ and to protect health and

¹⁹ *Francis Coralie v. Union Territory of Delhi*, AIR 1978 SC 597.

²⁰ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

²¹ Const. of India part. IV, Art. 38- State to secure a social order for the promotion of welfare of the people

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations

²² *Air India Statutory Corporation v United Labour Union*, AIR 1997 SC 645.

²³ Const. of India, part IV, Art. 39(d)- that there is equal pay for equal work for both men and women;

strength of women and to ensure that they are not forced by economic necessity to enter avocations unsuited to their strength.²⁴ State also directs to secure a Uniform Civil Code²⁵ applicable throughout the territory of India. Its particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce a Uniform Civil Code in India, the judiciary has recognized the necessity of uniformity in the application of civil laws relating to marriage, succession, adoption, divorce, maintenance, etc.²⁶ but as it is only a directive it cannot be enforced in a court of law. The State shall take necessary step to organize village panchayats²⁷ and the 73rd and 74th amendments to the Indian Constitution effected in 1992 provide for reservation of seats for women in elections to Panchayats and Municipalities.²⁸ The Constitution of India enumerates the fundamental duty of citizen of India to renounce practices derogatory to the dignity of women,²⁹ but its true realization in spirit is much awaited.

5.2. Legal Protection to the Women Against violence on the Name of Honour in India

Indian laws do not treat such crimes in a specific or separate clause. Indian laws pertaining to such crimes aren't covered under any statute directly, but provisions related to murder, attempt to murder, (attempt to) suicide, grievous hurt, outraging the modesty of women, rape, criminal intimidation,

²⁴ Const. of India, part IV, Art.39(e)- that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

²⁵ Const. of India, part IV, Art.44- Uniform civil code for the citizens The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

²⁶ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.

²⁷ Const. of India, part IV, art.40.

²⁸ Const. of India, Parts IX & IX –A- Part IX, The Panchayats, Art. 243 to 243 O & The Municipalities Art. 243 P to 243 ZG.

²⁹ Const. of India, part IV-A, art. 51A, (e). The Constitution of India enumerates the fundamental duty to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women.

protection of women from torture, prevention of atrocities against SCs and STs, etc., in the Indian Penal Code, 1860, Protection of Women from Domestic Violence Act, 2005, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Code of Criminal Procedure, 1973 respectively, can be constructively construed to cover the violence against women on the name of honour.³⁰

5.3. Protection under Criminal Law

There are lot of provisions under the IPC which combat the violence against women. There are some offences introduced under the IPC which are indirectly combat the crime against women on the name of honour that are murder,³¹ Culpable homicide,³² Attempt to murder,³³ Attempt to commit culpable homicide,³⁴ Dowry deaths,³⁵ suicides³⁶ and abetment of suicide³⁷.

In *Brij Lal v. Prem Chand*³⁸ case Supreme Court stated that:

..... the degradation of society due to the pernicious system of dowry and the unconscionable demand made by the greedy and unscrupulous husbands and their parents and relatives resulting in an alarming number of suicidal and dowry deaths by women has shocked the legislative conscience to such an extent that the legislature has deemed it necessary to provide additional provision of law, procedural as well as substantive, to combat the evil.

³⁰ The Justice Verma Committee's Report on Criminal law of India(Amendments), December 23, 2012: A three-member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law, Chapter 8, Khap Panchayats and Honour Killings, Available at: <http://www.manupatra.com/manufeed/contents/PDF/634946234449650140.pdf>, last visited on July 9, 2016

³¹ Indian Penal Code (1860). S. 300

³² Indian Penal Code (1860). S. 299

³³ Indian Penal Code (1860). S. 307

³⁴ Indian Penal Code (1860). S.308

³⁵ Indian Penal Code (1860). S. 304-B

³⁶ Indian Penal Code (1860). S. 309

³⁷ Indian Penal Code (1860). S. 306

³⁸ (1991) SCC (Cri) 394 .

Indian society is patriarchal in nature with inborn desire for the birth of a male child in the family. This desire along with the many prevailing superstitions, leads to indiscriminate abortion of female foetuses. Therefore in order to prevent such illegal acts sections 312-318 of the Indian Penal Code deal with the causing of miscarriage with or without consent. Thus these provisions deal with causing miscarriage,³⁹ without women consent,⁴⁰ death caused by an act done with the intent to cause miscarriage without women's consent,⁴¹ act done with intent to prevent child being born alive or to cause it to die after birth⁴² or causing death of quick unborn child by act amounting to culpable homicide⁴³. The exposure and abandonment of child under twelve years by parents or persons having care of it⁴⁴, concealment of birth by secret disposal of dead body⁴⁵ are some of the problems dealt with under the provisions of the Indian Penal Code.⁴⁶

IPC prohibits the trafficking⁴⁷ and all forms of exploitation.⁴⁸ Exploitation includes any act of physical exploitation or any form of sexual exploitation, slavery or practices alike to slavery, servitude, or the forced removal of organs. Selling minor for purpose of prostitution,⁴⁹ buying minor for purpose of prostitution,⁵⁰ forced labour⁵¹.

In *Gaurav Jain v. Union of India*⁵² case Supreme Court stated that:

Women found in flesh trade, should viewed more as victims of adverse socio-economic circumstances rather than as offenders in our

³⁹ Indian Penal Code (1860). S.. 312

⁴⁰ Indian Penal Code (1860). S. 313

⁴¹ Indian Penal Code (1860). S. 314

⁴² Indian Penal Code (1860). S. 315

⁴³ Indian Penal Code (1860). S. 316

⁴⁴ Indian Penal Code (1860). S. 317

⁴⁵ Indian Penal Code (1860). S. 318

⁴⁶ Malik & Raval, Law And Social Transformation In India, Publisher: Allahabad Law Agency, (3rd ed. 2011), at page- 164-165

⁴⁷ Indian Penal Code (1860). S. 370

⁴⁸ Indian Penal Code (1860). S. 370-A

⁴⁹ Indian Penal Code (1860). S..372

⁵⁰ Indian Penal Code (1860). S. 373

⁵¹ Indian Penal Code (1860). S. 374

⁵² (1997) 8 SCC 114.

society. The commercial exploitation of sex may be regarded as a crime but those trapped in custom-oriented prostitution and gender oriented prostitution should be viewed as victim of gender- oriented vulnerability.

Women have been depicted in the most respectable and aesthetic manner on the one hand and on the other hand they have also been victim of indecent, vulgar and obscene depictions. This contrast is difficult to balance especially where women are treated as “goods” to promote sales. The terms obscene, indecent and vulgar are difficult to define as they are intricately linked to the moral values in a society. Section 292-294 of the IPC, 1860 deal with the offence of obscenity. They deal with sale, hire, distribution, public exhibition circulation, import, export or advertisement, etc. of any matter which is obscene⁵³ to a young persons⁵⁴ and sings, recites or utters any obscene songs or does any obscene act in a public place to cause annoyance of others.⁵⁵

Modesty is an attribute which a female possess right from her birth. It is not easy to lay a comprehensive test for determining whether modesty of women is outraged or not. When any persons assaults or uses criminal force to any women, intending to outrage modesty of women⁵⁶ and that act is done with the intention of disrobing or compelling her to be naked⁵⁷ or make any word, sound and gesture to intrudes upon the privacy of women⁵⁸ and watches or captures the images of women engaging in a private act⁵⁹ shall be punishable under this code.⁶⁰

One of the important reasons, inter alia, given for the acceptance and the commission of offences against women is economic independence. Now as

⁵³ Indian Penal Code (1860). S. 292

⁵⁴ Indian Penal Code (1860). S. 293

⁵⁵ Indian Penal Code (1860). S. 294

⁵⁶ Indian Penal Code (1860). S. 354

⁵⁷ Indian Penal Code (1860). S. 354-B

⁵⁸ Indian Penal Code (1860). S. 509

⁵⁹ Indian Penal Code (1860). S. 354-C

⁶⁰ Mamta Rao, Law Relating To Women And Children, ISBN : 8170121329 Publisher: Eastern Book Co; (2nd Ed. 2011), paged- 171.

women try to fight economic disparity with men a new form of crime is emerged- sexual harassment⁶¹ at the work place. This offence is most glaring example of human right violation, gender inequality, and injustice. Each incident of sexual harassment at the work place also result in violation of fundamental rights under the constitution, namely, right to gender equality and right to life and liberty. That sexual harassment of a female at work place is incompatible with the dignity and honour of women.⁶²

In the penal laws of all countries, sexual offences against women occupy a significant place and out of all the crimes, the one which shocks the conscience, and shakes its roots and is the most heinous is rape. The only crime, perhaps, where instead of being sympathized with a victim is socially ostracized and morally degraded with a lifelong stigma on her dignity and character. The mental torture is deep and agony unbearable. The offence of rape occurs in chapter XVI of the IPC. It is an offence affecting the human body, that sections are 375 and 376, 376-A to 376-E, IPC. Sections related to rape have been substantially changed by the Criminal Law (Amendment) Act, 2013 which introduced new definition of rape and also introduced several new sections, namely, 376-A to 376-E which provide harsh punishment extend to life imprisonment or death for the offence of rape.

The code of criminal Procedure provided that the court may take appropriate measures to ensure that the women is not confronted by the accused where the evidence taken of women below the age of eighteen years who has a victim of rape or other sexual offences⁶³ and such inquiry or trial shall be conducted in camera⁶⁴ or as far as possible be completed before the period of not more than two months from the date of commencing of file as charge-sheet⁶⁵. It also provided compensation for victim under section 326-A

⁶¹ Indian Penal Code (1860). S. 354-A

⁶² Indian Penal Code (1860). S.293

⁶³ Criminal Procedure Code (1973). S. 273

⁶⁴ Criminal Procedure Code (1973). S. 327 (2)

⁶⁵ Criminal Procedure Code (1973). S. 309 (1) pro.

and 376- D⁶⁶ and provides a first aid or medical, treatment free of cost, to the victim of any offence covered under section 326-A, 376, 376-A, 376-B, 376-C, 376-D or 376-E of the Indian Penal Code.⁶⁷ Police officers especially empower to make investigation in to cases of suicides and other unnatural or suspicious deaths⁶⁸. and send the body for postmortem examination if :

(a) the case involves suicide by women within seven years of her marriage;

(b) the case relates to the death of a women within seven years of her marriage in circumstances raising reasonable suspicion that the women was the victim of an offence;

(c) that any relative of women made a request in that behalf when she died within seven years of her marriage;

(d) there is any doubt regarding the cause of death. ⁶⁹ If death is caused in the police custody the inquiry shall be conducted by a Magistrate⁷⁰.

The Indian Evidence Act, provide to penalize those who hide facts, either before or at the time of committing crime, or after the affirmed crime⁷¹. It also provides that even the prosecuter stated in her evidence that she did not consent to the sexual intercourse the court shall presume that she did not consent⁷² and burden of proving consent shift to the accused.⁷³ If prosecution is made under section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 376, section 376-A, section 376-B, section 376-C, section 376-D, section 376-E, of the IPC, evidence of previous character of the victim or previous sexual experience of with any other person's shall not be relevant on

⁶⁶ Criminal Procedure Code (1973). S. 357-B

⁶⁷ Criminal Procedure Code (1973). S. 357-C

⁶⁸ Criminal Procedure Code (1973). S. 174

⁶⁹ Criminal Procedure Code (1973). S. 174(3)

⁷⁰ Criminal Procedure Code (1973). S. 176

⁷¹ The Indian Evidence Act (1872), S. 8. Motive, preparation and previous or subsequent conduct. (Illustrations- e)

⁷² The Indian Evidence Act (1872), S. 114-A.

⁷³ *Nawab Khan v. State of M.P.*, (1990) Cr.LJ 1179.

the issue of such consent or quality of consent.⁷⁴ To make the amendment in the IPC more effective, amendment in the Indian Evidence Act, 1872 was considered to be necessary. Thus, Section 113-B which raised presumption as to dowry death was added. The provision of this section, although mandatory in nature, simply enjoin upon the court to draw such presumption of dowry death on proof of circumstances mention therein which amounts to shifting the onus on the accused to show that the married women was not treated with cruelty by her husband soon before her death.⁷⁵

5.4. Special Legislation for Protection of Women

The matrimonial legislation consists of a set of provisions that govern family relationship and rights of spouses and children during and subsequent to marriage. The Special Marriage Act of 1954 gives the right to women to choose his own spouse and marry him. It gives the freedom of choice. The Hindu Marriage Act of 1955 give the women who is Hindu various rights related to marriage, divorce, maintenance, custody etc. The Hindu succession Act, 1956 gave Hindu women right to inheritance. However, the son's had an independent share in the ancestral property, while the daughter shares were depend on the share received by their father. Hence, a father could effectively disinterest a daughter by renouncing his share of the ancestral property, but the son will continue to have a share in his own right. After the amendment of Hindu Laws in 2005, now women have been provided the same status as that of men.⁷⁶

The Hindu Minority and Guardianship Act give the right of guardianship to women and the Hindu adoption and Maintenance Act gives the right to claim maintenance to women. It provides equal rights to both men and

⁷⁴ The Indian Evidence Act of (1872), SS. 53-A & 146 .

⁷⁵ *Krishna Lal v. Union of India*, (1994) CrLJ 3472.

⁷⁶ Women in India, Wikipedia. Available at: [wikipedia.org/wiki /women-in-india](http://wikipedia.org/wiki/women-in-india). (last visited on april.2, 2016).

women to adopt a child. In 1986 the Supreme Court of India held that Shah Bano an old divorced victim who was eligible for maintenance. However the decisions were voice furiously opposed by fundamentalist Muslim leaders, who alleged that the court was interfering in their personnel law. The Union Government subsequently passed the Muslim Women (Protection of Rights Upon Divorce) Act.

In 1961, the Government of India passed the Dowry Prohibition Act, making the dowry demands in wedding arrangements illegal. In 1985, the Dowry Prohibition (Maintenance of Lists of presents to the bride and bridegroom) Rules were framed. The Immoral Traffic (Prevention) Act, was passed in 1956. However many cases of trafficking of young girls and women have been reported. These women are either forced into prostitutions domestic work or child labour. The Commission of Sati (prevention) Act, 1987 was passed by central government under the direction of the Supreme Court in its writs jurisdictions. The Act provide for the more effective prevention of the commission of sati and its glorification⁷⁷.

Child marriage has been traditionally presence in India and continues to this day. Although child marriage was outlawed in 1860, it is still a women practice to prohibit child marriages and save the girl child from hard practices. The prohibition of child marriage Act was enacted in 2006. The female foeticide is still prevalent in India. All medical tests that can be used to determine the sex of the child have been banned in India, due to incidents of these tests being used to get rid of unwanted female children before birth. Therefore the Parliament passed The Medical Termination of Pregnancy Act, 1971 to regulate termination of pregnancy in certain cases only by registered medical practitioners on the ground that if it involves a risk to the life of the pregnant women or gave injury to her physical or mental health or where there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped and where the

⁷⁷ *Ibid.*

pregnancy is alleged to have been caused by rape or as a result of failure of contraceptive used by a married women or her husband, and The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 provides the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorder or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre natal sex determination leading to female feticides⁷⁸.

Half of the total number of crimes against women reported in 1990 related molestation and harassment at the work place. So, in 1987 The Indecent Representation of Women (Prohibition) Act was passed to prohibit indecent representation of women through advertisements, or in publications, writings, paintings. Figures or in any other manner⁷⁹. In 2005 The Protection of Women from Domestic Violence Act, 2005 accommodates more powerful assurance of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for issues associated therewith or incidental thereto. This Act, For the purposes to know, it defines Domestic Violence under Section 3 of *The Protection Of Women From Domestic Violence Act, 2005*,⁸⁰ can be explained in other words as any act, omission, commission or conduct of the respondent shall commit domestic violence if there is any harms or damages or injures the health, safety, life, extremity regardless or well-being of whether mental or physical, of the victim or has a tendency to do as such and incorporates causing physical abuse, sexual abuse, verbal and psychological abuse and financial abuse, or harasses, hurts, harms or injures or endangers the victim with a view to pressure her or some

⁷⁸ *Ibid.*

⁷⁹ Chitra Mishra, Women Safety in Delhi- an analysis, Sexual harassment, Working Paper No 232 Summer Research Internship 2009, Center for Civil Society, New Delhi. Available at: https://ccs.in/internship_papers/2009/women-safety-in-delhi-232.pdf, (last visited on December 20, 2016)

⁸⁰ The Protection Of Women From Domestic Violence Act, 2005, Chapter- II, Section 3, Domestic Violence, (Definition Of Domestic Violence).

other person related to her to meet any unlawful demand for any dowry or other property or valuable security, or has the impact of debilitating the effect of threatening the aggrieved person or any person related to her by any conduct mentioned as above, or otherwise injures or causes hurt, whether physical or mental, to the victim.

Labour laws that protect women at the work place include various Acts. The Equal Remuneration Act, 1976 provides for equal remuneration to men and women workers to get equal pay for equal work or similar work, and prohibits discrimination. The Mines Act , 1952 prohibits the employment of women underground, and provides for restricted timings of work for women employed above the ground. The Factories Act ,1948 has many provisions protecting women at the workplace, including issues pertaining to occupational safety, provision of sanitation and crèche facilities. The Maternity Benefit Act, 1961 provides for maternity leave and benefit in order to protect the dignity of motherhood and gender justice.⁸¹

In illustration where the khap panchayats have forcefully separated wedded couples who are of sufficient age to get marital. The Indian Majority Act, 1857 Section-3, provides that anyone who reside in India shall be called major after completing the 18 years of age and not before it. Unless a particular personal law specifies otherwise, anyone who reside in India is considered to have attained majority after completion of 18 years of age. But, in the case of a minor regarding individual or property, or both, a guardian has been appointed or declared by the court of justice before the age of 18 years, and in case of each and every minor the superintendence of whose property has been suspected by the Court of Wards, age of majority will be 21 years and not 18. The Act is relevant in cases where the khap panchayats have forcefully

⁸¹ Prashanti, Protection to Women Under Industrial Laws- A Myth or Reality, Category : Workplace Equality & Non-Discrimination, (legal services india, article) Published : April 12, 2016, Available at: <http://www.legalservicesindia.com/article/article/protection-to-women-under-industrial-laws2029-1.html>,. (last visited on jan. 20, 2017)

separated wedded couples who are of adequate age to get marital. It is a violation of the provisions under this Act ⁸².

The chief purpose behind the passing of The Special Marriage Act, 1954 was to illustrate a exclusive institute of marriage for the people of India and all Indians living abroad, irrespective of the faith or religion pursued by any of the party, to succeed the willing marriage. The Indian Parliament had enacted Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to prevent atrocities against Scheduled Castes and Scheduled Tribes. The motive of the Act was to assist the social attachment of SC/ST into Indian society. It defines acts such as compelling an SC/ST to drink or eat any unbearable substance or uneatable, dishonouring, assaulting, removing clothes, parading naked or with painted face or body, sexual exploitation of an SC/ST woman, outraging the modesty of an SC/ST woman or threatening or ordering an SC/ST to leave his or her village or house as punishment⁸³.

The Act is linked to crime on the name of honour because numerous incidents of crime on the name of honour are being found closely linked to caste and religion. The Protection of Human Rights (Amendment) Act, 2006 provides the provisions regarding protection of human rights of individual and the creation of a Human Rights Courts, State Human Rights Commission and National Human Rights Commission for better safeguard of individual human rights of human being. Facts are relevant when custom or right is in question - Where the question is as to presence of any custom or right, the following facts are relevant:

- (i) Any matter dealt by which the custom or right in question was recognized, asserted or, claimed, created, modified, or which was conflicting with its presence;
- (ii) In the cases in which the custom or right was acknowledged, claimed, or practiced, or in which its practice was departed, uncertain or denied from. The

⁸² *Supranote* at 2 (Puneet Kaur)

⁸³ *Ibid.*

Act is appropriate to provide justice to those who become sufferer because of the orders issued by these unlawful assemblies i.e. khap panchayats.⁸⁴

Despite these laws, violence against women on the name of honour is on the rise. Honour crimes in the name of family and caste honour and ethnic culture are the most degrading human act and the woman continues to suffer due to the utter failure of the criminal justice system and inadequate protective measures⁸⁵. Thus, these are the various legislations which show that law acted and has been acting as an instrument of social change for women.

5.5. Initiation of the Government for Combating Crime against Women on the Name of Honour

Despite hundred of couples marrying against social barriers being hounded out or killed at the behest of Khap Panchayats in northern India, Uttar Pradesh, Rajasthan and Haryana have prepared no legal framework to counter the menace. The State of Uttar Pradesh submitted in its affirmation of affidavit that There was no particular law or legal framework to deal with the problem of such incidence of honour killings, though, the Director General of Police and additional Director General of Police have issued circulars to verify achievement with the guidelines provided under *The Protection of Women from Domestic Violence Act, 2005*⁸⁶.

The Rajasthan government depended on two circulars, one issued in 2001 and another in 2006, to check activities of Panchayats based on caste. The State of Haryana, on the other hand, observed that there it needs an action plan

⁸⁴ *Ibid.*

⁸⁵ Jyothi Vishwanath & C. Palakonda Srinivas, Patriarchal Ideology of Honour and Honour Crimes in India, 2011 International Journal of Criminal Justice Sciences (IJCJS) – Official Journal of the South Asian Society of Criminology and Victimology (SASCV) ISSN: 0973-5089 Janu. – Dec. Vol. 6 (1 and 2): at page 386–395, Available at: <http://www.sascv.org/ijcjs/pdfs/jyothiicjs2011i&iind.pdf>, (last visited on July. 20, 2016)

⁸⁶ The Times Of India. Honour Killings / Crimes in India, National Legal Research Desk – A Shakti Vahini Initiative, No Law In Place To Rein In Khaps – SC told, by Dhananjay Mahapatra, July 19, 2012, Available at: <https://honourcrimes.wordpress.com/tag/supreme-court/>, (last visited on September. 20, 2015)

rather than any circulars to hold down honour killings. This communication was assembled by *amicus curiae* Raju Ramachandran from the affidavits filed by the States in reply to a Public Interest Litigation by *Shakti Vahini* (NGO) looking for the Supreme court's interference to protect young couples, who were compelled to break up their inter-caste marriages or killed for disobedience. The Central Government stated that it was clearly planning to make honour killing as specific offence to amend the Indian Penal Code.⁸⁷

The then law minister M. Veerappa moily said that we have already finalized a draft and Government is planning to bring this bill in the Mansoon Session of Parliament in 2011 to provide for deterrent punishment for honour killings. Meanwhile, the Government has announced setting up of a Group of Ministers (GoM) that will considered amendments to the law to deal with the issue⁸⁸. An Amendment bill was expected to be tabled in Parliament in monsoon session of 2011, proposed to include a clause under section 300 of the IPC to deal exclusively with honour killings⁸⁹, but it could not be tabled.

Here the Amicus curie Raju Ramachandran's report⁹⁰ overviewed to show the legislative vacuum for the idea of war against Khap Panchayats and honour killings by them, emphasized that it would be need of the day for the Apex Court to give appropriate guidelines or diectives to stop atrocities in the name of custom and honour. He further advised that it is must be the duty of the States must be immediately directed to identify the areas, where Khaps are occurred or active in such wrongs and administration of these areas or the police officers must take appropriate step to protect the young couple from any threat and harm including their performed inter-caste marriages. The amicus also suggested that the police must take forward action and take action to stop

⁸⁷ *Ibid.*

⁸⁸ The time of india, lucknow, july 9, 2010 , *Available at:* <https://www.timesofindia.com>, (last visited on February16, .2015)

⁸⁹ The Hindu, OPINION, Of love and honour killings, by Radhika Santhanam, Sruthisagar Yamunan, March 17, 2016, *Available at:* <http://www.thehindu.com/todays-paper/tp-opinion/of-love-and-honour-killings/article8362486.ece>, (last visited on September 16, 2016)

⁹⁰ *In re Shakti Vahini case*, 2011, Report submitted by Amicus curie Raju Ramachandran.

Khap Panchayat meetings having to take decisions against these couples in the name of honour and if necessary arrest key members to destroy the gatherings⁹¹.

A question like had honour killing be a specific offence under a specific law, or such a condition would not have taken place yet, the answer must be given by the legislative assembly as well as judicial authority, till the answer coming out there would not be any force on the High court's especially to minimise the punishment from Capital Punishment to life imprisonment. Regarding above discussion Former CJI P. Sathasivam also advised a special law to curb and control Honour Killings. In this regard he said that there it is need a special legislation which will indeed be a welcome step as it will assist in making additional effort to protect the victims. However the existing law punishes the offences of murder and homicide, which does not directly punish the members of such group for the same purpose. The aim and objectives of the proposed Bill coupled with those provisions in the IPC would successfully restrain the honour killings and will be a direct safe guard to save from harm the young pairs and their relatives who are the sufferers of this social wrong.⁹²

Unless “*the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliance) Bill, 2011*” the proposed bill is passed and comes into effect, there is no any effective law created to combat or curb the act of honour killings especially in North India commonly known states like Haryana, Punjab, Rajasthan and Uttar Pradesh. There is no explicit lawful enactment to control the honour killings which is to be exactly provided under

⁹¹ Times of India, No specific legal framework to stop Khap-dictated honour killing, UP, tells SC, By Dhananjay Mahapatra, | TNN | Jul 17, 2012, Available at: <http://timesofindia.indiatimes.com/india/No-specific-legal-framework-to-stop-Khap-dictated-honour-killing-UP-tells-SC/articleshow/15011191.cms>, (last visited on September 16, 2016)

⁹² The Hindu, Special Law Will Deter Honour Killings, Says Sathasivam, Legal Correspondent, New Delhi:, June 30, 2013, Available at: <http://www.thehindu.com/news/national/special-law-will-deter-honour-killings-says-sathasivam/article4864168.ece>, (last visited on September 16, 2016)

the provision of Indian Penal Code⁹³. In nonappearance of specific offence in the Indian Penal Code, 1860, honour killings must be considered as murder and must be approached to the category of section 300, IPC.⁹⁴

Though, Section 300(4) of Indian Penal Code, 1860⁹⁵ can be explained in other words as about knowledge of result of committing act that if the person commits the act that it is so imminently dangerous according to his knowledge that it must, in all probability, cause death or such bodily harm as is expected to cause death, and executes such act without any defence for obtaining the risk of resulting death or such bodily harm as abovementioned, confers the offence of murder.

This is explained way to define the act of killings which are committed in the name of honour. At this point the act is deliberately, consciously dangerous and in all possibility has the chances of executing death, so it can be easily to say that the offenders involved in honour killings must be punished as the offenders of murderer and death sentence should be imposed on murderers⁹⁶.

5.6. Efforts made by the Commission

It was the first time The National Commission for Women (NCW) outlined a bill that is “Prevention of Crimes in the name of Honour and Tradition” Bill: 2010 Through this bill it was suggested certain preventive and penal method to control the jumble of killings and dishonourable crimes in

⁹³ The Indian express, Law Commission for making honour killings non-bailable offence , January 20, 2012, Indian Express News. Available at: <http://archive.indianexpress.com/news/law-commission-for-making-honour-killings-nonbailable-offence/901975/>, (last visited on March.2, 2016)

⁹⁴ Section 300 Murder.

⁹⁵ The Indian Penal Code (1860), Section 300- Murder , clause (4).

⁹⁶ Shukla Priyamvada, A Critical Jurisprudential Appraisal of Law and Justice in Crime of Honour Killings in India, RGC Research Journal, vol.- I, issues- I, January- April, 2012 Available at: <http://rgcresearchjournal.org/volume-I,issues-I,jan-apr2012/law/A%20Critical%20Jurisprudential%20Appraisal%20of%20Law%20and%20Justice%20in%20Crime%20of%20Honour%20Killings%20in%20India.pdf> (last visited on March.22, 2016).

the name of honour. The bill very emphatically stated every individual's right to choose her spouse either in marriage or else. Clause 3 of the bill, in other words, provides that all persons including young couples and major girls have the right to freedom of expression, right of association and movement, right to life, liberty, bodily integrity and right to control their own lives. They have a right to choose their own spouses either in marriage or else and no action to be stop the exercise of these rights, shall be a crime to restrain under the provisions of this Bill⁹⁷. Therefore any action in preventing a life partner or spouse of their choice should be an offence under this act. The Bill had made provision of sanction for any act of killing in the name of honour by punishment provided under the provision of Indian Penal Code, 1860. It had also made provision to punish the distressing of any woman or her spouse in order to prevent them to execute their right to marry out of their own choice.⁹⁸ The bill made punishable both mental and physical acts of harassment and explains the acts of harassment with particular aspects⁹⁹.

Explanation I of clause 5, in other words, provides that any act of harassment and prevention in this Section shall consist of mental and physical both acts such as, Declaring the young couple as a sister and brother, who have got married, provided that they are not daughter and son from the natural parents and such weddings are approved by any law or tradition for the time being in power, extraditing the young boy and girl or their family or kith and kin from area they live in or the village, asking the young boy and girl or anyone related with them or supporting them to pay damages a fine, extraordinary social punishment or social cut-off on the young boy and girl or on their family or on anyone related with them, imposing financial sanctions or boycott on the young boy and girl or their family related with them, depriving the young boy and girl or their family including the family of the male spouse of any property or land belonging to them, constantly harassing the young boy

⁹⁷ Prevention of Crimes in the name of Honour and Tradition, 2010, Sec. 3.

⁹⁸ *Id* at Sec. 5.

⁹⁹ Annual Report, 2010 – 2011, National Commission For Women,

and girl or one of them not to live, associate or meet with or reside with each other, by corporal visit them or through any means of contact, threatening the young boy and girl or anyone of them or their family or anyone related with them of deterrent and penal action of any kind whatever, causing injury or harm to the young boy and girl or anybody related with them, intimidation, acts of harassment or any other act whether psychological or mental or physical to evade the young boy and girl or any of them from get-together or spending life with each other¹⁰⁰. A mere support of killings or of harassment by anybody in public is a punishable offence under the bill as punishable with a term of imprisonment up to two years and with punitive fine.¹⁰¹

The bill additionally moved the burden of proving where any individual or people is or are indicted for an offence under this bill, on the person/persons so accused that they have not committed or involved in the offence or offences.¹⁰²

The authority to forbid certain acts under the act is on the the District Magistrate or Collector. Where the District Magistrate or Collector has received information or is of the view that any of the crimes under Sections 4, 5 or 6 are likely to be committed, he shall by order prevent/prohibit the commission of such offences and further prohibit the gathering of any persons or body of persons likely to discuss the commission of the said offences¹⁰³. Whoever contravenes any order made under Sub-Section (1) shall be

¹⁰⁰ Prevention of Crimes in the Name of Honour and Tradition, Bill 2010 Sec. 5 - Explanation I

¹⁰¹ Prevention of Crimes in the Name of Honour and Tradition ..2010 , Sec. 6- If any person or persons, including a body of persons by whatever name it is called, eulogises or publicly supports or incites,fine.

¹⁰² Prevention of Crimes in the Name of Honour and Tradition.. 2010, Sec. 7.- Burden of Proof – Where any person or persons is or are prosecuted for an Offence under Sections 4, 5 or 6, the Burden of proving that he or they have not committed the offence or offences under the said sections shall be on him or them.

¹⁰³ Prevention of Crimes in the Name of Honour and Tradition, (2010), Sec.8 (1) - Where the Collectorsaid offences.

punishable with imprisonment for a term which shall not be less than six months but may extend to two years and with fine¹⁰⁴.

When an Executive Magistrate receives information that any person or persons acting in accordance with , or, at the order of, a member of the family or a member of a body or group of the caste or race or community or caste panchayat is likely to commit any wrongful act and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person or persons acting in concert with , or, at the behest of, a member of the family or a member of a body or group of the caste, race, community to these panchayats to show cause why he/they should not be ordered to implement a bond with sureties for keeping peace and maintain good behaviour for such period, not exceeding one year, as according to the discretion of the Magistrate. Any Executive Magistrate can start Proceeding under this section when any of the place where the breach of the annoyance or peace is happened in his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the annoyance or peace or agitate the public tranquillity or to do any criminal act as above mentioned in such jurisdiction.

A Magistrate shall make an written order when he is performing under this provision to any person to show cause, It deems compulsory under such section, setting forth the fact of the information received, the sum of the bond to be executed, the expression for which it is to be in force, and class, character and the number of sureties required¹⁰⁵.

The bill also makes a provision for the needy couple to notify about their objectives to marry to the police or government officials. Yet, the provision falls tiny of providing any category of security to the couples who notify government officials of their objective to marry as there is no obligatory

¹⁰⁴ Prevention of Crimes in the Name of Honour and Tradition, (2010), Sec.8 (2) - Whoeverwith fine.

¹⁰⁵ Prevention of Crimes in the Name of Honour and Tradition, 2010, Sec.8 (3) - When an Executive Magistrate(if any) required.

duty cast on such authorities, so notified to protect these couple¹⁰⁶. Clause 10 of the bill also makes a provision to provide obligation on confined persons to report to commission of the evil doing under this Bill¹⁰⁷. The provisions of this Bill shall be in accumulation to the, and not in adjacent to any other existing law, which is already in effect¹⁰⁸.

The draft bill proposed by National Commission for Women, was a appreciable step trying to combat the inhuman and shameful activities done in the shadow of honour, though, as the Law commission pointed out rightly in its report¹⁰⁹, where it missed the desirability and requirement of the focusing on dealing directly on illegal gathering and their brutal persuade. Then after, the law commission presented the proposed legislation as a bill namely, the *Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliance) Bill, 2011* with exactly focusing on illegal gathering i.e. unlawful assemblies. According to the Law commission they assembled on community or caste, where they presumed themselves to have the authority and right to adjudicate and pronounce on those marries which are objectionable in their eyes and show minimum respect for life and liberty and are not prevented by any law or the court of justice. Such unlawful assemblies harass and abuse innocent youngsters and carry on to exercise unrestricted power and also appear to be against any suggestion regarding social tradition, rule and culture in that particular society.¹¹⁰

¹⁰⁶ Prevention of Crimes in the Name of Honour and Tradition , 2010, Sec. 9 - Declaration by a Couplesaid couple.

¹⁰⁷ Prevention of Crimes in the Name of Honour and Tradition, 2010 Sec. 10 - Obligation of certain to fine.

¹⁰⁸ Prevention of Crimes in the Name of Honour and Tradition, 2010, Sec. 11 –Bill, not in derogationin force.

¹⁰⁹ A Suggested Legal Framework, Prevention Of Interference With The Freedom Of Matrimonial Alliances (In The Name Of Honour And Tradition):. Report No.242, Law Commission Of India, Government Of India, August 2012, Available at: <http://lawcommissionofindia.nic.in/reports/report242.pdf>, (last visited on Jan. 23, 2016)

¹¹⁰ The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill 2011 - Suggestions and Recommendations, by The West Bengal National University of Juridical Sciences, Available at: <http://www.nujs.edu/downloads/nujs-the-prohibition-of-unlawfulassembly.pdf>, (last visited on Jan. 23, 2016)

Law commission also indicated and tried to define unlawful assembly in the bill which is quite differently defined in section 141 of the Indian Penal Code not same to unlawful assembly. The proposed law intends to deal with the performance of local bodies or caste assemblies and to strike at the blind faith of such assemblies performing against life and liberty of persons. A different form of illegal association should be punished differently, therefore, the commission has recommended as much as possible in better importance. The bill and its provisions are not in contrary or derogation to the Indian Penal Code but it is in its accumulation. The Commission already rejected the proposal to include 'honour killings' within the definition of murder to amend Section 300 of the Indian Penal Code on the ground that the existing provisions are enough to pay attention of the position leading to define and punish the acts of killing or causing physical injury to the intended person who supposedly damaged the honour of the community, caste or society. The object behind killing a human does not create the reason to introduce an additional provision in section 300 of IPC. However, shifting the burden of proof on to the offender facing allegation of taking part in the gravious offence of murder or homicide or abetment of it is not fortunate. Such a step will be against the fundamental ideology of criminal jurisprudence acknowledged and cover up into our criminal justice system. If onus has to be shifted in such offence, rationally, it will be converted into the other heinous crimes¹¹¹.

The Bill, 2011 is forwarded by clause 2(1) provided in other words that no person or any assembly of persons shall assemble with premeditated to intended plan, or smash any marriage, not banned by law, on the grounds that such marriage has ruined the community or caste custom or brought disregards to all or any of the persons to being part of the gathering or the relations or the person of the locality or of the society. The explanatory part contained the intended or proposed marriage within the meaning of 'Marriage.' Provided under Clause 2(2) directs any such assembly or meeting or gathering to be

¹¹¹ *Supranote* at 109 (A Suggested.....)

considered as an unlawful assembly and everyone convening or organizing such meeting and every member thereof participating shall be punishable with imprisonment for a term which shall not be less than six months but may extend to one year and shall also be liable to fine up to rupees ten thousand¹¹².

According to clause 4 of the bill any member of such gathering who only or in group with other such members supports, encourage or brings force upon any person or persons so as to disapprove, or condemn of the marriage which is objected to by the said members of the prohibited gathering, or creates an atmosphere of aggression towards such youngsters or one of them or their supporters, relatives or family members, shall be deemed to have acted in endangerment of their life and liberty and such an action of jeopardize shall be punishable with imprisonment for a term of not less than one year but which may be extended to two years and shall also be liable to fine up to twenty thousand rupees. Clause 4 (1) provides punishment for criminal intimidation of the young couple or their family members¹¹³. The bill further tightens the noose on persons participating in the assembly by presuming his intention to commit the act. The clause 6 of the proposed bill reads- “In a hearing under section 3 or 4, if it is established that any accused person involved himself or continued to involve in a illegal gathering, the Court shall presume that he deliberated and determined to take all essential steps to put into effect the decision of such gathering including the completing of acts provided in Sections 3 and 4¹¹⁴.”

The District Magistrate or the Collector has been delegated with the task of certifying the security of the persons targeted in case any verdict is taken by the khap Panchayat and she / he shall take essential steps to forbid the

¹¹²The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill 2011, Available at: <http://lawcommissionofindia.nic.in>, (last visited on 23 June, 2015)

¹¹³ The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill, 2011 clause(4)

¹¹⁴ The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill, 2011, clause(6)- In a prosecution under section 3 or section 4, if it is found that any accused person participated or continued to participate in an unlawful assembly, the Court shall presume that he intended and decided to take all necessary steps to put into effect the decision of unlawful assembly including the commission of acts referred to in Sections 3 and 4.

summoning of such illegal gatherings¹¹⁵. Any act against the provision provided under proposed law will be punished by imprisonment can be extent up to three years and a fine extent up thirty thousand rupees. The cases are to be decided by Sessions Judge or Additional Sessions Judge in a Special Court¹¹⁶. The Special Court would be authorized to *suo motu* cognizance of case concern to the technical development and incorporate practical participation via social networks and as the same. It should incorporate both indirect and direct involvement¹¹⁷. The act proposed in section 2 may not always be joint action. As stated in the common inspection above, if coercion, threat or intimidation can occur from either of the member of the family or within family. Such actions do not always need to break marriages but might also be to compel someone into marriage. So, under the forbidden action in section 2, such actions must be mention. Clause 6 uses the word 'participation' which should be defined to mean not only the influence of corporeal existence but also financial, political and others. With the expansion in the gathering of such gathering it is because of expanding cell phones and the use of social media, there must be a cell to control these cyber supports. Much the same as the bill proposed by NCW, the LCI's Bill likewise does exclude disciplines for exclusion on part of the expert, which gets data about the said offenses yet neglects to make fitting move. Expansion of responsibility with respect to aware officer/officers in the area must be considered to make the law viable and implementable¹¹⁸.

Further the Law Commission, draft a legislation 'The Endangerment of Life and Liberty (Protection, Prosecution and other measures) Act, 2011' to deal with the threat of 'honour killings' in several parts of the nation and grip

¹¹⁵The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill, 2011, cl. 8- (1) Where the Collector.....unlawful assembly.

¹¹⁶ The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill, 2011, cl. 9- (1) Notwithstanding anythingin the notification.

¹¹⁷ The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill, 2011, cl. 10- (1) A Special CourtCourt of Session

¹¹⁸ *Supranote* at 110 (The Prohibition.....)

with unlawful commands delivered by 'khap panchayats,' the Law Commission has drafted a legislation to prosecute either the member or the group concerned in such jeopardize activities and conduct. The proposed draft, 'The Endangerment of Life and Liberty (Protection, Prosecution and other measures) Act, 2011,' prepared by the member of Law Commission and senior advocate R. Venkataramani, has been discussed and approved by the Commission, which is chaired by Justice P. Venkatarama Reddi.¹¹⁹

The Commission has refused again as for last bill, the claims for a separate clause in Section 300(murder) of the Indian Penal Code to insert 'honour killings' under the provision of this specific Section. The commission stated that there is no need to insert a additional part i.e. honour killings within the scope of this section 300. It may creat interpretational difficulties and confusion inserting such a new clause. The current provisions in the Indian Penal Code are sufficient to deal with the situations relating to clear acts of such killing or other acts of physical harm to the intended person who allegedly undermined the honour of the caste or community.” Under the drafted law, the act of putting life and liberty in danger shall mean and include any way of acts of exhorting, encouragement, commending, threat and creating an situation to squash of life and liberty is threatened or imminent and shall include compelling the persons indirectly or directly compelling to move out, leave or abandon their home from the particular place and make mandatory obligations such as withdrawal of the resources of livelihood, cut off social relations, rejection of services and amenities which are generally otherwise available to the people of the particular society¹²⁰.

Additionally, it might be unlawful for any gathering of people to associate, collect or assemble with the aim to destroy, premeditated on, or to censure any relationship or marriage for example, marriage between couple

¹¹⁹The Hindu,,New Delhi, Law commission Proposes Legislation to curb 'Honour Killing, by J. Venkatesan, june 8, 2011, Available at: <http://www.thehindu.com/news/national/law-commission-proposes-legislation-to-curb-honourkilling/article2085349.ece>, (last visited on april 10, 2015).

¹²⁰ *Ibid.*

who have already get the age of majority in the particular society on the grounds that such relationship or conduct has disrespected the religion, caste or community of whole the society or the family or of the particular member or any of the persons forming part of the assembly of the particular society..

It might be presumed that any one or the group found to be part of the illegal caste gathering did as such with the aim to act in violation of life or liberty. Such a gathering might be dealt with as an unlawful assembly and all the persons coming under such assembly shall be punished with imprisonment for a period of not less than three years and it may extent up to five years and a fine of thirty thousand rupees. The proposed legislation provides that any person or persons meeting or gathering of such an assembly or who takes an active part in the execution of the assembly should likewise be subjected to civil punishment as they won't be qualified to contest any election to any local authority and will be dealt with as an ineligible candidate.¹²¹

Further in 2013 Late Justice J.S. Verma (retd) chairman of committee on amendment to criminal law has recommended in his reports the law relating to khap panchayat and honour killings according to his report¹²² a Khap is a form of grouping, which may comprise of more than one village. Sometimes these villages comprised of people belonging to the same gotra (clan) or caste or multi-gotra or multi-castes. The Khap Panchayat as a social institution has a long history. These institutions functioned as a public forum for resolution of difference by providing a platform for direct negotiations between the disputants from such village or villages which fell under Khap. The decisions meted out by the Khap Panchayat would bind the parties, and in a rare case, the dissatisfied party may apply for review to Sarv Khap, which functioned as a higher assembly of representatives from all neighbouring Khaps¹²³.

¹²¹ *Ibid.*

¹²² Justice J.S. Verma committee Report, Available at: <http://bba.org.in/sites/default/files/Justice-Verma-Committee-report.pdf>, (last visited on July 15, 2015)

¹²³ Report of the Committee on Amendments to Criminal Law, by Justice J. S. Verma (retd) chairman of committee, Justice Smt. Leila Seth (Retd) (Member), Gopal Subramaniam (member), Chapter-8, Para-3, Full text of the report by the Committee constituted to suggest amendments in laws for sexual crimes which was submitted to the Ministry of Home Affairs, published- Gov. of India, January 23, 2013.

This logic of maintaining caste order by preventing inter-caste marriages and further debarring intracaste marriages which are sagotra, severely limits the freedom to freely choose ones partner; these practices have no legal sanction under Hindu Marriage Act. This further unduly emphasizes a woman's 'honour' thereby encouraging not just control of sexuality but also her marital choice, by stigmatising inter-caste marriages.¹²⁴ This has much wider social and economic repercussions and restraining women's free mobility affecting her education/ employment and fundamental rights. He stated that the relative ease and speed with which justice was dispensed and the sense of solidarity and support that villages and communities provided to families gave khap a firm social standing. Of course, given the strong hold patriarchy had on all aspects of society, women played no part in khap deliberations. The position of the lower caste and schedule caste were no different". In his words, a Khap panchayat is seen as upholding the concept of bhaichara on a gotra, caste or territorial basis¹²⁵.

It is believed that Khap Panchayats generally consist of powerful elements of a dominant caste, senior citizens who "wished to be considered as upholders of village norms, custodian of rural culture and guardians of public morality."¹²⁶ The means adopted by Khap Panchayat to secure compliance of members of their community with their notions of morality and right conduct, in the name of culture and tradition, has assumed unreasonable proportions. Khaps regularly oppose marriages between people related by blood or belonging to the same gotra (sagotra), or people who are members of a Khap (on territorial basis). However, Khap permits marriage within the same caste and prohibits intercaste marriage.¹²⁷ It does not allow any violation of the above diktat to go unnoticed and imposes upon the violator social boycott or excommunication as punishment. These punishments have also taken form of

¹²⁴ Lakshmi Anusha, Honour Killings in India, (filed under Legal Articles). Posted on May 4, 2013, Available at: <http://www.legalindia.com/honour-killings-in-india/>, (last visited on July 25, 2015)

¹²⁵ *Supranote* at 123 (Report of.....)

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

gross human right violation where these purported violators have been subjected to brutality and sometimes have been brutally murdered¹²⁸.

Hence, in his report they directed the police and regulatory authorities to take hard steps to anticipate such horrible acts. If any such wrong occurs, have to start criminal proceedings against those responsible for such offences, the State Government is directed to promptly suspend the District Magistrate or the Collector and SSP or SPs of the area and other authorities concerned and issue so cause notice and charge sheet against them and proceed departmental action against them if they don't (1) anticipate such acts or if didn't happened but they have prior information about to happen, or (2) if the act happened and they don't arrest the offenders and others involved included and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly answerable in this relation¹²⁹.” The actions of Khap Panchayats are extremely relevant for the consideration of this Committee in the context of crimes against women, on the basis of gender, since one of the most prevalent practices employed by Khap Panchayats to enforce their decisions is that of “Honour Killing¹³⁰”.

Generally “honour crimes” and “honour killing” terms are used to explain the happening of harassment, threat and violence caused to young boys and girls having married or intending to marry against the desires of the family members or the community. Although, homicide in the name of honour of a person upon the belief that the person has bring ‘dishonoured’ to the family has been common in this part of the world¹³¹. The Law Commission, in its 242nd Report, observed that as for like the community or caste panchayats act a positive role in dealing the widespread problems relating to the society or peacefully settling the disputes between the local families and residents, deterring the people from a criminal course, the responsibility and the effort of

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid*, Chapter-8, Para-9

¹³¹ *Ibid*, Chapter-8, Para-11

these village Panchayatdars and elders can be highly praised; but, if they go beyond their parameter, as it is regularly occurring, compelling their decisions in affairs relating to wedlock and obstructing in the legal choices of youngsters and involving in acts of jeopardizing their life and liberty, the law cannot stand as a silent observer in our democratic and progressive matrimonial course to nurtured constitutional standards.”¹³²

In India, “honour killing” is being practiced against young boys and girls marrying either against the choices or desires of their family or marrying outside their religion or caste which are considered as “objectionable matrimonies”. Khap Panchayats have been implementing this practice to enforce their diktat “by assuming to themselves the role of community or social guardian”. Where a murder is committed in the name of pride, culture and honour, it has been considered as less serious than murder and members of the society are found to have ignored the killing¹³³.

As women have largely been targets of “honour killing” it is extremely important for the Committee to take note of this social menace and atrocities against woman. Therefore, with the intention of checking any unwarranted interference by the members of such panchayats, who would resort to criminal threats by the members of unlawful assembly to secure obedience with illegal assembly, the Law Commission of India was assigned the task to examine the need to have a separate legislation to curb “honour killings” in cases of matrimonial choices¹³⁴. We expect the State to ensure that these institutions will not interfere with the choices made by men and women in respect of marriage, as emphasized by the Supreme Court¹³⁵.

The caste system is a annoyance practice in the country and definitely it is destroyed the atmosphere of brotherhood. Actually, it is dividing the society and the country when it is need of the day to be united and face the challenges

¹³² *Ibid*, Chapter-8, Para-12

¹³³ *Ibid*, Chapter-8, Para-13

¹³⁴ *Ibid*, Chapter-8, Para-14

¹³⁵ *Ibid*, Chapter-8, Para-18

before the country. Therefore, in the national interest, inter-caste marriage is one of the appreciable step destroying the menace of caste system. Though, such alarming news are coming from some parts of the country that young couples who go through inter-caste marriage, are threatened or harassed with violence, or injury or attack is actually committed on them. In our view, such acts of harassment or threats or injury or attack or violence are wholly prohibited by law and those who commit or involved in such acts, must be strictly punished¹³⁶.

5.7. Role of Judiciary for the Protection of the Women against Violence on the Name of Honour in India

It is established that Indian judiciary and executive body is separated and it is independent body¹³⁷. It is the beauty and strength of Indian judiciary which has influenced and generate faith in the lives of common people. Where the Legislative body doesn't have matter or any reason that why it is unable to make a law to encounter a social menace. However, the Judiciary plays its role and acts as a guardian, alert watchman, champion, and strong supporter of human rights¹³⁸. The appearance and activities of these kangaroo courts have also not fugitive by the eye of the judicial system and the Apex Court, realizing the influences and scope of the malpractices harassments and killings exercised by medieval so-called Talibani courts or caste panchayats¹³⁹, has by its intervention, some extent, made efforts, to put grip on their functioning. Khap Panchayats are self-appointed or at worst elders mob-operated institutions that functions completely against the established principles of human rights or it can be said that their act is violating the criminal law. Above all It is a crudely

¹³⁶ The Hindu, National, Inter-caste marriages are in national interest: court, July 08, 2006, Available at: <http://www.thehindu.com/todays-paper/tp-national/Inter-caste-marriages-are-in-national-interest-court/article15734680.ece>, (last visited on July 18, 2016)

¹³⁷ Constitution of india, Article 50

¹³⁸ *Daryao and others v. state of Uttar Pradesh and others* 1961 AIR 1457, 1962 SCR (1) 574

¹³⁹ *Supranote* at 6 (Report Submitted.....)

or irregularly organized court, its operations shows biase controlled nature where they didn't follow fair trial to hear them and imposed their mandates on the deprived couples or either of them. Thus, it is the fact that court of kangaroos and its trial in actuality is a fraud legal proceedings of court¹⁴⁰. These courts deny *due process* principles in the name of realism so that the term "kangaroo court" is used for them to reside the expression of judicial proceedings¹⁴¹.

Such expressions consist of various rights of proceedings like right to get summon for witnesses, right not to be incriminate oneself, right to be part of cross examination, right to have control one's own defense, right not to be tried on hided evidence, right to exclude evidence that is irrelevant, inherently inadmissible or improperly obtained as hearsay evidence, the right to exclude judges or juries on the grounds of conflict or partiality of interest, and most significantly for the complete justice i.e. the right to appeal¹⁴². Ridiculously stating till now there is no right to appeal, the pronouncement of the khap panchayats is definitely unchallenged because the adjudicating power to pronounce and execute the verdict is vested by the heads of such kangaroo courts which are unproved and wild in nature. There continuous act without following law has made them bold and confident so they carry on with their inhuman and illegal adjudication as so called "justice". The inhuman act of the khap panchayats on the name of tradition and honour have not gone ignored by the eyes of high courts as well as supreme court¹⁴³.

The Constitutional courts in India perform 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

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² The Judicial committee is basically a kangaroo court or kangaroo trial, by Cheetos, *Available at:* <https://www.jehovahs-witness.com/topic/167835/judicial-committee-basically-kangaroo-court-kangaroo-trial>, (last visited on July 8, 2016)

¹⁴³ The Hindu, New Delhi:, Stamp out khap panchayats: court, J. Venkatesan, April 20, 2011, *Available at:* http://www.thehindu.com/news/national/Stamp-out-khap-panchayats-court/article_14689356.ece, (last visited on July 8, 2016)

significant role in protecting the fundamental, Constitutional and Statutory rights of public or its citizen as the power given by the Constitution of India. Further calculating that from last decade the atrocities of threats, harassment, injuries and violence against young boys and girls who go through intercaste marriage, are increasing day by day it became necessary for the judiciary to combat the problem and provide the protection to the youths who want to get marry with their own choice because where the other organs of the state have been failed to give any solution of the problem it is the judiciary on which people have more confidence¹⁴⁴.

Markandey Katju and Gyan Sudha Misra JJ. On behalf of Supreme Court of India observed that Since many such information of atrocities are received regarding violence, harassment and threats against young boys and girls who performed inter caste marriages with their choice. Our country is on way of a dangerous halfway stage in our history, and it is not possible that this court remain quiet in the matter of huge public anxiety¹⁴⁵.

Smt. Laxmi Kahhwaha v. The State of Rajasthan,¹⁴⁶ It was the case initiated through Public Interest Litigation which was filed in the High Court of Rajasthan, Through The PIL it was requested the court to consider regarding illegitimate dictates of caste Panchayats on the vulnerable group of the society, especially on young girls. The court stated that these Panchayats had no authority anyway to pass any threaten order, cut off social relation, or impose any fine on anybody and more of all they have no any jurisdiction to violate the basic rights of an individual.

The Apex Court has again restated on the act of honour killing as brutal offence done in the name of honour cannot be allowed to go without punishment. In the case of *Arvinder Singh Bagga v. State of U.P.*¹⁴⁷ the Court observed that the court have carefully perused the report and said that the court

¹⁴⁴ Ambika Pant, Role Of Courts In Protection Of Human Rights, Available at: <http://ujala.uk.gov.in/files/issue%202/2Ch-5.pdf>, (last visited on July 18, 2016)

¹⁴⁵ *Arumugam Servai v. State Of Tamil Nadu*, Slp(Crl) No. 8428 Of 2009

¹⁴⁶ AIR 1999 Raj 254.

¹⁴⁷ AIR 1995 SC 11

appreciate the whole judicial work done by the District Judge. The Court further stated that it was a complete inquiry by examining a number of witnesses to go into at the truth. In the considered opinion of the court the report was a fair one and it was deserves to be accepted. Finally the reort was consequently accepted for further criminal proceeding¹⁴⁸.

In *Lata Singh v. State of UP and Another*,¹⁴⁹ the apex court observed: This case exposeb a shocking state of affairs. There is no dispute that the petitioner is an adult and was at all relevant times an adult. Therefore, she is free to marry anybody with her choice or live with anybody she likes. There is no restriction to an inter-caste marriage under the Hindu Marriage Act or any other law. Thus, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.

The court held that no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court as well as of the administrative governance at the instance of the petitioner's brothers who were only irritated because the petitioner married outside her caste¹⁵⁰. The court distressed to note that instead of taking action against the petitioner's brothers for their illegal and autocratic acts the police has instead proceeded against the petitioner's husband and his family members. Since several such illustrations are coming to our knowledge of harassment, violence and threats against young men and women who marry outside their caste, we feel it compulsory to make some general remarks on the matter. Our country is passing through a crucial transitional period in our history, and this Court cannot remain silent in subject of great public concern, such as this one.

¹⁴⁸ *Arvinder Singh Bagga v. State of U.P.*, [1994] INSC 517 (6 October 1994), Mohan, S. (J) Mohan, S. (J) Majmudar S.B. (J), Citation: 1995 AIR 117 1994 SCC (6) 565 JT 1994 (6) 478 1994 SCALE (4)466, Available at: <http://www.advocatekhoj.com/library/judgments/index.php?go=1994/october/14.php>, (last visited on July 11, 2016)

¹⁴⁹ AIR 2006 SC 2522.

¹⁵⁰ *Supranote* at 136 (The Hindu.....)

The caste dividing system is a malpractice on the nation and the sooner it is destroyed the future. In fact, it is dividing the nation when we have to be united to take the challenges before the nation unitedly. Therefore, inter-caste marriages are in fact in the national interest as they will outcome in destroying the caste system. Nevertheless, more of the disturbing news are coming from a number of parts of the country that young boys and girls who undergo inter-caste marriage, are harassed and threatened with violence, or violence is actually committed on them and resulted to murder which are wholly illegal and those who commit them must be strictly punished¹⁵¹.

India is a democratic, free and republic country, and once a person becomes adult he or she can marry with their choice. If the parents of the boy or girl disapprove of such inter-religious or inter-caste marriage the maximum they can do is that they can disconnect social relations with the son or the daughter, but they cannot commit or give threats or instigate acts of violence and cannot harass the person who performs such inter-religion or inter-caste marriage. Therefore, the court has direct that the police authorities or administration all over the country will see to it that if any major boy or girl who gone through marriages out side of caste or out side of religion with a major girl or boy with their choice, the couples should neither be threaten by any body nor subjected to harass or acts of violence, and anyone who gives such illegal and inhuman atrocities either himself or by their relatives, will be taken to the custody by the police or authorities with instituting criminal proceedings against such persons and further it will be start strict action as provided by the law¹⁵².

The court further stated that sometimes we got information of killings of such persons who go through marriages of out side the religion or out side the caste of their own choice. There is nothing marvellous in such murder, and in fact its all nothing but shameful and barbaric acts of killing done by cruel,

¹⁵¹ *Lata Singh v. State of UP and Another* AIR 2006 SC 2522.

¹⁵² *Ibid.*

violent and brutal minded people. These people deserve hard punishment and this is the only way through which we can stop such acts of barbarism. The police authorities have to watch concerned areas should make sure that neither the victim nor the spouse nor any relatives of the spouse are threatened or harassed nor any acts of atrocities are committed against them. If anyone is found guilty, he must be taken to the custody by the police or authorities with instituting criminal proceedings against him and further it will be start strict action as provided by the law¹⁵³.

The Apex court in the case of *Arumugam Servai & Others. v. State of Tamil Nadu*,¹⁵⁴ after observation stated that the court have got information about “Katta Panchayats” (its Khap Panchayats known as in Tamil Nadu) in last few years which often order, support or commit honour killings or other inhuman acts in an organized way on young girls and boys of different religion and castes, who desire to have been married or to get married of their own choice, or obstruct within their personal lives. Other atrocities against women within her personal lives is not permitted. The court further stated that it is our view that these atrocities and organization (*kangaroo courts or katta panchayats*) are completely illegitimate and has to be forcefully root out. There is nothing honourable in honour killing or other violence against women and actually, it is nothing but shameful, barbaric, and cruel murder committed by feudal, cruel and brutal minded persons deserve hard punishment. Only in this way we can stop such acts of feudal, cruel and brutal approach. Furthermore, if these acts committed it will be count as the offender has taken the law into their own hands which is strictly prohibited¹⁵⁵.

Further the bench stated that, the caste system is a annoyance practice on the nation and more rapidly it is destroying the atmosphere. Actually, it is isolating the society when it is the time to be united and to face more of the

¹⁵³ *Lata Singh Case* Supreme Court – (2006), By National Legal Research Desk - February 5, 2012, Available at: <http://nlrd.org/lata-singh-case-supreme-court-2006/> .(last visited on July 13, 2016)

¹⁵⁴ (2011) 2 SCC 405.

¹⁵⁵ *Arumugam Servai v. State Of T.Nadu* On 19 April, 2011, Available at: <https://Indiankanoon.Org/Doc/1337458/>, (Last Visited On July 17, 2016)

challenges for the nation building. Therefore, inter-caste marriages are indeed can be the greatest solution to destroy the caste system in the national interest. It can be used as the weapon against caste hierarchy where two persons married out side their caste. Practicing more and support this type of marriage also can remove one of the menace in our society i.e. “Dowry”. Though, shocking reports are coming from some parts of the country that young couples or either of them who go through such marriage, are threatened or harassed with cruelty, or cruelty is actually committed on them. In our view, such acts of harassment or threats or violence are completely prohibited and those who commit such acts must be strictly penalize¹⁵⁶.

Furthermore the court directed that if the parents either of the girl or boy reject their inter religion or inter caste marriage, they have maximum one thing to do is that they can disconnect social relations with the daughter or the son, but they cannot give any type of instigate or threat or commit acts of atrocity and harass the person who goes through such inter religion marriage or inter caste marriage with their own choice if both are adults¹⁵⁷.

In this case the bench of Supreme Court has direct that the police authorities or administration will see the whole country, if any adult girl or boy goes through inter- religion or inter- caste marriage with a man or woman with their own choice if both are adults, the couples are neither subjected to threats harassed by any one nor or acts of atrocity, and anyone who gives such threats or harasses or commits acts of atrocity either himself or by their relatives, against such acts of threats, harassments or atrocities which are completely prohibited, those who commit such acts must be taken action against him and strictly penalize by law¹⁵⁸.

In the same case Honourable bench issued special direction given to the police officials and administrative to take strong instrument to prevent such atrocities i.e. honour killing. The court ordered to institute criminal proceedings

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

against those responsible for such killings, if any such activities happened under their jurisdiction. Further directed the state Government to immediately suspend the Collector or District Magistrate and SP or SSPs of the district as well as other concerned officers and with charge sheet them and proceed action against them departmentally if they are unable to prevent such happenings (honour killing). If it has not already happened but they have prior information or if it has happened and they do not immediately detained the offenders and others engaged in it, must be initiate criminal proceedings against them it will be supposed to be indirectly or directly accountable for that crime¹⁵⁹.

The Supreme Court also stated that in number of state *Khap Panchayat* (non-judicial authorities) which often pass order or instigate to honour killings or atrocities against the young girls and boys of different religion and castes, who desire to have been married or to get married of their own choice, or obstruct within their personal lives is totally illegal and feudal practice. Through this land mark judgement the Hon'ble Supreme Court has directed different authorities to eradicate the caste system from the country and protect the victims of honour related violence¹⁶⁰. The Court further declared such kangaroo approached courts to be illegal, further directed the police authorities as well as the state governments to deal with them rigorously.

Again in *State of U.P. v. Krishna Master*¹⁶¹ the Apex Court sentenced life imprisonment to the three persons found guilty of the honour killing who were accused of murder under section 300 of IPC. They murdered six persons brutally of the same family. The Court further said that they have almost finished the whole member of the family in the name of honour or insubstantial ground to keep false pride of the family must be amount to consider under rarest of the rare case by the court¹⁶². The idea of rarest of the rare case is

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*

¹⁶¹ AIR 2010 SC 3071.

¹⁶² Khap Panchyats, Adjudicating Cultural Dishonour?, by manbir_bhinder, Published on December 14, 2013, Available at: <http://ncw.nic.in/pdfReports/ReportbyJamiaMilia.pdf>, (last visited on July 18, 2016)

initiated by the Apex court deciding in the landmark case *Bachan singh v. State of punjab*¹⁶³.

In the case of *Faiz Ahmed Ahanger and Others. v. State of Jammu & Kashmir*,¹⁶⁴ the Apex Court had evidently held that the right to marry out of any religion or caste of the individual as well as couple without the permission of the guardian with their own choice seek police protection in case they fear harass, threaten or any violence apart from the society or the families. The court further stated that In such cases of performing marriages out of the religion or out of the caste the Court has only to be noticed two things about that

(i) Majority- The girl is above age of 18 years, then in the matter of the court where the law considers her as a major accordingly Section 3 of the Indian Majority Act, 1875. An above 18 years person is believed *major* by the law to know what is in her or his benefit.

(ii) Desire- Then the court again directed about the desire of the girl that if a girl is major she can marry with her own desire with anyone. Neither any law can prohibit her desire nor any one can restrict it.

After observing the facts and circumstances the court said that no one shall be harassed, threaten, or commit any activity of atrocities or other illegal act on the victim or the members of her family and till next orders they shall not be detained in custody with the matter concerned. If these couples feel or suffer unsafe, they may consult to the police or authority and in such incident, the police shall provide security to the couples¹⁶⁵. If anyone is found guilty, he must be taken to the custody by the police or authorities with instituting criminal proceedings against him and further it will be start strict action as provided by the law.

*Jyoti Alias Jannat and Another v. State of UP and Others*¹⁶⁶ the Court held that According to section 3 of the Indian Majority Act 1875 a person is a

¹⁶³ AIR 1980 SC 898, 1980(2) SSC 684

¹⁶⁴ 2009 (3) Raj. 692.

¹⁶⁵ *Supranote* at 6 (Report Submitted....)

¹⁶⁶ 2003 (4) AWC 2844.

major who is 18 years of age provided under the Act. It is the presumption of the law is that a major is aware of his or her wellbeing. Therefore a major has right to move anywhere with anyone he or she choose and reside. India is a democratic, independent and libral country. Therefore if anyone who is major his or her parents cannot obstruct the right to life and liberty and that individual cannot be anticipated from moving anywhere and reside with anybody. He has all liberty to go through marriage as per his/her choice, and no one, even the parents can't use any mean to torture the either of couples. Under Article 21 personal liberty is incorporated as sole of the provision, guaranteed under the Indian Constitution¹⁶⁷.

*Shiv Kumar Gupta Alias Raju v. State of UP and Ors*¹⁶⁸ In this case Rani Gupta move to the court alleging her father was compelling her to marry with a man she not liked. Then after she got into marriage with a person of her choice, of her own free will. The Court agreed that Rani was a major and she had to be given the chance to make her declaration to the court on her preference. The court stayed the detention of her husband and held that Rani Gupta must not be obstructed with her personal life and liberty provided under the Constitution of India¹⁶⁹.

In the case *Pradeep Kumar Singh v. State of Haryana*¹⁷⁰, the High Court laid down the directions on the case of runaway couple and case is to decide on complaints by the parents of the girl against the boy. Although, a large number of cases of runaway couples have been decided by the Court but it was necessary to deal this incidence with the directions (in other words):

- i. when any clue is received by any means to the SP or SSP of that District in regards the marriage of a young couple with a danger and

¹⁶⁷ *Jyoti Alias Jannat And Anothers. vs State Of U.P. And Anothers*, 2003 (4) AWC 2844, Available at: <https://indiankanoon.org/doc/387611/>, (last visited on July 18, 2016)

¹⁶⁸ 1999 L.L.R.J.

¹⁶⁹ *Shiv Kumar Gupta @ Raju v. State of U.P. & Ors.*, 10 March 1999, Hon'ble Judges: Virendra Saran, R.D.Mathur, Advocates Appeared: .Code of Criminal Procedure,1973 ,Section 164.Code of Criminal Procedure,1973 ,Section 83, Case Number: W.P. No. 908 (M/B) of 1999, Available at: <http://www.supremecourtjudgements.in/judgment?jid=35478>, (last visited on July 20, 2016)

¹⁷⁰ 2008(3) RCR (Criminal) 376.

a fear of encroachment of the privilege of life, liberty and freedom by relatives of one of the couple, the concerned SP or SSP will consider at privileged and will investigate the issue and will take action as suggested, (Punjab Police Rules-Chapter 21).

- ii. On receipt of such intimation of marriage, the necessary orders must be delivered to that Station of the Police to make vital step as per law to enquire into the issue of such matter to deal the guardians of both couple. The issue with respect to age, consent of the young girl and objection of her relatives will be resolved. In the consequence of any complain of abduction or kidnapping having been received from any of the relatives of the girl. It is directed that the male (spouse) won't be detained till then the female (spouse) did not give the statement against him. Immediate detention of the male be avoided on the complaint by the guardians or relatives of that female but must be taken in to consideration as directed in *Joginder Kumar's case*¹⁷¹ by supreme court.
- iii. The female should not be captured by police to be handed over to her guardians against her will if the female is above 18 years (major). illicit force against the male must be avoided too.
- iv. Private persons are not allowed to assault or harm the young couple to threaten or harass them, The initiative action must be taken by the police if such incidence happened against the couple.
- v. If such incidence happened by the relatives of the couples, State authorities accordance with law must provide securities to the couples.
- vi. For "Runaway couple" It will not be allowed to violate the Law. They must be prepresent before the SP or SSP of the concerned District.

¹⁷¹ *Joginder kumar v. state of UP and others* AIR 1994 SC 1349

- vii. If there is suspicion regarding security to the couple which is informed to the SP or SSP, there is an anxiety or risk of violation of right of free movement or personal life and liberty, High court will be the last place to approach for remedy.
- viii. To assured such marriages valid there is an authority constituted to provide certificate with effect of law as laid down by the Apex Court in *Seema's case*¹⁷² in the concerned districts. The couple of alleged 'run away marriage' should make their marriage registered and get the according to the guidelines of the Supreme Court and a copy of the certificate should also be forwarded to the police authority along with the representations.

Nothing more said here above to avoid the immediate take into custody of a person who deceitfully lures a female with false guarantees and endeavours her sexually according to the statement of the female¹⁷³.

in the case of *Smt Seema v. Ashwani Kumar*¹⁷⁴, the National Commission for Women had submitted an affidavit to the Apex court regarding marriages and its consequences that it is need to make the marriages compulsorily register so there should be a legislation on compulsory registration of marriages which could be helpful to solve several matters related to women importance. The Commission is of the opinion that non-registration of marriages affects the most women. There are following issues (in other words) in support to commence the proposed law would be as:

- (i) To check bigamy or polygamy which is illegal
- (ii) To make the terror on the parents to sell their daughters to anybody or stranger, in the shadow of marriage
- (iii) To ensure minimum age of marriage to prohibit child marriages

¹⁷² Transfer Petition (civil) 291 of 2005 /Supreme Court

¹⁷³ *Pradeep Kumar Singh v. State Of Haryana*, 2008 (3) Rcr (Criminal) 376, By National Legal Research Desk - February 5, 2012, Available at: <http://nlrd.org/pradeep-kumar-singh-vs-state-of-haryana-2008-3-rcr-criminal-376/>, (last visited on July 20, 2016)

¹⁷⁴ Transfer Petition (Civil) 291 of 2005 /Supreme Court

- (iv) To ensure the ceremony of marriage have done with the consent of the parties
- (v) To empowered the married women to claim their right to reside in the matrimonial house and to claim their inheritance rights, maintenance and other benefits and privileges after divorce or separation
- (vi) To make the terror on men after marriage not to commit any form of violence against the women, and
- (vii) To empowered widows to claim their inheritance rights, maintenance and other privileges and benefits which they are entitled to after the death of their husband¹⁷⁵.

All the States should have frame rules for uniformity regarding registration of marriages to solve the disputes of marriages in the same way. As properly asserted by the NCW, in many cases lacking of registration made suffer the women. Registration of the marriage has evidentiary value in itself additionally it gives proof of the marriage solemnised and would give a rebuttable presumption of the marriage having performed. However, the registration itself can't be a proof of legitimate marriage by itself, and would not be the determinative factor about legitimacy of a marriage, So far, it has an incredible evidentiary value where the disputes regarding custody of children, right to conceive or born child from the marriage of the two people whose marriage is registered and to prove the age of the majority of both the party at the time of marriage¹⁷⁶.

In this way, it would be in light of a legitimate concern for the common people in the society if registration of marriages made compulsory, the motive behind the framing Section 8 of the Hindu marriage Act 1955 will be expressed

¹⁷⁵*Smt Seema v. Ashwani Kumar* Transfer Petition, (Civil) 291 Of 2005 /Supreme Court, Registration Of Marriage Made Mandatory, By National Legal Research Desk - February 5, 2011, Available at: <http://nlrd.org/registration-of-marriage-made-mandatory-smt-seema-vs-ashwani-kumar-transfer-petition-civil-291-of-2005-supreme-court/> . (last visited on 26 september 2016)

¹⁷⁶ *Ibid.*

and utilized the words¹⁷⁷ "the proof of Hindu Marriages". As a characteristic result, the impact of non registration would be that the presumption will exist towards the denial of the marriage for both the party.

Therefore, the view regarding marriages of all people who are citizens of India belongs to different religions must be made obligatorily registrable in their concerned States, where the marriage is solemnised. Thus, the Supreme Court has directed the following steps (in other words) to be taken by the Central Government and the States to make law as¹⁷⁸

- (i) All the respective States should notified the procedure for registration within 3 months from date of judgement and make amendments in the existing Rules, if any and objections from the persons shall be welcomed before bringing the said Rules into effect. Further, the States should make publicity for due attention and awareness for the public and take the objections for 1 month from the date of publicity. On the expiry of the said period, the States should issue suitable notice bringing the Rules into effect.
- (ii) The authorized officer under the law be appropriately approved to register the marriages. Matrimonial status (divorcee, unmarried), the age, be written under. The reason of non registering marriages and providing false statement shall also be written according to the provided Rules. Unnecessary to include that the said Rules having empowered by this Court.
- (iii) Whenever the Central Government made such act, having the same effect under this Court for its review.
- (iv) The Learned legal practitioner of every States and Union Territories should also guaranteed and regard the directions should taken away instantly.

¹⁷⁷ The Hindu Act, 1955, Section 8- "for the purpose of facilitating the proof of Hindu Marriages"

¹⁷⁸ *Supranote* at 175 (Smt Seema v.)

The false registration of kidnapping charges on eloping couples is very well reflected in the NCRB data. In spite of these states being lesser trafficking prone areas there has been a substantial increase of kidnapping and abduction in these three states¹⁷⁹.

It is also appealing to note that in the case of *Vivek Kumar @ Sanju v. The State Gov. of Delhi*,¹⁸⁰ the Supreme Court observed that it is alarming, a minor female (not crossed 18 years) falling in love with someone else is not prohibited by law. Neither falling in love with somebody is an offence under Indian penal law nor in any other specific law. It is also not an offence to wishing to marry with her loving partner. It has only two options available to a minor female, who is falling in love with someone, one is that after obtaining the consent of her guardian she should marry with her loving partner. another is she has to wait till attaining the age of majority having the age of 18 years and then she can exercise her right as a major to marry with her loving partner or her own choice if her parents disagreed or convinced with her step. Though, both possibilities will be applicable just when the home of her guardian where she is living in pleasant environment and she is permitted to live there without any query in that home and pass the time to get majority having the age of 18 years¹⁸¹.”

The Apex court additionally stated that personal life and liberty is assured by the Indian Constitution (under Article- 21), is similarly available to major person as well as minors. Parents of a minor daughter have no privilege to marry her compellingly, against her will. Neither they have privilege to harass her nor to murder her, only for the reason that she wants to marry inter-caste or inter-religion. If the minor daughter age of 17 years, to protect herself from the assault of her Parents or other family members runs away from her parents house and reach to her loving partner or moved to go with him to get

¹⁷⁹ *Ibid.*

¹⁸⁰ Cr.L.M.C. No. 3073-74/2006 decided on 23.2.2007

¹⁸¹ *Vivek Kumar @ Sanju And others v. The State Gov. of Delhi*, Available at: <https://indiankanoon.org/doc/390627/>, (last visited on 13 September 2016)

married is not an offence either for the act of that minor girl or the act of her loving partner¹⁸².

*Fiaz Ahmed Ahanger And Others v. State Of Jammu and Kashmir*¹⁸³ in this case the Honourable Court held that right to marry is essential part of the liberty, it must be consider under right to life as a fundamental right. The court has only to be satisfied about two things of inter religion or inter-caste marriage- (i) According to Section 3 of the Indian Majority Act, 1875, the law presumes a girl as an major when the girl is above 18 years of age, the law presumes a person major to recognize what is in her or his wellbeing, and (ii) The desire of the major girl, Then the court again directed about the desire of the girl that if a girl is major she can marry with her own desire with anyone. Neither any law can prohibit her desire nor any one can restrict it.

After facts observation the court stated that no anyone will threaten, harass or commit any acts of cruelty or other illegitimate acts on the victim and the victim's family members and they shall not be take to the custody till next orders in connection where the facts of the case is already in question. If they feel fear or terror, they can apply now and then to the police and in such happening, the police must grant possible protection to all of them¹⁸⁴. If anyone is found guilty, he must be taken to the custody by the police or authorities with instituting criminal proceedings against him and further it will be start strict action as provided by the law.

*Aminder Kaur v. State Of Punjab And Others*¹⁸⁵ In this case it was the matter relating to the Child Marriages. To prohibit celebration of child marriages, The Child Marriage Restraint Act, 1929 was enacted. Though, it was amended consequently in 1949 and 1978 for the purpose of marriage in order to lift the age limit of the female and male persons. The Child Marriage

¹⁸² *Ibid.*

¹⁸³ 2009 (3) Raj 692

¹⁸⁴ Law Resource India, National Legal Research Desk on Violence Against Women and Children, Available at: <https://indialawyers.wordpress.com/category/honour-kilings/>, (last visited on 13 September 2016)

¹⁸⁵ CRM-M 29790 of 2009 (O&M)

Restraint Act, 1929 still prohibits celebration of child marriages. Though, it did not affirm them to be invalid or void. while there was a public outrage in the Society to check and present more impediment solutions by making harsh provisions to demolish the wrong practice of celebration of child marriages¹⁸⁶, The Prohibition of Child Marriage Act, 2006 enacted in 2006. Section 2(a) of the act defines that if a male did not completed his age of twenty-one years and a female did not completed her age of eighteen years is “child”. Section 12 of the Act provides Marriage of a minor child to be void in certain circumstances, provisions should apply with full firmness in the case where the marriage has been solemnised who is child and a minor, is unsound in the eyes of law, must be declared as void.

the Court in this case observed as prima-facie that according to collected evidence by the police investigation, the girl found major, over the age of 18 years but yet at the same time while arguing for the sake judgment, it was declared that whatever the girl is the age of 16 years and 2 months is regardless to the obtaining the age of majority and has performed the marriage with her own particular decision or will, no offense is said to have been conferred. This Court had no circumstances to illustrate the provision of Section 12 of the Indian Majority Act. Thus, the ratio set down in this cases is not relevant.¹⁸⁷.

In the cases of *Lata Singh*¹⁸⁸ and *Pardeep Kumar Singh*¹⁸⁹ the Apex Court already direct that the police authorities or administration all over the country will see to it that if any major boy or girl who gone through marriages out side of caste or out side of religion with a major girl or boy with their choice, the couples should neither be threaten by any body nor subjected to harass or acts of violence, and anyone who gives such illegal and inhuman atrocities either himself or by their relatives, will be taken to the custody by the

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ *Lata Singh v State of UP* AIR 2006 SC 2522.

¹⁸⁹ *Pradeep Kumar Singh v. State Of Haryana*, 2008 (3) Rcr (Criminal) 376

police or authorities with instituting criminal proceedings against such persons and further it will be start strict action as provided by the law. It is strictly ordered by the court that the girl should be protected she could not be the part of any atrocity so police protection has to be provided in accordance of law¹⁹⁰.

*Abdus Sabur Khan v. Union of India and Others*¹⁹¹ Honourable Justice Dipak Mishra while delivering the judgment on 10 December 2010 observed and stated that the court occasionally received the information of honour-killings of the persons who go through the marriages out of their religion or out of their caste of their own choice. It is nothing except murder in the name of honour only where there is false pride only. Which is consist of shameful and barbaric acts of killing of human done by cruel or brutal minded person who deserved hard sentence. Only in this way we can hamper the acts of honour killings¹⁹².

We may hasten to add though they said decision was rendered in a different context but we have referred to the same because their Lordship have their concern with regard to honour-killing and in the case at hand the apprehension expressed by the daughter before the competent authority of the Central Government speaks piquantly about the danger to life she would face if she goes back to her father in Bangladesh because of honour which the father harbours in a different way. The parental unwanted intervention in the lives of major children sometimes writ large. In the name of honour, apart from torture murder also takes place. Honour-killing cannot be countenanced in civilized society and more so in a body polity governed by rule of law, for right to life is sacred and sacrosanct. One may treat that it is an affair of honour and he would

¹⁹⁰ *Aminder Kaur v. State Of Punjab And Others* CRM-M 29790 of 2009 (O&M)

¹⁹¹ LPA No. 878/2010 (Delhi High Court)

¹⁹² No Deportation Of Major Married Daughter At Instance Of Foreign Father: High Court , Law-In-Perspective Dedicated To The Cause Of Providing Insights Into Law's Whys And Hows. Focusing On Content From India But Then Covering The Legal Arena From All Over The World., 30 Dec 2010, Available at: <http://legalperspectives.blogspot.in/2010/12/no-deportation-of-major-married.html>, (last visited on September 20, 2016).

go to any extent for the cause of his honour but by such an idea he cannot have the feeling of a victor and the sufferer at his hand a vanquished one. India, is governed by the resplendent philosophy of the compassionate Constitution of India which puts life at the greatest pedestal and in such a system an arbitrary rule, the fashionable world of honour to commit offences or to trespass into others' individual living is totally impermissible. The concept of social expulsion or suspension or even for that matter a perverse notion of self-respect cannot be countenanced. Ex consequential, we do not find any merit in this appeal and dismiss the same. Ordinarily, we would have imposed exemplary costs but we have refrained from doing so. We are disposed to think, a misguided father requires more of therapeutic treatment rather to face the burden of costs¹⁹³.

the Punjab and Haryana High Court in the very popular *Manoj Babli murder case*,¹⁹⁴ stated that this is the 21st century, even in this era in our society such a shameful act of murder in the name of honour is committed. We observed that it is in fact a stain on the fine fabric of the Indian civilization. However, abduction is an offence in the eye of law but killing brutally of the offender is barbaric¹⁹⁵.

The court acknowledged the issues in deciding the case and said that there is no any eye witness in this case, it is unfortunate. The proceedings of the prosecution is based on the circumstantial evidence in the whole case. The court reached at the opinion to assume assured facts of the circumstances presented by the prosecution. As we have furnished the decision in light of the circumstantial evidence, our conscience does not allow us to affirm capital punishment to the accused¹⁹⁶.

¹⁹³ *Ibid.*

¹⁹⁴ Murder Reference No. 2 of 2010 Criminal Appeal No.479-DB of 2010 and Criminal revision No. 2173 of 2010.

¹⁹⁵ *Punjab & Haryana High Court, Gurdev Singh v. State of Haryana*, 11 March 2011, Hon'ble Judges: Satish Kumar Mittal, M.Jeyapaul, Case Number: Murder reference No. 2 of 2010., Available at: <http://www.supremecourtjudgements.in/judgment?jid=562771>, last visited on September 20, 2016.

¹⁹⁶ *Ibid.*

The Punjab and Haryana High Court remarked on the completing the judgment that it is delay and lack of care of the investigating authority in finding proof and collecting evidences. It is a case of complete failure of the investigating authorities then after law enforcement authorities where the police officers were protecting the young couple from the danger of brutal killings. It is very shocking through the inquiry the court got that the intention of investigation was to dispose the investigation and protect the accused rather than the young couple and leave a challenge before the society, which is not justified. A investigation team is consist of police officers to collect all the relevant evidence to help the court proceedings not to misguide or not to engage themselves in the crime¹⁹⁷.

Then the *Shakti Vahini* NGO had generated a writ petition¹⁹⁸ in the Apex Court praying to debar the Khap Panchayats immediately, basically on the ground that they are the main factors for committing “honour killings” and they are performing as “extra judicial” or parallel to the judicial bodies. While hearing the petition, Supreme Court said that ordering women not to consume mobile phones or not to use it or to wear dress in a careful approach are such orders not socially retrograde, is an offence and warned that nobody can instigate a parallel court to harass young couples, whatever its dealing matrimony issues, it will be presumed as dictats or disobeying the law¹⁹⁹.”

While hearing the PIL, The Supreme Court asked to the IG of additional police, DGP (law and order) and SP relating to khap adjudication, its dictates or its act as honour killing. All the police authorities declared that khaps are the group of elders so the people regards them and they follow their mandates in some issues but no any instance we got to connect with respect to honour killings. The police officers further said that it was their relatives who involved in killings of young couples who opposes gotra, caste or religion hindrances. The Court was surprised of why it was declaring “*good character certificate*”

¹⁹⁷ *Ibid.*

¹⁹⁸ Civil Appeal number 231/2010

¹⁹⁹ *Supranote* at 6 (Report Submitted.....)

to the khap panchayats with affidavit by the police Heads of UP, Punjab and Haryana. Shakti Vahini filed the PIL in 2010, till now it was pending due to absence of the khaps before the court. In the middle time on January 14, 2013 the court ordered the khaps for representation and their answer to the petition²⁰⁰. After then on 21st August 2017 Mr. Raju Ramachandran (Amicus Curiae) with Senior Advocate Mr. Gaurav Agrawal, submitted proposals to this Court on 20.11.2012. and expressed that there are sure advancements and many orders passed by the Apex court as well as all by various High Courts in the issue, which require an upgradation of the proposals which are submitted in the Petition. The Supreme court permitted the Petition with Upgraded recommendations submitted to this Court on 21 Aug. 2017²⁰¹.

*Dilip Premnarayan Tiwari v. State of Maharashtra*²⁰², in this case three convicts had murdered two people and brutally harmed two others and abandoning them for dead. The third victim later take back himself to harm more while seeing that the violence was in the manner of "honour killing". In the judgement the Court diluted the capital punishment granted to two of the offenders to sentence for life till completing 25 years of actual custody. The third was condemned to complete 20 years of actual custody. That these offenders were youth people who did not have criminal records it was the reason behind diluting their capital punishment²⁰³.

In *Arumugam Servai v. State of Tamil Nadu and Ajit Kumar and others v. State of Tamil Nadu*,²⁰⁴ the Apex Court direct that the administration officials or police authorities throughout the country will observe that if any male or female who is the adult, performed their marriages out of the religion or out of the caste with a female or male with their choice who has also attained majority

²⁰⁰ *Ibid.*

²⁰¹ *Shakti Vahini (NGO) v. Union Of India* (21 Aug. 2017), Writ Petition (Civil) No. 231/2010

²⁰² 2010 (1) SCC 775

²⁰³ *Deepak Rai v. State Of Bihar*, See Complete document, Point No. 76, Available at: <https://indiankanoon.org/docfragment/178668154/?big=1&formInput=criminal%20antecedents>, (last visited on September 28, 2016).

²⁰⁴ 2011(6) SCC 405

age. The couples should neither be threaten nor be harassed or never be sufferer of any violence and anybody who gives such dangers or commits acts of violence either by himself or by his relatives, must be taken by the police action against him with charging or instituting criminal proceedings according to the law. The Apex Court directed the police and administrative officials to take hard steps to avert such atrocities. whenever such mishappening occurred, must be charged and taken custody by police or start criminal proceedings against those who has committed such violence, Further directed the state Government to without delay suspend the Collector or DM and SP or SSPs of the district as well as other concerned officers with charge sheet and proceed departmental action against them if they are unable to prevent such violence (honour killing). If it has not already happened but they have prior information or if it has happened and they do not immediately detained the offenders and others engaged in it, must be initiate criminal proceedings against them it will be supposed to be indirectly or directly accountable for that crime²⁰⁵.

In the case of *Bhagwan Das v. State of NCT, Delhi*,²⁰⁶ Supreme Court held that the ‘*the rarest of the rare*’ is special case for awarding death sentence and honour killing must comes under this principle so as to creat terror among such offenders. In the judgement again the Supreme Court held mandatory death sentence for the offenders of ‘honour’ killing and also directed for mandatory suspend the administrative officials and the police who did not prevent such crime. This pronouncement raised a voice against the caste institutions and also admired by the progressive group of Indian society²⁰⁷.

*In Re: Indian Woman Says Gang-Raped On 28 March, 2014*²⁰⁸ Supreme Court, based on the news item published in the Business and Financial News dated 23.01.2014 relating to the gang-rape of a 20 year old woman of Subalpur Village, P.S. Labpur, District Birbhum, State of West

²⁰⁵Supranote at 6 (Report Submitted.....)

²⁰⁶ (2011) 5 Scale 498.

²⁰⁷Supranote at 6 (Report Submitted.....)

²⁰⁸ Suo Motu Writ Petition (Criminal) No. 24 Of 2014

Bengal on the intervening night of 20/21.01.2014 on the instructions of caste panchayat as punished to make cohabitation with a male of another community, by order dated 24.01.2014, took *suo motu* action and directed the District Judge, Birbhum District, West Bengal to inspect the place of occurrence and submit a report to this Court within a period of one week from that date. Mr. Sidharth Luthra, learned amicus having perused and scrutinized all the materials on record in his submissions had highlighted three aspects viz. (i) issues concerning the investigation; (ii) prevention of recurring of such crimes; and (iii) Victim compensation; and invited this Court to consider the same²⁰⁹.

Delhi High Court (on April 2, 2014), in the famous *Nitish Katara honour killing case*²¹⁰ maintained the life Imprisonment decision sentenced by the Trial Court accusing to Vikas Yadav, Vishal Yadav and the contract killer Sukhdev Pehalwan. An appeal by Katara's mother and prosecution pursuing for capital punishment to the convicts yet decision was pending under the High Court. The Delhi High Court (on Friday 06th Feb 2015) sentenced Vikas Yadav and his cousin Vishal Yadav to 30 years of life imprisonment in jail for the murder of Nitish Katara and one another man relating to..

*Nitaben vs State Of Gujarat & others*²¹¹ on 11 July, 2016

On noticing that the petitioners have married with each other, without the blessings of the girl's parents, because of their likeness, they are apprehending that they may become victim of honour killing. It appears that both the petitioners are neighbours and they belong to the same community. It is only the resistance on the part of the parents and the relatives of the girl, who

²⁰⁹*InRe: Indian Woman says gang-raped on orders of Village Court*, published in Business & Financial News, dated 23.01.2014, [Suo Motu Writ Petition (Criminal) No. 24 of 2014], P.Sathasivam, CJI., Available at: <http://www.advocatekhoj.com/library/judgments/announcement.php?WID=4634>, (last visited on September 23, 2016)

²¹⁰ *Nitish Katara murder case*, Judgement, Available at: https://en.wikipedia.org/wiki/Nitish_Katara_murder_case, (last visited on September 23, 2016)

²¹¹ Special Criminal Application (Direction - Police Protection) No. 4782 Of 2016, see also- R/SCR.A/4782/2016,

are against such relation, which is formed by the petitioners out of their own choice²¹².

Heard both the sides. Bearing in mind the fact that both the petitioners have married and they are apprehending threat from the community and the family of the girl due to such a step taken by them, a possibility of their being victim of honour killing also cannot be ruled out. In that view of the matter, here, it would be relevant to refer to the observations made by the Hon'ble Apex Court in the case of "*Lata Singh v. State Of U.P.*", 2007 (1) GLH 41, in which reads as that the caste system is one of the annoying a practice and blot in our civilized society. definitely, this system has divided the nation and smashed the better it is the time when we have to face many of the challenges be united to show the strength as the national integration.

*Manmeet Singh v. State Of Haryana And Ors*²¹³ on 20 May, 2016

Considering the nature of case and the poignancy of the situation, I went beyond merely ordering protection and sensing that it was a repeated theme in the State of Haryana, of parents or local khaps actively advocating against sagotra marriages as well as marriages outside the boundaries of respective castes, I gave some directions, constituted a special investigation team and called upon the police to report the progress and the steps taken in the light of directions given to prevent the recurrence of the festering problem of the honour killings. While I had disposed of the case on 23.02.2015, I had directed the matter to be called on 07.04.2015 to submit a report outlining the actions actually taken by the police for implementation of the guidelines given²¹⁴.

The Superintendent of Police, Sirsa had filed a report in Court and my brother Judge before whom the case was brought on 07.04.2015 had found that the affidavit did not address all the directions given to the police and directed a

²¹² *Nitaben v. State Of Gujarat & 4 others* on 11 July, 2016, R/SCR.A/4782/2016, Order, (Paragraph-3), Available at: <https://indiankanoon.org/doc/106871804/>, (last visited on September 23, 2016)

²¹³ C.M. No.2638 of 2016 and IOIN-CWP No.26734 of 2014.

²¹⁴ *Manmeet Singh v. State Of Haryana And Ors* on 20 May, 2016, C.M. No.2638 of 2016 and -1- IOIN-CWP No.26734 of 2014, Available at: <https://indiankanoon.org/doc/88246954/>, (last visited on September 23, 2016)

specific affidavit to be given with regard to implementation of all the directions. The police had pointed out to circulation of Standard Operation Procedure (SOP) for investigation of cases relating to honour killing as alleged to have been issued by the Director General of Police, Haryana. This, according to the State would take care of every situation which this Court had contemplated and therefore, there was no need to file the affidavit. At the next date on 05.05.2016, the Sub Inspector Mr. Vikas brought to the attention of Court that the challan had been presented against five persons and requested the fact to be taken note of and also take into consideration the SOP issued by the Director General of Police. At the next hearing before yet another brother Judge, the State informed that the trial had already commenced and no further directions would be necessary. The case was directed to be placed before me by the orders of the Acting Chief Justice and at that stage, the petitioner at whose instance certain directions had been given had filed serious objections to the Memorandum of Procedure circulated and how deliberately the police had been shielding certain persons against whom the petitioner had given tangible proof of involvement in the murder of his wife but they had not been included in the charge sheet and they had been left out of reckoning from being arraigned as accused²¹⁵.

About the directions contained already in the judgment to prevent honour killings to include, inter alia, the investigation to be put in charge of a Special Investigation Team and the entrustment to the officer not below the rank of Deputy Superintendent of Police under direction supervision of the Senior Superintendent of Police, I have no material to see whether this direction was complied with. The reference to the Senior Superintendent of Police in my order was only to take note of the grave situation that prevailed in the State of Haryana in such like matters relating to honour killings and I directed the Senior Superintendent of Police to have a direct supervision of the evidence 6 of 12 IOIN-CWP No.26734 of 2014 brought before the trial Court

²¹⁵ *Ibid.*

and assist the court in every possible way to bring every one responsible for the macabre killing to book²¹⁶.

Honourable court further said that I depart from the case with the hope that the next honour killing is not reported and if there is ever one, the State machinery had 11 of 12 IOIN-CWP No.26734 of 2014 acted with adequate alacrity to bring the persons guilty of this abhorrent practice by swift conclusion of investigation and securing conviction in Court of law without losing time, take care of the couple and give protection and give adequate compensation when death or injury results to either of the couple. Any public spirited person may approach this Court if the State is found lacking in the initiative to put an end to the festering problems of honour killings and elicit from the State appropriate response for the suggestions given in this case through this order and earlier on. In the delicate separation of powers amongst the key functionaries of State and judiciary in the constitutional scheme, I make no attempt to rock the apple cart. This judicial exercise is an exhortation to just not the State executive and the legislature but also to the civil society as well, to get the act together to secure to themselves what they deserve; stem the rot of social evils by using law as an instrument of social engineering and trigger social reform through potent weapon of law²¹⁷.

*Smt. Sheeba Bano And Another vs State Of U.P. And 3 Ors*²¹⁸. In the said case the Court also relied on the judgment of the Supreme Court in *Bhagwan Das v. State*²¹⁹ (NCT of Delhi), (2011) 6 SCC 396, it is apt to extract relevancy of the said judgment, as: To keep away from the atrocities of kangaroo courts, Generally the young boys and girls who fall in love and run away from their house and have to ask for shelter in protection homes or the police lines. The court had held in the verdict of *Lata Singh case* that in the act of "honour" killing there is nothing "honourable", and it is nothing but cruel

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ WRIT – C. No. - 29589 of 2016

²¹⁹ (2011) 6 SCC 396

and brutal murder by narrow-minded with feudal prejudiced persons. According to the court honour killings are very alarming act against the civilized society, deserving death punishment which must come under the category of the rarest of rare cases to identify it. It is need of the time to eradicate these feudal or cruel activities which degrades our unity and are blots on our country. It is very essential as anticipation for such disgraceful or inhuman practice. If some people who are intended or in prepration to commit the act of such killings, they should know that the law is behind him to vanish²²⁰.”

*Virupakshappa Gouda And Another v. The State Of Karnataka And Another*²²¹

In this case the deceased and his wife (the daughter of the accused-appellant No.1) were staying in peace away from the acrimonious community, but due to some kind of “misconceived class honour”, the vengeance reigned and awe for law went on a holiday. They thought that their perception mattered and as alleged, they put an end to the life spark of the young man. The choice of the daughter was allowed no space. Her identity was crushed and her thinking was crucified by parental dominance which has roots in an unfathomable sense of community honour. Though the lovers became fugitive, the anger founded on anachronistic values prompted the accused persons to annihilate the life of a young man. Consequently, the appeal, being sans merit, stands dismissed. As we have dismissed the appeal, the appellants shall surrender to custody forthwith and it will be the duty of the trial Judge to see that they are taken into custody²²².

²²⁰ *Smt. Sheeba Bano And Another v. State Of U.P. And 3 Ors.* on 30 June, 2016, Bench: Surya Prakash Kesarwani, Available at: <https://indiankanoon.org/doc/101346550/>, (last visited on September 23, 2016.)

²²¹ Criminal Appeal No. 601 OF 2017, (Arising out of S.L.P. (Crl.) No. 8781 of 2016)

²²² *Virupakshappa Gouda And Another v. The State Of Karnataka And Another* on 28 March, 2017, Author: D Misra, Bench: Dipak Misra, A.M. Khanwilkar, Available at: <https://indiankanoon.org/doc/146045597/>, (last visited on May 03, 2017).

The Court held that the perversity of approach by the learned Additional Sessions Judge, who has enlarged the appellants on bail, is totally unacceptable. It is reflective of sanctuary of errors. In such a situation, we are obligated to say that the High Court has performed its legal duty by lancing the order passed by the learned trial Judge²²³.

*Asha Devi Wife of Sunil Kumar Singh v. The State of Bihar*²²⁴

The petitioner seeks bail in connection with Sheohar P.S. Case No. 113 of 2016 registered for the offences punishable under Sections 302, 201 and 120-B/34 of the Indian Penal Code²²⁵.

The daughter of the petitioner was kidnapped and after her recovery, she was living with the petitioner and other family members and, later on, her dead body was recovered, which was identified by the husband of the petitioner and, accordingly, a case was registered and during investigation, it transpired that the petitioner along with other family members killed her daughter and it is a case of honour killing. Submission is of false implication and that no mother will kill her daughter. There is no legal and tangible material against the petitioner. The confessional statement of Anil Kumar Singh, who is devar of the petitioner, has got no evidentiary value in the eye of law. The confessional statement of the husband of the petitioner is also of no value and, as such, the petitioner deserves sympathetic consideration as she is suffering in custody since 19.11.2016. The learned APP opposes the prayer of bail by submitting that the statement of Avinash Kumar, son of the petitioner, was recorded under Section 164 Cr.P.C. wherein, he has stated that his sister Sweetie (deceased) was taken away in Bolero by his father, mother and uncle and, thereafter, her dead body was recovered. The statement recorded under Section 164 Cr.P.C. of

²²³ *Ibid.*

²²⁴ Criminal Miscellaneous No.4615 of 2017

²²⁵ *Asha Devi v. The State Of Bihar* on 3 April, 2017, Patna High Court, Cr.Misc. No.4615 of 2017 (3) dt.03-04-2017, Available at: <https://indiankanoon.org/doc/62930031/>, (last visited on May 03, 2017).

the son of the petitioner is well founded and, as such, the petitioner does not deserve bail²²⁶.

In the facts and circumstances stated above, considering the allegation attributed against the petitioner, at present, I am not inclined to enlarge the petitioner on bail and accordingly, her such prayer stands rejected in connection with Sheohar P.S. Case No. 113 of 2016 pending in the Court of learned Chief Judicial Magistrate, Sheohar. However, the trial court is directed to expedite the trial and conclude the same within six months after taking the same on priority basis, failing which, the petitioner if at no fault, may be at liberty to renew her prayer for bail²²⁷.

*Virender And Anr v. State Of Haryana And Anr*²²⁸ on 6 March, 2017,

By this petition, two petitioners seek to be admitted to pre- arrest bail, having been summoned by the learned trial Court upon a complaint instituted before it alleging therein the commission of offences punishable under Sections 195/201/218/302/364/120-B/148/149 IPC, by the six respondents-accused therein, of whom the present petitioners are two persons, i.e. Virender and Suresh²²⁹.

The background of the complaint is that the complainant is stated to be the brother of one Rupa alias Rup Singh, who was having an affair with his co-villager, Rachna, sister of respondent no. 1 in the complaint. On 12.09.2012 they were stated to have been found in a compromising position, upon which Rachna was allegedly beaten and insulted by her family members and as per the allegation made in the 1 of 6 complaint, she was strangled by four persons, including her brother, and the present two petitioners. However, upon investigation it was found to be a case of suicide by the investigating agency and in fact FIR No. 355 was registered on 13.09.2012 against Rup Singh @ Rupa, Kanwar and Harveer. On 14.09.2012, the complainant (in the complaint

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ CRM-M-4854-2017

²²⁹ *Virender And Anr v. State Of Haryana And Anr* on 6 March, 2017, CRM-M-4854-2017, Available at: <https://indiankanoon.org/doc/58274178/>, (last visited on May 03, 2017).

case from which the present petition arises), received information to the effect that an unknown person was lying at Kishan Singh Hospital, Hodal, whom the complainant, upon reaching the hospital, identified to be the dead body of his brother Rupa alias Rup Singh. The complainant further alleged that having investigated the matter of own, he came to know that his brother Rupa was the seen in the company of three persons, i.e. the present two petitioners and one Jyoti son of Ajay, on 13.09.2012, at about 05:00 p.m. at the by-pass of Hodal. One Sukhbir is stated to have seen them all together. He further found that his brother had been actually admitted to hospital as a victim of a road side accident. However, as per the complainant, there was no sign of any accident at the site. He is further stated to have come to know that his brother remained unconscious till his death, and though one Assistant Sub-Inspector is alleged to have been requested to investigate the case at Police Station Hodal, he told them that the deceased had committed suicide after consuming poison as revealed by the doctor who treated him in the hospital at Hodal. Allegedly the complainant was also refused a copy of the MLR recorded at the time when the deceased was brought in an injured condition to the hospital. On an application having been filed by him under the RTI Act, the complainant was given a reply to the effect that the deceased remained unconscious and did not make any statement during the time that he was alive in the hospital. Thereafter, as per the FSL report also, it was stated that Rup Singh alias Rupa had not consumed any poison as no poison was found in his viscera (as stated in the impugned order of the learned trial Court)²³⁰.

In the aforesaid background, the trial court recorded that the contention in the complaint was, in fact, that the accused had first murdered Rachna on 12.09.2012 and had thereafter lodged an FIR with false allegations against Rup Singh and others, and thereafter, had murdered Rup Singh on 13.09.2012, making it look like an accident. Consequently, the trial Court, vide the impugned order, opined that it seemed to be a case of an 'honour killing' and

²³⁰ *Ibid.*

therefore, there were sufficient grounds to proceed against four accused, including the present petitioners, for the alleged commission of offences punishable under Sections 148, 302, 364, 120-B read with Section 34 IPC, and as regards the 5th and 6th accused, for the alleged commission of offences punishable under Sections 201 and 218 IPC. Hence, all the accused, including the present two petitioners, were ordered to be "called through warrant of arrest through Superintendent of Police, Palwal for 30.1.2017²³¹".

Hence, this petition came to be filed on 13.02.2017, seeking anticipatory bail in the face of the aforesaid order of the trial Court. The matter has been adjourned thrice since then, asking learned counsel for the parties for placing on record the MLR and the DDR, which were thereafter produced before this Court and on 22.02.2017. On a contention made on that date that the complainant had been threatened by 3 of 6 the petitioners, and that he had made a complaint to the police control room with regard to the threat, learned State counsel had been directed to place on record any document with regard to the complaint made by the complainant. On 6th March, 2017, an affidavit of the Deputy Superintendent of Police, Palwal, has been filed by learned State counsel, to the effect that no complaint with regard to any quarrel with the complainant was received by the police in the months of January and February 2017. In fact, a statement of the complainant, Pappu alias Rattan Singh, has also been annexed with the affidavit, that no altercation had taken place with him and that he had not made any telephonic call or given any written complaint in that regard²³².

On the merits of the petition seeking anticipatory bail, learned counsel for the petitioner has relied upon an order of the hon'ble Supreme Court, in *Maninder Kaur and others v. Teja Singh*²³³ (CRA No. 699 of 2000, dated 25.08.2000), wherein it was observed as follows-

²³¹ *Ibid.*

²³² *Ibid.*

²³³ CRA No. 699 of 2000, dated 25.08.2000

"Normally, when a case is instituted on a complaint, summons to the accused to appear in the Court and on such being appearance, instead of being arrested, he would apply for bail. Unless there are compelling reasons, the Court would allow the accused to remain on bail, at least till the charge is framed. Even after charge is framed, the situation would be reconsidered if necessary, whether bail should be cancelled or not²³⁴".

Learned counsel for the complainant on the other hand has relied upon a judgment of the hon'ble Apex Court in *Singashan Singh v. State of Bihar and others*²³⁵ (2015) 1 RCR (Criminal) 786, wherein in the context of a protest petition-cum-complaint instituted in the trial Court, alleging therein the commission of an offence punishable under Section 302 IPC, after reproducing Section 438 Cr.P.C. as also paragraph 13 of the 4 of 6 judgment in *Gurbaksh Singh Sibbia and others v. State of Punjab*²³⁶, AIR 1980 SC 1632, it was held as follows:-

"The High Court, however, without appreciating the nature of offence and gravity of the accusations against the respondents herein has enlarged the respondents on anticipatory bail. In the circumstances herein, the High Court ought not to have granted the anticipatory bail at the stage of cognizance of offence, especially when the veracity of the same had not been investigated into by the investigating agency. Further, the High Court should have considered the conduct of the respondents in failing to appear before the learned Magistrate despite the directions by Sessions Court to that effect. Such conduct of the respondents creates reasonable apprehension in the mind of Court in respect of the bona fides of respondents and indicates their non- cooperating in the process of law. The aforesaid circumstances being writ large from the facts on record, the High Court could have directed the investigating agency to investigate into the protest-cum-complaint filed by the complainant and also, the private respondents to seek for a regular bail before the competent Court.

²³⁴ Spranote at 229 (Virender And.....)

²³⁵ (2015) 1 RCR (Criminal) 786

²³⁶ AIR 1980 SC 1632

Since that has not been done in this case, we take exception to the order passed by the High Court²³⁷."

Having considered the arguments raised on both sides and the background of the case, the situation that emerges is that an alleged "honour killing" of two persons took place, though as regards the girl, Rachna, the police had registered an FIR under Sections 306, 376, 506, 452, 34 IPC (against deceased Rup Singh and two others). As regards Rup Singhs' death, it is made out to be a road side accident; however, according to the complainants' case, it was also a murder that was attempted to be shown as a road side accident. Though, obviously at this stage, no custodial interrogation of the petitioners would be required, a criminal complaint having been instituted before the trial Court and not an FIR with the police, however, in the entire set of circumstances aforesaid, I am not inclined to grant them the concession of anticipatory bail and as such, I see no reason to entertain this petition. Consequently, it is dismissed. However, nothing said hereinabove will be taken to be any observation of, or indication by, this Court as regards the merits of the allegations made against the petitioners and their co-accused, which would obviously be subject matter of evidence to be led before the learned trial Court²³⁸.

Vikas Yadav v. State of U.P²³⁹

Constitution of India Articles 19(1) (a), 21, 25 and 15(3): Freedom of thought, conscience, identity and choice, including of person she marries, available to women: Freedom, independence, constitutional identity, individual choice and thought of a woman, be a wife or sister or daughter or mother, cannot be allowed to be curtailed, and definitely not by application of physical force or threat or mental cruelty in the name of the man's self-assumed honour. One may feel "My honour is my life" but that does not mean sustaining one's honour at the cost of another. That apart, neither the family members nor the

²³⁷ Spranote at 229 (Virender And.....)

²³⁸ *Ibid.*

²³⁹ (2016) 9 SCC 541.

members of the collective has any right to assault the boy chosen by the girl. Her individual choice is her self-respect and creating dent in it is destroying her honour and to impose so-called brotherly or fatherly honour or class honour by eliminating her choice is a crime of extreme brutality, more so, when it is done under a guise. It is a vice, and a condemnable and deplorable perception of “honour”, comparable to medieval obsessive assertions. In the present scenario of India this act is condemnable it is cruel as well as barbaric act. In above cases it is already The honourable court has stated that honour killing is nothing but murder in the name of false pride only. Thus, life imprisonment by trial court converted to minimum non-remittable fixed term of 25 yrs by High Court, held, appropriate in facts of present case.

*Vikram vs State Of Haryana*²⁴⁰ on 5 April, 2017

It was submitted that both the petitioner as well as the deceased were students at the ITI Butana. They were known to each other. Reference is made to messages exchanged between the petitioner and the deceased on their mobile phones. These messages form a part of the challan/final report under Section 173 Cr.P.C. Learned counsel for the petitioner has vehemently argued 1 of 3 CRM No.M-6083 of 2017 [2] that the present is in fact a case of honour killing by the family of the deceased when they came to know about the friendship/relations between the petitioner and the deceased. It is submitted that in the Medico Legal Report (Annexure P1) issued by the Oscar Trauma Super Speciality Hospital, Rohtak it is mentioned that injuries were present on the victim's body. She was put on ventilator support after she was brought to the hospital on 19.07.2016 at about 1.30 p.m. She suffered a respiratory and cardiac arrest at 5.50 p.m. on the same day as per the said medical report (Annexure P2). However, in the post- mortem examination it is mentioned that no injury was found on the person of the deceased. In the final report under Section 173 Cr.P.C. (Annexure P4), it is mentioned that ASI Subhash Chand alongwith others proceeded to the Oscar Hospital, Rohtak and obtained a Ruqa

²⁴⁰ Criminal Misc. No.M- 6083 of 2017(O&M)

and MLR bearing CR No. 7441 dated 19.07.2016 in respect of the deceased. As per the Ruqa, the victim was brought dead. There are material discrepancies in the prosecution version. It is contended that it is highly debatable whether the offences punishable under Sections 294/323/306/376/506/ 511 IPC are attracted in this case. The petitioner has been in custody since July 2016. He is a student. Therefore, this petition be allowed²⁴¹.

Learned counsel for the State submits that the cause of death of the victim is poisoning. There are clear-cut allegations against the petitioner. Thus this petition be dismissed. However, the medico legal report, post- mortem report as well as the messages on the mobile phones exchanged between the petitioner and the deceased are not denied. It is also not denied that the petitioner alongwith the victim were students at ITI Butana. The petitioner is not involved in any other case. The charge in this case was framed on 03.01.2017. Twenty three (23) prosecution witnesses are to be examined in this case. It is apparent that trial in this case is not likely to conclude in the near future. There are no allegations on behalf of the State that the petitioner is likely to abscond or that he is likely to dissuade the witnesses from deposing true facts in the Court, if released on bail²⁴².

Keeping in view the facts and circumstances as above but without commenting upon or expressing any opinion on the merits of the case, this petition filed by Vikram is allowed. The petitioner shall be released on bail pending trial subject to his furnishing requisite bail bonds and surety bonds to the satisfaction of the learned Trial Court. It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition²⁴³.

²⁴¹ *Vikram v. State Of Haryana* on 5 April, 2017, CRM No.M-6083 of 2017, Available at: <https://indiankanoon.org/doc/40741348/>, (last visited on May 05, 2017)

²⁴² *Ibid.*

²⁴³ *Ibid.*

The judicial attitude in deciding the cases of honour killing is very fluctuating and due to absence of any special law/ provisions on honour killing the court in similar cases is pronouncing differently. It depends on the whims of the judiciary to put a particular case of honour killing either in rarest of rare cases or decide otherwise. This is the irony of justice in a country governed by rule of law. The judges are after all the part of the society and can't be totally immune from the dominant trend of social thoughts²⁴⁴. Cardozo has rightly observed that, the tides and currents which engulf the rest of men do not turn aside and pass the judges by.²⁴⁵

5.8. Conclusion

Khap Panchayats and quasi adjudicating have deep impact over the villagers and very often upon the polite class similar to that the machinery of the State number of times unable to react on time to their unreasonable orders which is pure ridicule of rule of law. They often order gang-rape of a young lady in love with a man of other caste or they banned the use of cellular by youth girls, influence of the orders of khap panchayats is insightful on the places of their existence. The politicians to protect their vote bank often ignore the callous orders which shock the very ethics of cultured human being. Every Khap rules over villages which makes the Khap Panchayat so dominant resulting in making them leaders of massive vote banks which are competent of handling at the time of elections the power game of voters. These kangaroo courts has control over the peoples is a sign towards inability of the States or unwilling domineering role in these subjects²⁴⁶.

²⁴⁴ S.P.Sathe, Gender, Constitution and Courts, Edited by Amita Dhanda, published in Engendering Law , 1999, Paged- 120, See also- Treat 'honour' killings as rarest of rare cases: court, by J. Venkatesan, New Delhi, May 09, 2011, Available at: <http://www.thehindu.com/news/national/Treat-honour-killings-as-rarest-of-rare-cases-court/article13883857.ece>, (last visited on May 05, 2017).

²⁴⁵ Benjamin N Cardozo, The Nature Of The Judicial Process, Yale University Press, Edited by Quid Pro Books, 25th edn, 1966, at page- 168.

²⁴⁶ Aishwarya Tiwari and Chintan Nirala, Khap Panchayats- Retrograding Avatar Of The Moral Police, Indian Journal Of Legal Philosophy, ISSN : 2347- 4963, Volume 2, Issue 4, December 2014,

Even though, a number of reasons are predictable to the uncontrollable rule of these Panchayats on the groups. However, decisively it is the lack of the State intervention which has led such panchayats to come forward in front with their own justice. Surprisingly, the rural persons support the inhuman decisions of the Panchayats, and due to such support, it is said that the panchayats have claimed that their decisions dived under the ‘personal Sector’ of that village. while investigating the crime in the name of honour is also seen reluctance on the part of the police or investigation agencies. We have to see if the state is considered to be completely behind the ‘personal Sector’, especially when such a withdraw has destroyed many innocent youths. Can the state depart its responsibility and the horrors of crime can be seen as a dumb and deaf witness?. When a young girl is murdered or ruined her body, it is an alarming question. Violence on the name of religion, traditions, customs, honour and culture, mostly for marriage represents one of the most disturbing forms of violence in India against women²⁴⁷. The Constitutions of India imposed a duty on the State to recognize the right to life and personal liberty²⁴⁸. The Constitutional provisions can be used to legitimize intervention, if there is political will on the part of government and accountability in introducing changes to normative standards that perpetuate or encourage violence against women on the name of forced marriage or marriage solemnized on choice. Cases in which the courts have been requested to strike down customary and religious law for infringement of the Constitution reveal the manner in which the courts try to balance conflicting rights, so as to achieve the core norms of protecting women’s human rights²⁴⁹.

From the point of view of Judiciary it is clear that Khap Panchayats are illegal and Honour Killings are either murder or homicide which are heinous

Available at: [http://www.ijlp.in/ijlp/imageS/IJLP-Volume-2,Issue\(4\),December-14.pdf](http://www.ijlp.in/ijlp/imageS/IJLP-Volume-2,Issue(4),December-14.pdf), (last visited on May 06, 2017).

²⁴⁷ *Supranote* at 6 (Report Submitted.....)

²⁴⁸ Constitution of India, part III, Art.21- Protection of life and personal liberty.

²⁴⁹ *Daniel Latif and Another v. Union of India*, AIR 2001 SC 3262.

crimes comes under the IPC 1860. It also violates Articles 14, 15 (1) & (3) 19, 21, 39(f), and fundamental duty to renounce practices derogatory to the dignity of women²⁵⁰ of the Constitution of India. It is against the various International Commitments which the Government of India has made in accordance to the CEDAW of which India is a signatory and has also ratified the convention. It is also against the spirit of UDHR and ICCPR. Though, the remarkable changes have taken place in the twenty first century, but discrimination and violence against women and girls remain steadfastly rooted in cultures in India. Indian society is based on patriarchal culture where women were considered as property. However present scenario has changed through the implementation of constitutional rights but still traditional mind-set has not changed that's the result they are intended as property of men in their family irrespective of their religious group, caste, ethnic or class. Consequently, the owner of the property has the right to decide its fortune. The model of ownership has turned women into a commodity which can be exchanged, bought and sold²⁵¹. Unfortunately, most religions of the world developed in patriarchal cultures, which were male centered, male dominated, gave men (as they presume) a sort of sole authority to interpret the texts and assume proprietary rights over the lives of women. To these men who are killing their wives, sisters and daughters, their honour is something very precious and priceless in comparison to the lives of the women to the extent of replacing their lives (killing) with the honour of themselves which is certainly not reflective of any religious and cultural teachings in the countries where honour killing is writ large. The outcome of this killing is

²⁵⁰ The Constitution of India, Article 51 A (e) , imposes a Constitutional duty on every citizen of India- to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

²⁵¹Thousands of Women Killed for Family "Honor", by Hillary Mayell, for National Geographic News, February 12, 2002, Available at: http://news.nationalgeographic.com/news/2002/02/0212_020212_honorkilling.html, (last visited on May 8, 2017)

going to be disastrous for the coming generation in the era of globalization and where the governance is to be sustained on equality²⁵².

²⁵²Honor killing, Available at: https://en.wikipedia.org/wiki/Honor_killing, (last visited on May 8, 2017)

Chapter-6



CHAPTER 6

THE PROHIBITION OF UNLAWFUL ASSEMBLY (INTERFERENCE WITH THE FREEDOM OF MATRIMONIAL ALLIANCES) BILL-2011: AN ANALYSIS

6. Introduction

“Crimes of honour” is gender based violence against women deprive the right to life, liberty, security as well as safety. The right must be free from punishment, cruelty, harassment, torture, inhuman or degrading treatment. There should be equal treatment in the family and should be right to equality to have utmost attainable standard of mental as well as physical health. In the broad sence of patriarchy ideology inspiring the crimes of honour. India is constrained and obligated as a state party to make sure that all types of gender based discrimination in subjects concerning to marriage and relatives of the family are removed, yielding them with the equal right to marriage and to choose their partner freely with their will or choice and then after enter into marriage only with their free will or choice and full consent .This consists to ensuring the informal decision making powers that to be operating on traditional laws, for example the khap panchayats, are renounced from imposing their dictats or orders, and snooping with the right of women to choose their partner¹.

As we have discussed in the preceding chapter 5 different Acts and Schemes of the central government as well as state government to empower the women of India. However, Up to now, there is no specific law to deal with honour killings. The murders come under the general categories of homicide or manslaughter. Sometimes the honour killings are also done by a mob and so when a mob has carried out such attacks, it becomes difficult to

¹ National Legal Research Desk on Violence Against Women and Children, law resource India, Available at: <https://indialawyers.wordpress.com/category/honour-kilings/> (last visited on September 29, 2016)

pinpoint a culprit. The collection of evidence becomes tricky and eyewitnesses are never forthcoming. But ‘Honour Killings’ are against International Law on Human Rights and against United Nation agendas. But still even though we don’t have any law to deal with it specifically in India but we have judicial precedence over it². There is a bill which is in the latent stage against the honour killings, which are planned to be introduced in the parliament sooner. Let us discuss the bill under following paragraphs.

6.1. The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill 2011³-An Analysis.

Now a days there is a growth of unlawful interferences by caste Panchayats that the Law Commission of India has propose a draft Bill. Supreme Court of India in its decisions has also highlighted the need to take actions to curtail such unlawful activities and bring in a culture of accountability. The effort of the Law Commission in this direction is creditable. The proposed draft by the Commission is a significant effort to retain continued attention on an evil which otherwise will vanished from public memory till the next incident happens⁴.

The draft Bill aims to criminalise acts of groups against the freedom vested in every individual. Additionally, it seeks to affirm the right to family of an individual, which can be read within the penumbra of rights within right to life under Art.21 of the Indian Constitution. The Bill is perceived to be a social

² Piyush Bajaj , Anum Hussain, There Is No Honour In Murder, Journal On Contemporary Issues of Law (JCIL) Vol. 2 Issue 8, September 28, 2016, Available at: <http://jcil.lsyndicate.com/wp-content/uploads/2016/09/There-is-no-honour-in-murder-Piyush-Annum.pdf> (last visited on Decemberber 29, 2016)

³ The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill 2011, Available at: <https://indiankanoon.org/doc/3764069/> (last visited on October 11, 2016): see also- Prevention of Interference With The Freedom of Matrimonial Alliances (In The Name of Honour And Tradition): A Suggested Legal Framework. Report No.242, Law Commission of India, Government of India, August 2012, Annexure to Consultation Paper (at page 41-44), [Refer para 2.7 of the Report], Available at: <http://lawcommissionofindia.nic.in/reports/report242.pdf>, (last visited on October 11, 2016)

⁴ Ibid.

legislation. It is therefore imperative to understand its repercussions on the target demographic, that is, family units. The ethics of the family should not be breached at the same time individual's right shall not also be sacrificed. Creation of substantive offences and criminalisation as its necessary corollary will result in several oddities including less reporting of offences as individuals will be unwilling to report against their family members or persons in the neighbourhood, more so, when adversaries possess political clout⁵.

Even if, such violence or acts of threats form crimees under the Indian Penal Code 1860, however, it is essential to condemn such unlawful assemblies or gathering. This Bill is as a result planned to control in the sprout and to prevent dispersing of repulsion or provocation to violence through such assemblies. The Bill is planned to compose special offences against such gathering or assemblies, in count to other offences under the Indian Penal Code 1860⁶.

6.2. Proposed Changes To The Provisions Of The Bill

Section 1. Short title, extent and commencement ⁷

- (1) This Act may be called the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Act, 2011.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may

⁵ *Ibid..*

⁶ Law Commission Report, 242nd Report on Prevention of Interference With The Freedom of matrimonial alliances Bill, 2011, Government Of India, Law Commission of India, Prevention of Interference With The Freedom Of Matrimonial Alliances (in the name of honour and tradition): A Suggested Legal Framework., Report No.242, August 2012, The Prohibition Of Unlawful Assembly (interference with the freedom of matrimonial alliances) Bill, 2011, Available at: <https://indiankanoon.org/docfragment/3764069/?big=3&formInput=inter%20caste>, (last visited on October 6, 2016)

⁷ Prevention of Interference With The Freedom of Matrimonial Alliances (in the name of honour and tradition): A Suggested Legal Framework. Report No. 242, Law Commission Of India, Government Of India, August 2012, Annexure to Consultation Paper, at page 41, Available at: <http://lawcommissionofindia.nic.in/reports/report242.pdf>, (last visited on October 11, 2016)

be appointed for different States⁸.

Section 2. Unlawful Assembly⁹

(1) No person or any group of persons shall gather, assemble or congregate at any time with the view or intention to deliberate on, or condemn any marriage, not prohibited by law, on the basis that such marriage has dishonoured the tradition, caste or community or brought disregard to all or any of the persons forming part of that assembly or the family or the people of the locality concerned.

Explanation: ‘Marriage’ shall include a proposed or intended marriage.

(2) Such gathering or assembly or flock shall be deal as an unlawful assembly and every person arranging or organizing such assembly and every member there of participating therein shall be punished with imprisonment for a term of not less than 6 months but which may be extend to one year and shall also be liable to fine up to 10,000 rupees¹⁰.

Suggestion: - Section 2(1) of the Act-

There it is used the words any marriage ‘not prohibited by law’. These words create grey area because law does not prohibit marriages even by minors, though it is punishable under the law. Therefore, this loophole must be remedied and the Act must apply to marriages and the like between consenting adults. Delete the expression ‘not prohibited by law’. The ambit of the wording remark ‘marriage’ should also be explained with live in relationships and the others similar to. The illegal act in section 2 is “gather assemble or congregate at any time with a view or intention”. This shows to recommend only meeting or gathering assembly or congregation in the

⁸ 242Nd Report On Prevention Of Interference With The Freedom Of ... Available at: <https://indiankanoon.org/doc/3764069/> (last visited on October 11, 2016)

⁹ Supranoteat 7 (Prevention of)

¹⁰ Supranote at 8 (242Nd Report)

physical space. This section should also have to concern the technological innovation and consist of efficient participation through social connections and the others alike. It should involve the participation both direct as well as indirect. The planned action in section 2 may not always be joint action. As it is talk about in the general remark above, if any coercion, threats or intimidation can appear about from inside the family or through any of the family member. Such type of act neither can stop the marriages nor can make any barrier regarding to perform marriages and in other hand no one could also be to compel someone to perform marriage. Hence, under the prohibited action as planned in section 2, such acts should also mention.

Section 3. Endangerment of Liberty¹¹.

Any member of an unlawful assembly who alone or in association with other such members counsels, exhorts or brings pressure upon any person or persons so as to prevent, or disapprove of the marriage which is objected to by the said members of the unlawful assembly, or creates an environment of hostility towards such couple or either of them or their relatives or supporters, shall be deemed to have acted in endangerment of their liberty and such an act of endangerment shall be punishable with imprisonment for a term of not less than one year but which may extend to two years and shall also be liable to fine up to twenty thousand rupees¹².

Suggestion: - Section 3 of the Act –

According to the proposed bill if any person suffers from ambiguity where it uses the phrases ‘creates an environment of hostility’ and ‘brings pressure’. These phrases need to be guided or explained, as they are very general in absence.

¹¹ Supranoteat 7 (Prevention of)

¹² Supranote at 8 (242Nd Report)

Section 4. Criminal Intimidation¹³.

(1) Any member of an unlawful assembly who, with a view to secure compliance with the illegal decision of that assembly in relation to the marriage that is being objected to, indulges in criminal intimidation of the couple or either of them or their relatives or supporters shall be punishable with imprisonment for a term of not less than one year but which may extend to three years and shall also be liable to fine up to thirty thousand rupees provided that if the threat be to cause harm or injury of the description referred to in second part of Section 506 IPC, the maximum punishment shall extend to seven years of imprisonment instead of three years and fine extending to thirty thousand rupees.

Explanation: The expression ‘criminal intimidation’ shall have the same meaning as is provided under section 503 of the Indian Penal Code¹⁴.

Suggestion: - Section 4(1) of the Act –

Not only must the Act prohibit criminal intimidation but also extortion. This is in light of various cases which have occurred where the family of the couple has been made to pay huge fines to the Khap Panchayat. There seems to be no section 4 (2), therefore the numbering of the section as 4 (1) is not necessary.

Section 5. Provisions of IPC remain unaffected¹⁵

The provisions in Sections 2, 3 and 4 shall be in addition to and not in derogation of the provisions in the Indian Penal Code¹⁶.

¹³ Supranote at 7 (Prevention of)

¹⁴ Supranote at 8 (242Nd Report)

¹⁵ Supranote at 7 (Prevention of)

¹⁶ Supranote at 8 (242Nd Report)

Section 6. Presumption¹⁷.

In a trial by prosecution under section 3 or section 4, if it is found that any accused person participated or continued to participate in such gathering of an unlawful assembly, the Court shall presume that he intended and decided to take all required steps to put into effect the decision of unlawful assembly including the charge of acts referred to in Sections 3 and 4¹⁸.

Suggestion:- Section 6 of the Act –

There it is the word ‘participate’. Participation should be clear to represent not only individual as physical and mental presence but also financial and political other influence too. Also, it should include virtual participation in light of the increase in use of technology and the internet in form of Facebook, Twitter and the like. (Please also see the last suggestion for section 2)

Section 7. Amendment of Act 43 of 1951¹⁹

(the Representation of the People Act, 1951).

In the Representation of the People Act, 1951, in sub-section (2) of section 8, after clause (c), the following ought to be inserted, namely :-

“(d) any terms of the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Act, 2011”²⁰..

Suggestion:- Section 7 of the Act-

The intent of section 7 though commendable cannot be achieved if framed in the present manner. The amendment shall be made in the concerned enactment.

Section 8. Power to prohibit certain acts²¹.

¹⁷ Supranoteat 7 (Prevention of)

¹⁸ Supranote at 8 (242Nd Report)

¹⁹ Supranoteat 7 (Prevention of)

²⁰ Supranote at 8 (242Nd Report)

²¹ Supranoteat 7 (Prevention of)

(1) Where the Collector or District Magistrate receives information that there is probability of gathering of an unlawful assembly, he shall, by order, prohibit the convening of any such assembly and doing of any demonstration towards the commission of any offense under this Act by any individual in any area specified in the order.

(2) The Collector or District Magistrate may take such steps as may be necessary to give effect to such order, including giving of proper mandates to the police authorities.

(3) The Collector or District Magistrate shall also take likewise steps as may be appropriate to ensure the safety of the focused on compliant to the illegal decision taken by the unlawful assembly²².

Suggestion:- Section 8 of the Act –

The bill Does not incorporate punishments for mistake on part of the police or other authority, which gets information about the said evil doings but fails to take suitable action. The Protection of Women from Domestic Violence Act, 2005 has a provision of accountability. Also, the Supreme Court in *Bhagwan Das v State of Delhi* (decided on 9 May, 2011) has suggested to ensure accountability on the part of responsible office/officers. Addition of accountability element in the section may be considered. Further in this section in addition to Collector or District Magistrate, the Judicial Magistrates should also be given powers under the Act.

The ambit should be enlarged to include prohibitory and protective orders. Punitive measures should be resorted to when there has been a breach of such orders.

Therefore section 8 need to undergo a major overhaul, in the line of general comment made above.

Section 9. Trial of offences under this Act²³.

²² *Supranote* at 8 (242Nd Report)

(1) Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be triable by a Special Court constituted under a notification issued in the official gazette and the special court shall be presided over by an officer of the rank of Sessions Judge or Additional Sessions Judge.

(2) The State Government shall in consultation with the High Court constitute one or more Special Courts for the trial of offences under this Act and every Special Court shall exercise jurisdiction in respect of the whole or such part of the State as may be specified in the notification²⁴.

Suggestion: - Section 9 (1) of the Act –

Though, the provision for Special Courts is attractive, the strength of the cadre of judges to manage these Courts should be kept in mind before creation of such Courts. The Special Courts shall not be drawn from the existing cadre which itself is short of optimal human resources. Till the Special Courts are established the Sessions Courts may try the offences.

The phrase ‘unlawful assembly’ present throughout the Bill, creates vagueness as it is already defined in Section 141 of the IPC with its own requirements. Therefore, this phrase needs to be swapped with a neutral expression. Even the word ‘association’ may not be appropriate as an association has a feature of permanence, organization and administrative nucleus, which is missing in a Khap Panchayat or a motley crowd. Therefore, the most viable option is to amend Section 141 IPC to incorporate the assembly indicated in this Bill.

²³ Supranoteat 7 (Prevention of)

²⁴ Supranote at 8 (242Nd Report)

Section 10. Procedure and power of Special Court²⁵.

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) Subject to the other provisions of this Act, a Special Court shall, for the purpose of the trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, so far as may be, in accordance with the procedure prescribed in the Code of Criminal Procedure for trial before a Court of Session²⁶.

Section 11. Power of Special Court with respect to other offences²⁷.

(1) When trying any offence under this Act, a Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial of any offence under this Act, it is found that the accused person has committed any other offence under this Act or any other law, the Special Court may convict such person also of such other offence and pass any sentence authorized by this Act or such other law for the punishment thereof²⁸.

Section 12. Offences to be cognizable, non-bailable and non-compoundable²⁹.

Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be cognizable, non-bailable and non-compoundable³⁰.

²⁵ Supranote at 7 (Prevention of)

²⁶ *Supranote* at 8 (242Nd Report)

²⁷ Supranote at 7 (Prevention of)

²⁸ *Supranote* at 8 (242Nd Report)

²⁹ Supranote at 7 (Prevention of)

³⁰ *Supranote* at 8 (242Nd Report)

6.3. Conclusion

The Bill is a reaction to a despicable phenomenon and the legislative response is to criminalise the action. The experience of Dowry Prohibition Act, 1961 and the abysmal level of its performance should teach us a lesson or two in the making of this enactment. The law should be capable of achieving the objectives it intends to. It should be verified to see whether it is capable of realising the proposed objectives³¹.

Regarding the proposed law it submitted that the Bill needs to focus more on prohibiting acts rather than punishing them. As this is a piece of social legislation, it will be very difficult to implement it if its emphasis is on criminalisation. Social legislations which have been proved to be effective focused on prohibition rather than criminalising. The colonial experience in Bengal by which Sati and Female infanticide could be considerably reduced offer models for emulation. It was through a concerted action of the administration supported by law that success could be achieved³². The method was intense, whenever there was a death of a male member, appropriate authorities cause to send officials both police and administrative to make sure that sati is not performed by overseeing the funeral. These were measures taken at the grass root level and were so effective that the number of incidents of sati reduced drastically. Female infanticides were controlled by periodical visits by the local authorities to assess the well being of the girl child born when information is passed on by designated authorities³³.

The phrase ‘unlawful assembly’ present throughout the Bill, creates vagueness as it is already defined in Section 141 of the IPC with its own requirements. Therefore, this phrase needs to be swapped with a neutral expression. Even the word ‘association’ may not be appropriate as an

³¹ *Supranote* at 3 (The Prohibition.....)

³² P. Ishwara Bhat, *Law and Social Transformation*, Eastern Book Company, 1st Edn., 2009, at page 102-106

³³ *Supranote* at 3 (The Prohibition.....)

association has a feature of permanence, organization and administrative nucleus, which is missing in a Khap Panchayat or a motley crowd. Therefore, the most viable option is to amend Section 141 IPC to incorporate the assembly indicated in this Bill³⁴.

The terms provided under this proposed Bill are very similar to the terms provided under Indian Penal law. All the possibilities have been applied to see that there is no repetition or in same meaning with the terms provided under the Indian penal code. In additional it can be said, the wrongful act against the law except those acts which specifically covered under this proposed Bill, 2011, are punishable under the Indian penal code 1860³⁵.

This model can offer some guidelines. District authorities on receipt of information or suo motu may initiate actions to prevent prohibited activities declared by law. On intervention by court, prohibitory orders and wherever necessary protection orders should be issued. However, there should be strict secrecy over names and identity of the persons giving such information. There is need to establish fast track court through this legislation for providing speedy justice. Special cells should be created for spreading awareness about the procedure. Also, these cells would act as more approachable bodies for the victims to discuss the problems and avail assistance to lodge complaints. Cooption of non-governmental sector could be adopted³⁶.

In light of the ostracism faced by such couples and their families, there could be economic schemes devised to help the victims to rebuild their lives. This will incorporate curative aspect in the Bill. Institutional support systems in the line of the *Protection of Women from Domestic Violence Act, 2005*, and the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007* could be incorporated. The Bill does not provide for witness protection, which is

³⁴ *Ibid.*

³⁵ *In Re: Indian Woman says gang-raped on orders of Village Court*, published in Business & Financial News, dated 23.01.2014, [Suo Motu Writ Petition (Criminal) No. 24 of 2014], P.Sathasivam, CJI., Available at: <http://www.advocatekhoj.com/library/judgments/announcement.php?WID=4634>, (last visited on December 9, 2015)

³⁶ *Supranote* at 3 (The Prohibition.....)

very important due to societal pressure that exists with regard to these offenses. Protection to whistleblowers also should be considered. The Bill must not only prohibit breaking of marriages but also address forced alliances³⁷.

We should hope this proposed bill, 2011 with certain recommended amendments can curb the Honour Killing as well as Khap Panchayats by which legal and constitutional rights can be implemented with harmony in the society.

³⁷ *Ibid.*

Chapter-7



CHAPTER 7

CONCLUSION AND SUGGESTIONS

7. Concluding Remarks

In the present society there have seen various changes in the mindset of the people regarding their beliefs and faith towards the traditional concept of marriage and other social relationships. It has also presented many difficulties to the traditional laws on which our Indian laws are based. The problem of Honour killings is at the top among the current challenges. The major task to the law exists in finding a correct harmony between the two clashing rights or interests, on one hand from perspective of the traditions and then again from the perspective of basic human rights. Any hasty conclusion in this field might be dangerous to the interests of one or other area¹.

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

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

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

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

7.1. Conclusion

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

In India, The Constitution of India is the supreme legislation of the land. It guaranteed Right to life, liberty, security, and so many other fundamental rights to the people and its citizens (men and women both) on the principle of equality. but it does not speak anything about right to marry for the reason that India is a land of diverse cultures and religions and part III of the Constitution² confers Right to Freedom of Religion, Freedom of conscience and free profession, practice and propagation of religion to the persons.³ Not only in India but in most of the Countries in word, Marriage is considered as a religious practice and each religion has its own traditional practice and standards to regulate the practice of marriage. These traditional practice and standards are recognized as personal laws, such as Hindu Personal Law, Muslim Personal Law, etc. Therefore in India marriages are governed by the personal laws⁴.

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

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

⁴ The Hindu, Personal laws and the Constitution, Editorial, October 19, 2016, Available at: <http://www.thehindu.com/opinion/editorial/Personal-laws-and-the-Constitution/article16074921.ece>, (last visited on January 2, 2017).

Though, in India, the marriages are governed by the personal laws⁵ but no personal law illegalizes marriage between male and female on the grounds of its being sagotra and inter-caste. Even inter-religious marriages are also legalize in India by The Special Marriage Act 1954⁶. Woman who is a major and is at all relevant times a major at the age of 18, is has choice to marry or to live with anyone she loves. There is no restriction under the Hindu Marriage Act 1955 or any other laws to an inter-caste marriage in India. India is a republic, democratic and free country, whenever a person hold the major age of 18, he or she is free to marry with his/ her own choice. If the guardians of the male or female do not agree of such such inter- religious or inter-caste marriage, the utmost they can do boycott personal relationships with their daughter or the son, but they can't give intimidation or execute or prompt acts of violence and cannot harass the person who choose such inter- religious or inter-caste marriage. Such acts of harassment or threats or violence are completely prohibited. However the principle of consent⁷ which is essential in almost in all the religions for a valid marriage is not being fully observed and

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

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

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

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

followed thereby violating this by iron clad practice of "male-controlled marriages"

Despite universally recognized rights, the issue of women rights often causes uneasy discussions⁸, worldwide. Though the remarkable changes have taken place in the twenty first century, but discrimination and violence against women and girls remain steadfastly rooted in cultures around the world. India is no exception of it. The concept of women's rights is not culturally relevant to deeply patriarchal societies. Inter caste marriages, marriages within the village and even same gotra and *intra-gotra* marriages are not illegal and uncommon in India. Simultaneously, such marriages are treated as inbreeding in certain areas of India, and among certain castes.” There is no law that bars two adults from the same 'gotra' marrying each other⁹, but society sometimes do not accept this. The groom or the bride is killed for marrying someone from a lower caste. Such killings happen in order to save the honour of the caste, community or family. Most "honour killings" in India target young couples who dare to marry outside their caste and are killed by relatives in an attempt to protect the family's reputation¹⁰ Secretary General of National Human Rights

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

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

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

Commission Mr. K. S. Money said, "Honour killings are most dishonourable. It is the worst form of discrimination against women. Honour killings are manifestations of a disease which can be seen in the form of dowry, discriminations, foeticide¹¹."

Honour Killings are are heinous crimes. It is nothing but homicide and murder only in the name of honour under the Indian Penal Code 1860. It also violates Articles 14, 15 (1) & (3), 19, 21, 39(f), and fundamental duty to renounce practices derogatory to the dignity of women¹² of the Constitution of India. It is against the various International Commitments which the Government of India has made in the CEDAW of which India is a signatory and has also ratified the convention. It is also against the spirit of UDHR and ICCPR. Though the remarkable changes have taken place in the twenty first century, but discrimination and violence against women and girls remain steadfastly rooted in cultures in India¹³.

"Females are still measured as belonging to the men in their family irrespective of their class, ethnic or religious group. The owner of the property has the right to decide its fate. The concept of ownership has turned women

the village well. The girls who were found later by the villagers were brought back to the village and killed within a day. The study, commissioned by National Commission for Women (NCW), also found that 72 per cent of the 326 cases documented over the past one year involved couples that entered into inter-caste marriages, The Times of India, Daily news paper, Lucknow, 9 July, 2010, p.1; a woman who married a Dalit man, was later killed by own family members in Rajasthan; and in Feb. 2004, a 50-year-old Haryana woman, a Dalit, expressing they had no direction to do as such, and none was expected, US Department of State 2005, Country Reports on Human Rights Practices – India, 28 February, Available at: <http://www.state.gov/g/drl/rls/hrrpt/2004/41740.htm> (last visited on January 3, 2016)

¹¹ Report of the Committee on Amendments to Criminal Law, by Justice J. S. Verma (Retd) chairman of committee, Justice Smt. Leila Seth (Retd) (Member), Gopal Subramaniam (Member), Chapter-8, Para-3, Full text of the report by the Committee constituted to suggest amendments in laws for sexual crimes which was submitted to the Ministry of Home Affairs, published- Gov. of India, January 23, 2013.

¹² The Constitution of India, Article 51 A(e) - imposes a Constitutional duty on every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

¹³ Urmila Bhardwaj, Nothing Honourable in "Honour Killing" A Social Stigma, (legal Services India, print article), Published on October 29, 2014, Available at: http://www.legalservicesindia.com/article/print.php?art_id=1721, (last visited on July 8, 2016)

into a commodity which can be exchanged, bought and sold¹⁴." Unfortunately, most religions of the world developed in patriarchal cultures, which were male centered, male dominated, gave men (as they presume) a sort of sole authority to interpret the texts and assume proprietary rights over the lives of women. To these men who are killing their wives, sisters and daughters, their honor is something very precious and priceless in comparison to the lives of the women to the extent of replacing their lives (killing) with the honour of themselves which is certainly not reflective of any religious and cultural teachings in the countries where honour killing is writ large. The outcome of this killing is going to be disastrous for the coming generation in the era of globalization and where the governance is to be sustained on equality¹⁵.

Only a legally constituted body that is judiciary has the right to adjudicate the offenses committed by the citizens. The constitution of India gives this power to judiciary but the 'khap panchayats violated the law of the land. The Supreme Court of India called these 'Khap Panchayats' as Kangaroo Courts or Katta Panchayats¹⁶. In the name of khap a particular segment of persons where they declared themselves as god father of the society and the culture. They carry on their rigid and unreasonable custom and forced to follow, on result of disregard they penalise the doer, additionally they never accept and look to the growing culture or modern concept of neighborhood. There are so many instances in the news where these illegitimate caste based panchayats have overtly explained their commands to rule the society by issuing illegal diktats has broadened complex¹⁷. Although the khap panchayat or caste panchayat is not a well-known institution throughout the Indian States, as many believe, but is confined to a particular regions or states, such as Haryana,

¹⁴National Geographic News, Thousands of Women Killed for Family "Honor", by Hillary Mayell, February 12, 2002, Available at: http://news.nationalgeographic.com/news/2002/02/0212_020212_honorkilling.html, (last visited on May 8, 2016)

¹⁵ Honor killing, Wikipedia, Available at: https://en.wikipedia.org/wiki/Honor_killing, (last visited on May 8, 2016)

¹⁶ *Arumugam Servai v. State of Tamil Nadu* (2011) 6 SCC 405 and *Ajit Kumar and others v. State of Tamil Nadu*, (2011) 6 SCC 405

¹⁷ Human Rights Watch 2006, India – World Report, 18 January, Available at: <http://www.hrw.org/english/docs/2006/01/18/india12272.htm>, (last visited on May 7, 2016)

Uttar Pradesh, Rajasthan, Himanchal and other north India states. The government has failed to eradicate prejudice, particularly in rural areas. Caste Panchayats, or caste-based village councils, extra judicially punish inter-caste marriages with public lynching of couples or their relatives, murder of the bride or the groom, rape, public beatings, and other sanctions.¹⁸ Harassment on young boys and girls, progressive-minded people and S.C. (Dalits) have become common¹⁹. There is a wide spread consciousness that all marriages based on choice between young couples are based on close sexual relations (incestuous). Actually the khaps are against the right to marry with their choice based partner. The actual objective is to control women's sexuality to make certain that goods remains within the male dominance caste sphere. An illogical message was announced by the *khap*: that the young boy and girl have dishonoured the tradition of not to marry in the nearest village as it build the element of brotherhood. Along with the several cases of khaps delivered command in Asanda, Dharana, Hadaudi, Jaundhi, Ludana, Maham-kheri, Singhwai, and in other areas, the wedded couples were declared as brothers and sisters, and families made to suffer excommunications and furthermore, banning communications and relations from their villages. It is estimated through the news that every year approximately hundreds of married couples are murdered, asked to break their marriage, asked to leave the village, and forced to accept each other as brother-sister, displayed or paraded open body i.e. naked, and painted black their faces by their families in command to retain or regain 'family honour', on the derogate instructions of 'Khap Panchayat'. 'The sarv khap panchayat' also stated for boycott from the society of persons who raise their voice against these caste panchayats²⁰.

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

¹⁸ *Ibid.*

¹⁹ The Hindu, Khap panchayat signs of desperation ?, Jagmati Sangwan, May 7, 2010, UPDATED: NOVEMBER 12, 2016 editorial page. Available at: <http://www.thehindu.com/opinion/lead/Khap-panchayat-signs-of-desperation/article13796344.ece>, (last visited on December 1, 2016)

²⁰ Karela Fry, 'khap panchayat', Alternative constitutions, Apr 20, 2011, Available at: <https://oakblue.wordpress.com/tag/khap-panchayat/>, (last visited on December 1, 2016)

facilitate a ban on marrying from the 'same gotra.' the Khap Panchayats also demanded that the Hindu Marriages Act should be amended to ban 'same village' marriages and disallow the recognition given by the Arya Samaj to the weddings of "eloping couples" conducted in temples²¹. 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 elections²².

Due to the illegal intervention of community/ religions/ castes assemblies in the name of 'Khap Panchayats' in matrimonial matters, and increasing horrible incidents of these killings and other crucial crimes practiced against persons wedding or intending to wed commonly called sagotras or inter religions, inter castes or outside their community²³. There is a noise and shed tears for making a separate law to protect young couples from Honour killings to the amount of amending Section 300 of I.P.C. by way of amending to insert namely 'Honour Killing' as murder and shifting the onus to the accused²⁴. The Supreme Court also issued notices to the Centre and nine States on a PIL seeking directions to the Union government to make law to protect young couples from Honour killings. A vacation bench comprising Justices R. M. Lodha and A. K. Patnaik issued notices on a petition filed by an NGO Shaktivahini alleging that young couples who dare to defy their families or

²¹ Aspects of Honour Killing and Human Rights, Chapter IV, Accountability Khap Panchayat, Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/89946/12/12_chapter%20-iv.pdf, (last visited on January 7, 2016)

²² Law tightens noose around Haryana's community courts, March 30, 2010, Available at: <http://subalternexpression.wordpress.com/2010/03/>, (last visited on January 8, 2016)

²³ Gauri Shrikhande & Shreya Singh, The Prohibition Of The Unlawful Assembly (Interference With Freedom Of Matrimonial Alliances) Bill, 2011- A Critical Overview, International Journal of Legal Research Volume 2 | Issue 2 | ISSN-2349-8463 paged- 147, Available at: <http://nebula.wsimg.com/3ade8e42211cac382766034177ecfcb0?AccessKeyId=71B0329B3B14D5BF6DD5&disposition=0&alloworigin=1>, (last visited on January 8, 2016)

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

Khap Panchayat in the matter of marriage are under constant threat from them²⁵.

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

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

²⁵ The Hindu, National, New Delhi, Honour killings: notice issued to governments, by J. Venkatesan, June 21, 2010, Available at: <http://www.thehindu.com/news/national/Honour-killings-notice-issued-to-governments/article16261857.ece>, (last visited on December 7, 2015)

²⁶ Sub: Unlawful interference of Caste Panchayats etc.with marriages in the name of honour: A suggested legislative framework Consultation paper, Annexure to Consultation Paper, Available at: <http://lawcommissionofindia.nic.in/reports/cp-Honour%20Killing.pdf>, (last visited on August 30, 2015)

²⁷ LEGAL NEWS, (Law Commission’s new draft wants khap panchayats on marriages declared illegal, by Aarti Dhar), Posted on January 26, 2012, by advocate kamal, Available at: <https://advocatekamal.kumarpandey.wordpress.com/category/court/advocate/page/11/>, (last visited on 15-07-2015)

²⁸ *Ibid.*

judiciary to combat the problem and provide the protection to the youths who want to get marry with their own choice because where the other organs of the state have been failed to give any solution of the problem it is the judiciary on which people have more confidence. Markandey Katju and Gyan Sudha Misra JJ. On behalf of Supreme Court of India observed that, there are so many news are listening of violence, atrocities, threatening and harassments of the young couple who get married outside the caste. Our country is on the turning root of a very dangerous era on which the Court can't be noiseless in issues of awesome open concern, for example, the present one²⁹.

Justice Katju has observed in *Lata Singh v. State of Uttar Pradesh*³⁰ that, there is no way to say like any pride in such murder, and actually this atrocity is nothing but inhuman, shameful and barbaric acts of murder done by cruel and brutal minded persons should be punished hard. This would be the only way to curb such an inhuman act of brutality. The Apex Court ordered the police across the country to take stern action against those resorting to violence against young men and women of marriageable age who opted for inter-caste and inter-religious marriages. the same was again reiterated by Justice Katju as a judge of the Apex Court in *Ashok Kumar Todi v. Kishwar Jahan*³¹ that, when both, married on their own will, who were majors, and the marriage was duly registered under the notified authority, the police officials have no role in their conjugal affairs and the law enforcing authorities have no right to interfere with their married life and, in fact, they are duty bound to prevent others who interfere in their married life. Court further observed that it is the duty of all persons in the police authorities or administration all through the nation that if any male or female is adult, goes through inter-caste or inter- religious marriage, their marital life should not be disturbed or harassed and if anyone gives such threat or commits acts of violence or instigates, it is the responsibility of the officers concerned to take stern action against such persons as provided by law.

²⁹ *Lata Singh v. State of U.P. & Anr* (2006) 5 SCC 475, the Court observed (paras 14 to 18)

³⁰ (2006) 5 SCC 475

³¹ (2011)3, Scc, 758

The judicial attitude in deciding the cases of honour killing is very fluctuating and due to absence of any special law/ provisions on honour killing the court in similar cases is pronouncing differently. It depends on the whims of the judiciary to put a particular case of honour killing either in rarest of rare cases or decide otherwise. This is the irony of justice in a country governed by rule of law.

The judges are after all the part of the society and can't be totally immune from the dominant trend of social thoughts³². Benjamin Cardozo observed, the "great tides and currents which engulf the rest of men do not turn aside in their course and pass judges by"³³.

Violence against woman clubbed with the prohibitions on marital choice is a total negation of her rights. Since, the right to choose life partner at the time of marriage constitutes an integral part of her right of self-preservation, majority of the International. Conventions, Declarations and Protocols fall in line by emphasizing that her consent and choice in the matters relating to marriage should be weighed and prohibit resultant violence against her due to the difference of opinion in these matters³⁴.

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

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

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

³⁴ Jyoti Vishwanath, Patriarchal Ideology of Honour and Honour Crimes in India. IJCJS –SASCV, Jan. – Dec. 2011 Volume 6, Issue (1&2), ISSN- 0973-5089. at page. 386–395, Available at: <http://www.sascv.org/ijcjs/pdfs/jyothiicjs2011i&iind.pdf>, (last visited on September. 20, 2016)

reasonable condition such as a couple cannot marriage with same villagers and same gotra³⁵.

7.2. Suggestions

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

1. In order to prevent honour killing, inter-caste marriages need to be encouraged as per Dr. B. R. Ambedkar the real remedy for breaking caste is inter- caste marriage. Nothing else will serve as a solvent of caste.
2. The powers of the caste panchayats need to be curtailed by appropriate Legislation. In India, there is no specific criminal law to deal with the offence of honour crimes. Need is there to either enact a special law or to add specific provisions in order to curb this menace in the Indian Penal Code, 1860, for example Section 304-C Honour killing, in the same line as of Dowry death in Section 304-B .
3. The criminal law measures to prevent, prosecute and punish the honour crimes need to be strong and effective and no leniency ought to be provided to the perpetrators of these crimes on the justification of any custom, tradition or religious considerations.

³⁵ Livemint, E-Paper, Khap inter-caste marriage ruling a sign of compulsion, not reform, 21 May 2017 |Modified: Fri, Apr 25 2014, Available at: <http://www.livemint.com/Politics/97nIRJpAoePXPXlp0CvbxN/Khap-intercaste-marriage-ruling-a-sign-of-compulsion-not-r.html>, (last visited on September. 30, 2016)

4. The judiciary, elders in the society, parents, young men, police and lawmakers need to be gender sensitized. Honour crimes can be properly checked only if the police and judiciary consider it as the most heinous crimes and meet out stringent punishment.
5. There is need to clear implementation of law and judicial pronouncement related to Honour Killing. Besides, at state level, the number of honour killings can be reduced through altering the justice system with the use of media.
6. Cases relating to honour killings should be tried under fast track courts. There should be amendment in section 113 of the Indian Evidence Act ought to be made to shift the onus on accused, along these appearance making him liable to show his innocence regarding honour killing by putting it under a new Section namely 113-C, Presumption as to honour killing, in the same line as of Presumption as to dowry death in Section 113-B.
7. The governance should think of different help lines numbers and special cell where aggrieved people can approach for protection. There should be special cell for a woman who may be a victim of honour killing
8. The common man and the general public ought to be enlightened about the importance of the female population, the value of life and the horrors of honour crimes through massive and large scale awareness campaigns, public debates and discussion, media coverage etc. The family and the community attitude towards these crimes can be combated and checked only by having a discourse with them and no strategy in this direction will be successful without their consent and cooperation.
9. A wider social movement needs to be launched for making the women aware of their legal rights and in making them understand and accept that there exists no violation of the family honour or caste honour, if she educates herself, develops her personality, expresses her desire in making marital choices, develops friendships with opposite sex and chooses to work.

10. Women and girls should be trained in the skill of self-defence in protecting themselves from those who tries to hurt them.
11. There is need to change the attitude to the Khap Panchayat towards the changing society.
12. The number of honour killings can be decreased by providing education and employment opportunities, because education enlightens the minds of people to get rid of conservativeness.
13. All the marriage should be legalized and registered looking up to their context.
14. Those who are marrying inter caste should be awarded and provide them legal protection as well as social safeguard.
15. Khaps also killed the persons or spouse who belongs to same gotra (Sagotra). Legislatures should amend Section 5 in The Hindu Marriage Act, 1955, to insert the word “Sagotra” after Sapinda and Prohibited relations by which there will be legally ban to marry within Sagotra. This attempt could also reduce the honour killings.
16. Last yet not the least, the Government of India ought to recall its commitments and sense of duty regarding shield its residents from such brutality under CEDAW.

Bibliography



BIBLIOGRAPHY

ACTS

- Indian Christians Marriage Act 1872
- Special Marriage Act 1954
- The Anand Marriage (Amendment) Act 2012
- The Constitution of India-1950.
- The Criminal Procedure Code- 1973 Amended on 2013.
- The Dissolution of Muslim Marriage Act 1939
- The Divorce Act ,1869.
- The Foreign Marriages Act 1969
- The Hindu Marriage Act 1955
- The Indian Evidence Act- 1872 Amended on 2013.
- The Indian Penal Code-1860 Amended on 2013.
- The Parsi Marriage and Divorce Act 1936
- The Prohibition of Child Marriage Act, 2006
- Universal Declaration of Human Rights 1948.

BILL

The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill-2011

DOCUMENTS

- Chitra Mishra, Women Safety in Delhi- an analysis, Sexual harassment, Working Paper No 232 Summer Research Internship 2009, Center for Civil Society, New Delhi

- Crimes of Honour – Females’ Right for Support in the Multicultural Society, Malmö University Department of International Migration and Ethnic Relations IMER 61-90 Spring 2008 Bachelor Thesis,
- Commission on Human Rights resolution 2002/36. The Commission on Human Rights,. Recalling the Universal Declaration of Human Rights
- Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Turkey, United Nations CRC/C/TUR/CO/2-3, Convention on the Rights of the Child Distr.: General 20 July 2012, Committee on the Rights of the Child Sixtieth session 29 May–15 June 2012,
- Convention on the Elimination of All Forms of Discrimination against Women, UN Women, United Nations Entity for Gender Equality and the Empowerment of women,
- Culture of Discrimination: A Fact Sheet on “Honor” Killings, Honor Killings - Amnesty International, USA,
- Declaration on the Elimination of Violence against Women, UN Document Series Symbol: ST/H/, UN Issuing Body: Secretariat Centre for Human Rights, Proclaimed by the General Assembly Resolution 48/104 of 20 December 1993
- ECOSOC Resolution 2001/45. Restructuring and revitalization of the Group of Experts on the United Nations Programme in Public. Administration and Finance.
- Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly entitled “Women 2000: gender equality, development and peace for the twenty-first century” Report of the Secretary-General, United Nations A/57/171, General Assembly Distr.:

General 2 July 2002, Fifty-seventh session Item 104 of the preliminary list Advancement of women.

- General Comment No. 28 Article 3 (The equality of rights between men and women) (Replaces general comment No. 4), HRI/GEN/1/Rev.9 (Vol. I), Office of the High Commissioner for the Human Rights, HUMAN RIGHTS COMMITTEE Sixty-eighth session Adopted: 29 March 2000 (1834th meeting),
- Human Rights Treaty Bodies, OHCHR, Glossary of treaty body terminology,
- Prem Chowdhry, Redeeming 'Honour' Through Violence: Unraveling The Concept And Its Application, Section I- Intra-Caste Marriages.
- Raj Singh, Panchayat Raj Manual: A Socio-Historical Cum Legal Perspective. Anmol Publications. New Delhi, (1996).
- Resolution adopted by the General Assembly, United Nations A/RES/55/66. General Assembly Distr.: General 31 January 2001, Fifty-fifth session Agenda item 107 [on the report of the Third Committee (A/55/595 and Corr.1 and 2)], 55/66. Working towards the elimination of crimes against women committed in the name of honour,
- Resolution adopted by the General Assembly [on the report of the Third Committee (A/55/602/Add.2 and Corr.1)] 55/111. Extrajudicial, summary or arbitrary executions, United Nations A/RES/55/111, General Assembly Distr.: General 12 March 2001, Fifty-fifth session Agenda item 114 (b).
- The Prohibition of Unlawful Assembly (Interference with Freedom of Matrimonial Alliances) Bill 2011 - Suggestions and Recommendations, by The West Bengal National University of Juridical Sciences.
- The right to food, Commission on Human Rights resolution 2000/10, The Commission on Human Rights, Recalling the Universal Declaration of

Human Rights, which provides that everyone has the right to a standard of living adequate for her/his health and well-being, including food.

REPORTS

- Annual Report, 2010 – 2011, National Commission For Women
- Anwesha Tripathy, Illegitimacy: And illegitimate concept, Family Law Project Report Submitted To and Guided By: Dr.Shaiwal Satyarthi Associate Professor, Faculty of Law, Chanakya National Law University Patana.
- Human Rights Watch 2006, India – World Report, 18 January,
- In re Shakti Vahini case, 2011, Report submitted by Amicus curie Raju Ramachandran.
- Law Commission Report, 242nd Report On Prevention Of Interference With The Freedom Of Matrimonial Alliances.
- National Legal Research Desk on Violence Against Women and Children, Law Resource India,
- Prevention Of Interference With The Freedom Of Matrimonial Alliances (In The Name Of Honour And Tradition): A Suggested Legal Framework. Report No.242, Law Commission Of India, Government Of India,
- Report of the Committee on Amendments to Criminal Law, by Justice J. S. Verma (Retd) Chairman of committee, Justice Smt. Leila Seth (Retd) (Member), Gopal Subramaniam (Member), submitted to the Ministry of Home Affairs, published- Gov. of India, January 23, 2013.
- Report of the Committee on Revitalization of Panchayati Raj Institutions, L.M. Singhvi, chairman, Government of India, Delhi, 1986.
- Report Submitted by- Jamia Millia Islamia University, Discriminative and Derogatory Practices against Women By Khap Panchayats, Kangaroo

Courts and Shalishi Adalats in India: An Empirical Study in the States of Haryana, Uttar Pradesh(West), West Bengal & Rajasthan,

- Shariah: The Threat To America An Exercise In Competitive Analysis Report Of Team 'B'.
- Shobhit Sainesh Awasthi, Panchayati Raj System In India, project submitted to Dr. Ram Mahohar Lohiya National Law University.
- The Justice Verma Committee's Report on Criminal law of India(Amendments), December 23, 2012, Chapter 8, Khap Panchayats and Honour Killings.

BOOKS

- Albert V. Dicey, Introduction To The Study Of The Law Of The Constitution.
- A.S. Altekar, State And Government In Ancient India
- Aqil Ahmad, The Mohamdan Law
- Avatar Singh, Law of Evidence.
- B.M. Gandhi, Indian Penal Code.
- Benjamin N Cardozo, The Nature Of The Judicial Process
- C. K Takwani, Law Relating to ARBITRATION and CONCILLITATION IN INDIA.
- Chander Suta Dogra, Manoj and Babli- A Hate Story.
- D.R. Chaudhary and Mukesh Kumar, Khap Panchayaton ki Prasangikta.
- D.R. Chaudhary, Khap Panchayat and Modern Age.
- Dr. Rajendra Siddaling, Women And Political Awareness: A Sociological Study Of Representatives Of Local Self Governments
- Dr. Paras Diwan, Hindu Law
- H.M. Seervai, Constitutional Law of India.
- I. P. Massey, Administrative Law

- L.M. Singhvi, Constitutional Law of India.
- Lynn Welchman and Sara Hossain, Honour- crime paradigms and violence against women.
- M.P. Jain, Indian Constitutional Law.
- Mulla, Principles of Mahomedan Law
- Malik & Raval, Law And Social Transformation In India
- Mamta Rao, Law Relating To Women And Children
- Mathew George, Panchayati Raj In India, An Overview. Status Of Panchayati Raj In India, Concept
- Patricia Uberoi, Family kinship and marriage in India
- P. Ishwara Bhat, Law and Social Transformation,
- Prof. Kusum Family Law Lectures Family Law-1.
- R.P. Joshi and G.S. Narwani, Panchayat raj in india Emerging trends - across the states
- R.V. Kelkar, Criminal Procedure Code (large edition).
- Rana Hussein, Murder In The Name Of Honor
- Rao Arif Ali Khan, Honour Killing- Roots and Remedies, a Global View.
- Raj Singh, Panchayat Raj Manual: A Socio-Historical Cum Legal Perspective,
- Rathna Ghosh, Alok Kumar Pramanik, Panchayat System in India. Historical, Constitutional and Financial Analysis.
- S.R. Myneni., Women And Law
- S.S. Srivastava, Indian Penal Code.
- Samsher Malik Singh, The New Panchayati Raj, Rural Transformation In The State Of Haryana,
- Satish Chandra, Madayakalin Bharat Me Itihas Lakhan, Dharm, Aur Rajay Ki Prakriti,

ARTICLES

- Ajay Kumar, Khap Panchayats: A Socio-Historical Overview, Economic & Political Weekly, Vol. 47, Issue No. 04, Jan, 2012. ISSN (Online) - 2349-8846.
- Aishwarya Tiwari and Chintan Nirala, Khap Panchayats- Retrograding Avatar Of The Moral Police, Indian Journal Of Legal Philosophy, ISSN : 2347- 4963, Volume 2, Issue 4, December 2014,
- Anand Kirti, Prateek Kumar and Rachana Yadav, The Face of Honour Based Crimes: Global Concerns and Solutions, International Journal of Criminal Justice Sciences (IJCJS) – Official Journal of the South Asian Society of Criminology and Victimology (SASCV),2011, ISSN: 0973-5089 January – December Vol. 6 (1&2): 343–357
- Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, European Journal of International Law (2008) Volume 19 Issue 4, at page 655-724,
- Dr. Ashish Kumar Singhal, Ikramuddin Malik , Abroo Khan Malik, Khap Panchayat & Personal Laws in India, Researcher 2013; Volume 5 Issue 2, (ISSN: 1553-9865).
- Gauri Shrikhande & Shreya Singh, The Prohibition Of The Unlawful Assembly (Interference With Freedom Of Matrimonial Alliances) Bill, 2011- A Critical Overview, International Journal of Legal Research Volume 2, Issue 2, ISSN-2349-8463
- Juhi Gupta, Caste, Culture And Khap: No Honour, Only Killings, Impact: International Journal Of Research In Humanities, Arts And Literature (Impact: Ijrhal), Vol. 2, Issue 7, Jul 2014, at page-40, ISSN(E): 2321-8878; ISSN(P): 2347-4564.
- Jyoti Vishwanath, Patriarchal Ideology of Honour and Honour Crimes in India. International Journal of Criminal Justice Sciences (IJCJS) – Official

Journal of the South Asian Society of Criminology and Victimology (SASCV), January – December 2011 Vol. 6, Issue (1&2), at page. 386–395, ISSN- 0973-5089.

- Kavita Kachhwaha, Khap Adjudication in India: Honouring the Culture with Crimes, International Journal of Criminal Justice Sciences Vol 6 Issue 1 & 2, January- June / July – December 2011 (Combined Issue). ISSN: 0973-5089.
- Laksheyender Kumar, Salient features of the Hindu Marriage Act, 1955, (legal Services India, articles),
- Manbir_bhinder, Khap Panchyats: Adjudicating Cultural Dishonour?, (legal Services India, articles), Published on December 14, 2013,
- Mohamad K. Yusuff, Honor Killings in the Name of Religion, Islamic Research Foundation International, Inc., This article was printed in the February/March 1999 issue of the Voice of Islam newsletter. (This newsletter is published by the Islamic Society of the Washington Area).
- Mazna Hussain, “Take My Riches, Give Me Justice”: A Contextual Analysis Of Pakistan’s Honor Crimes Legislation, Harvard Journal of Law & Gender, Vol. 29, 2006,
- Nancy Woloch, Muller V Oregon: A Brief History With Documents, Publisher- Bedford/St.Martin's, 1996, ISBN- 0312085869
- Nidhi Kumari, Concept Of Village Panchayat: Constitutional Analysis, CNLU, ACADEMIKE (ISSN: 2349-9796), Published on April 5, 2015.
- Office of the High commissioner, Women’s Rights are Human Rights, United nations Human Rights, HR/PUB/14/2 United Nations Publication Sales No. E.14.XIV.5 ISBN 978-92-1-154206-6 E-ISBN 978-92-1-056789-3 © 2014 United Nations All Worldwide Rights Reserved.
- Piyush Bajaj , Anum Hussain, There Is No Honour In Murder, Journal On Contemporary Issues of Law (JCIL) Vol. 2 Issue 8, September 28, 2016

- Prashanti, Protection to Women Under Industrial Laws- A Myth or Reality, Category : Workplace Equality & Non-Discrimination, (legal services india, article) Published : April 12, 2016
- Puneet Kaur Grewal, Honour Killings and Law in India, IOSR Journal Of Humanities And Social Science (JHSS) ISSN: 2279-0837, ISBN: 2279-0845. Volume 5, Issue 6 (Nov. - Dec. 2012),
- Ranbir Singh, Feudal Roots, Frontline (magazine), August, 28, 2009.
- Ranbir Singh, The Need to Tame the Khap Panchayats, Economic & Political Weekly, Vol. 45, Issue No. 21, Jan, 2012. ISSN (Online) - 2349-8846. May, 2010
- Richa Jhanwar, HNLU, The Need for Maternity Benefits for Women Employee, ACADEMIKE (ISSN: 2349-9796), November 16, 2014
- Ritupriya Gurtoo, Khap Panchayats In Relation To Women's Human Rights: Indian Perspective, journal of legal studies and research, vol.2, issue 2, ISSN: 2455-2437, April 2016.
- Ritu Singh, Marriage And Registration Under Special Marriage Act: A Socio – Legal Study, Law Mantra, Think Beyond Others, International Monthly Journal, ISSN: 2321 6417
- Samarth Trigunayat, Inter-Caste & Inter-Religious Marriages: Social And Legal Issues, CNLU, Academike, ISSN: 2349-9796
- Sudarshan Verma and Priti Saxena, “Roots, rationale and judicial outlook on killing in the name of honour: A solution based scrutiny”, Indian Bar Review, Vol. 39, Issue No. 4, 2012 (Oct-December), at page 43,
- Suruchi Thapar- Bjorkert and Gurchathen Sanghera, The Ascendancy of the Khap Panchayats in Contemporary India: Gender, Caste, Globalisation and Violence, Intersections: Gender and Sexuality in Asia and the Pacific, Issue 34, Published on March 2014.

- Vijender Beniwal, An Appraisal of Khap Panchayats: Issues and Concerns, (academia.edu. article),
- Uma Pal, Right To Equality- A Fundamental Right, (legal service india, print article) Published on : July 29, 2014,
- Urmila Bhardwaj, Nothing Honourable in "Honour Killing" A Social Stigma, (legal Services India, print article), Published on October 29, 2014.

JOURNAL, PERIODICALS AND NEWS PAPERS

- All India Reporter
- Aljazeera
- Annual Survey Of Indian Law
- Apex Court Expression.
- Delhi Law Review
- India Today
- Indian Bar Review
- Journal of Indian Law Institute.
- Supreme Court Cases
- Supreme Court Journal
- The Hindu
- The Hindustan Times.
- The Indian Express
- The Times Of India
- The Tribune
- Amar Ujala (Hindi daily)
- Dainik Jagran (Hindi daily)
- Hindustan (Hindi daily)
- Navbharat times (Hindi daily)

WEBSITES

- <http://barandbench.com/content/212/khaps-history-now-becoming-burden#.U1T2r1X6NIg>
- <http://but-its-leaders-have-done-little-to-rein-in-the-khap-pachayats/story-www.hindustantimes.com/editorials/up-tops-the-honour-killing-list-oo2yeMQg95j3d2Uzakm6UM.html>
- <http://causelists.nic.in/hp/weekly/cl.html>
- <http://content.time.com/time/world/article/0,8599,1991195,00.html>
- <http://ego by-punita-parsoya>
- http://en.wikipedia.org/wiki/Manoj-Babli_honour_killing_case
- <http://honourcrimes.wordpress.com>
- <http://justicekatju.blogspot.com/2012/02/judgement-on-caste-atrocities-honour.html>
- https://en.wikipedia.org/wiki/Forced_marriage
- <https://indialawyers.wordpress.com/tag/honour-killings>
- <https://oakblue.wordpress.com/tag/khap-panchayat>
- <https://www.hrw.org/news/2001/04/05/item-12-integration-human-rights-women-and-gender-perspective-violence-against-women>
- <http://ijesls.com/Honor%20killing-%20Shivani%20Rastogi.pdf>
- <http://indialawyers.wordpress.com/category/honour-kilings/>
- <http://indiankanoon.org/docfragment/1782717/?formInput>
- <https://indiankanoon.org/doc/3764069/>
- <https://indiankanoon.org/doc/1364215/>
- [https://indiankanoon.org/docfragment/3764069/?big=3&formInput=inter%20caste,](https://indiankanoon.org/docfragment/3764069/?big=3&formInput=inter%20caste)
- <https://bigbuddysociety.net/essays/adr-village-panchayat-in-india/>
- <http://international.vlex.com/vid/khap-adjudication-honouring-crimes-418589458>

- http://Khap-honorkilling.blogspot.in/2011_07_01_archive.html.
- <http://lawmantra.co.in/khap-panchayat-killing-for-honour-or-for-the->
- <http://lawreports.wordpress.com/category/honour-killing/>
- <http://manupatra.com/roundup/337/Articles/Honour%20Killing.pdf>
- <http://marxists.org/archive/marx/works/1884/origin-family/ch02d.html>.
- <http://ncw.nic.in/pdfReports/ReportbyJamiaMilia.pdf>
- <http://shaktivahini.org/initiatives/honour-killings>
- http://shodhganga.inflibnet.ac.in/bitstream/10603/16401/7/07_chapter%2001.pdf
- http://shodhganga.inflibnet.ac.in/bitstream/10603/2392/11/11_chapter%203.pdf
- <http://studylib.net/doc/9809950/mahatma-gandhi-on-non-violence> ,
- http://supremecourtofindia.nic.in/scr/2012_v1_piv.pdf
- <http://timesofindia.indiatimes.com/city/kanpur/Girls-welcome-khap-panchayat-diktat-on-dowry-say-they-can-live-with-ban-on-jeans/articleshow/32738501.cms>
- <http://timesofindia.indiatimes.com/city/lucknow/All-women-mahapanchayat-of-western-UP-to-burn-jeans-tops/articleshow/15049768.cms>,
- http://timesofindia.indiatimes.com/Opinion/Sunday_Specials/Panchayats_turn_into_kangaroo_courts/rss/articleshow/2351247.cms
- www.abplive.in/india-news/muzaffarnagar-khap-panchayat-bans-jeans-mobile-for-girls-52619,
- www.academia.edu/14500761/An_Appraisal_of_Khap_Panchayats_Issues_and_Concerns
- www.academia.edu/4774552/Khap_Panchayats_A_Socio-Historical_Overview
- www.academia.edu/9619032/Khap_Panchayat

- www.advocatekhoj.com
- www.aljazeera.com/indepth/features/2012/12/2012121614107670788.html
- www.azadindia.org/social-issues/khap-panchayat-in-india.html
- www.bbc.co.uk/ethics/honourcrimes/crimesofhonour_1.shtml
- www.countercurrents.org/attri110110.htm
- www.freepressjournal.in/headlines/up-sarv-khap-panchayat-launches-drive-against-female-foeticide/541903
- www.indiankanoon.org/
- www.indlaw.com/guest/DisplayNews.aspx
- www.lawcommissionofindia.nic.in/reports/report242.pdf
- www.lawprofiles.co.in/article.aspx
- www.lawyersclubindia.com/articles/Murder-for-the-Sake-of-Honour-4347.asp
- www.legalservicesindia.com/article/article/khap-panchyats-adjudicating-cultural-dishonour-1610-1.html
- www.livelaw.in
- www.mid-day.com/articles/nitish-katara-murder-case-honour-killing-cases-vikas-yadav-vishal-yadav-conviction/17443183
- www.pathlegal.in
- www.shaktivahini.wordpress.com
- www.thehindu.com/news/national/other-states/uttar-pradesh-community-panchayat-bans-jeans-mobile-phones-for-girls/article6298539.ece
- www.thehindu.com/opinion/lead/khap-panchayat-signs-of-desperation/article424506.ece
- www.thehindu.com/opinion/op-ed/retrograde-avatar-of-repressive-traditions/article5674489.ece
- www.sascv.org/ijcjs/pdfs/jyothiicjs2011i&iind.pdf
- <http://www.sascv.org/ijcjs/pdfs/kavitaijcjs2011i&iind.pdf>

- <https://www.lawctopus.com/academike/inter-caste->
- <http://jcil.lsyndicate.com/wp-content/uploads/2017/01/Utkarsha-Aishwariya.pdf>
- http://abuse.wikia.com/wiki/Honor_killing
- <http://xaam.org/human-rights-honour-killings-and-indian/?print=print>
- http://sciencepub.net/researcher/research0502/008_15782research0502_39_43.pdf
- <https://www.lawctopus.com/academike/concept-village-panchayat-constitutional->
- <http://www.iosrjournals.org/iosr-jhss/papers/Vol5-issue6/F0562831.pdf?id=>
- <http://dspace.mah.se/bitstream/handle/2043/6820/?sequence=1>
- <http://www.aljazeera.com/indepth/features/2012/12/2012121614107670788.html>
- <http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>
- <http://www.sacw.net/article1785.html>
- <https://indiankanoon.org/doc/382721/>
- <https://indiankanoon.org/doc/387611/>
- <http://www.law.harvard.edu/students/orgs/jlg/vol291/hussain.pdf>
- http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2000-10.doc
- <https://academic.oup.com/ejil/article/19/4/655/349356/Human-Dignity-and-Judicial-Interpretation->
- [http://www.legalservicesindia.com/article/print.php?art_id=1688,](http://www.legalservicesindia.com/article/print.php?art_id=1688)
- <https://www.jehovahs-witness.com/topic/167835/judicial-committee-basically-kangaroo-court->
- <http://www.thehindu.com/opinion/lead/khap-panchayat-signs-of-desperation/article424506.ece>

- <https://indiankanoon.org/doc/688980>
- <http://www.epw.in/journal/2010/21/commentary/need-tame-khap-panchayats.html>
- <http://www.academia.edu/4774552/>
- http://academia.edu/14500761/An_Appraisal_of_Khap_Panchayats_Issues_and
- <http://www.globeserve.org/hindu-christian-wedlock-is-invalid-a-supreme-court-of-india->
- <https://indiankanoon.org/doc/1528658/>
- [https://indiankanoon.org/docfragment/178668154/?big=1&formInput=criminal%20antecedents,](https://indiankanoon.org/docfragment/178668154/?big=1&formInput=criminal%20antecedents)
- <http://www.state.gov/g/drl/rls/hrrpt/2004/41740.htm>
- <http://www.freepressjournal.in/headlines/up-sarv-khap-panchayat-launches-drive-against->
- <http://www.countercurrents.org/attri110110.htm>
- <http://www.un.org/en/ecosoc/docs/2001/resolution%202001-45.pdf>
- <http://www.legalindia.com/judgments/category/high-court/delhi-high-court/page/128>
- https://en.wikipedia.org/wiki/Nitish_Katara
- <https://indiankanoon.org/doc/1422914/>
- [http://www.dnaindia.com/bangalore/report-what-is-the-right-age-of-consent-1881022,](http://www.dnaindia.com/bangalore/report-what-is-the-right-age-of-consent-1881022)

Annexures

Annexure I

A Bill

**The Prohibition Of Unlawful Assembly (Interference With The Freedom
Of Matrimonial Alliances) Bill , 2011**

to provide for, in the interests of protecting individual liberty and preventing victimization, prohibition of unlawful assemblies and other conduct interfering with the freedom of matrimonial alliances in the name of honour and tradition and for the matters connected therewith or incidental thereto;

Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows: -

1. Short title, extent and commencement-

(1) This Act may be called the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Act, 20__.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.

2. Unlawful Assembly-

(1) No person or any group of persons shall gather, assemble or congregate at any time with the view or intention of condemning any marriage, not prohibited by law, on the basis that such marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned.

Explanation 1: ‘Marriage’ shall include a proposed or intended marriage.

Explanation 2: The words ‘gather’, ‘assemble’ or ‘congregate’ would include acting in concert through the use of any technological means or mediums.

(2) Such gathering or assembly or congregation shall be treated unlawful and every person convening or organizing such assembly and every member thereof participating therein directly or indirectly shall be punishable with imprisonment for a term of not less than six months but which may extend to one year and shall also be liable to fine up to ten thousand rupees.

3. Endangerment of Liberty-

(1) The members of such unlawful assembly who in furtherance thereof individually or collectively counsel, exhort or bring pressure openly or otherwise upon any person or persons to prevent or disapprove of the marriage which is objected to by the said members or to generate an environment of hostility towards such couple or either of them or their relatives or supporters shall be deemed to have acted in endangerment of their liberty and such an act of endangerment shall be punishable with imprisonment for a period of not less than one year and extending upto two years and fine extending to twenty thousand rupees.

(2) Any other person acting at the instance of any member of unlawful assembly or otherwise indulging in the acts of endangerment of liberty shall also be punishable likewise. Explanation: ‘Endangerment of liberty’ shall include the acts calculated to lead to social boycott or enforcement of social sanctions and in particular the following acts: (i) Bringing to bear pressure on the couples or their family or relatives to leave the village or area of residence concerned;

(ii) Indulging in any conduct which will impede or is likely to impede, access to markets, community facilities, places of worship or any other necessities of life.

(iii) Divesting or dispossessing the couple or their family of any land or property belonging to them.

(iv) Any other act of harassment whether physical or mental.

4. Criminal Intimidation-

Any member or members of an unlawful assembly or any other person acting at their instance or otherwise who, with a view to secure compliance with the illegal decision of that assembly in relation to the marriage that is being objected to, indulges in criminal intimidation of the couple or either of them or their relatives or supporters shall be punishable with imprisonment for a term of not less than one year but which may extend to three years and shall also be liable to fine up to thirty thousand rupees provided that if the threat be to cause harm or injury of the description referred to in second part of Section 506 IPC, the maximum punishment shall extend to seven years of imprisonment instead of three years and fine extending to thirty thousand rupees. Explanation: The expression ‘criminal intimidation’ shall have the same meaning as is given in section 503 of the Indian Penal Code.

5. Provisions of IPC remain unaffected-

The provisions in Sections 2, 3 and 4 shall be in addition to and not in derogation of the provisions in the Indian Penal Code, and is further clarified that the specific offences under the above provisions shall be punishable under this Act, regardless of punishment for any corresponding offence under any other law.

6. Presumption-

Every person participating in an unlawful assembly, shall be presumed to have also intended to commit or abet the commission of offences under Section 3 and 4 of the Act.

7. Amendment of Act 43 of 1951-

In the Representation of the People Act, 1951, in section 8, in sub-section (2), after clause (c), the following shall be inserted, namely :-

“(d) any provision of the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Act, 2011.”

8. Power to prohibit certain acts and taking preventive measures-

Power to prohibit certain acts and the duty of authorities to take preventive measures.

[a] The sub-divisional Magistrate or District Magistrate shall receive any request or information from any person or persons seeking protection from any assembly of persons or from members of any family who are likely to or who have been objecting to any lawful marriage.

[b] Where the SDM or District Magistrate receives information from any source that there is a likelihood of convening of an assembly openly or in secrecy to condemn as objectionable any marriage proposed or solemnized, he shall, by order prohibit the convening of such assembly and doing of any act towards the commission of any offence under this Act by any person in any area specified in the order.

[c] The SDM or District Magistrate may take such steps as may be necessary to give effect to such order including giving appropriate directions to the police authorities concerned.

[d] The SDM or District Magistrate shall also take such steps as may be necessary to ensure the safety of the persons targeted pursuant to the illegal decision taken by the unlawful assembly.

[e] The SDM or the District Magistrate shall be in direct supervision of the protection and safety of the persons concerned.

[f] Every official called upon to act in terms of the above provisions shall be accountable for their lapses, omissions or failures and the State Government shall provide for and take such action against them as may be deemed fit for their lapses, omissions or failure to act

9. Trial of offences under this Act-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be triable by the Court of Sessions presided over by the District and Session Judge or any other Sessions Court presided over by an officer of the rank of Sessions Judge or Additional Session Judge in the district concerned as may be specified by the High Court in a notification.

(2) The Court of Sessions so notified may take cognizance of any offence without the accused being committed to it for trial upon receiving a complaint of facts which constitutes such offence, or upon a police report of such facts.

10. Power of Special Court with respect to other offences-

(1) When trying any offence under this Act, the notified Court of Sessions may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial of any offence under this Act, it is found that the accused person has committed any other offence under this Act or any other law, the notified Court may convict such person also of such other offence and pass appropriate sentence authorized by that law.

11. Offences to be cognizable, non-bailable and non- compoundable-

Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be cognizable, non- bailable and non-compoundable.

Annexure II**The Prohibition of Interference with The Freedom Of Matrimonial Alliances Bill, 20__ A Bill**

to provide for, in the interests of protecting individual liberty and preventing victimization, prohibition of unlawful assemblies and other conduct interfering with the freedom of matrimonial alliances in the name of honour and tradition and for the matters connected therewith or incidental thereto;

Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows: -

1. Short title, extent and commencement.

- (1) This Act may be called the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Act, 20__.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.

2. Unlawful Assembly

- (1) No person or any group of persons shall gather, assemble or congregate at any time with the view or intention of condemning any marriage, not prohibited by law, on the basis that such marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned.

Explanation 1: ‘Marriage’ shall include a proposed or intended marriage.

Explanation 2: The words ‘gather’, ‘assemble’ or ‘congregate’ would include acting in concert through the use of any technological means or mediums.

- (2) Such gathering or assembly or congregation shall be treated unlawful and every person convening or organizing such assembly and every member

thereof participating therein directly or indirectly shall be punishable with imprisonment for a term of not less than six months but which may extend to one year and shall also be liable to fine up to ten thousand rupees

3. Endangerment of Liberty

- (1) The members of such unlawful assembly who in furtherance thereof individually or collectively counsel, exhort or bring pressure openly or otherwise upon any person or persons to prevent or disapprove of the marriage which is objected to by the said members or to generate an environment of hostility towards such couple or either of them or their relatives or supporters shall be deemed to have acted in endangerment of their liberty and such an act of endangerment shall be punishable with imprisonment for a period of not less than one year and extending upto two years and fine extending to twenty thousand rupees. (2) Any other person acting at the instance of any member of unlawful assembly or otherwise indulging in the acts of endangerment of liberty shall also be punishable likewise. Explanation: 'Endangerment of liberty' shall include the acts calculated to lead to social boycott or enforcement of social sanctions and in particular the following acts: (i) Bringing to bear pressure on the couples or their family or relatives to leave the village or area of residence concerned;
- (ii) Indulging in any conduct which will impede or is likely to impede, access to markets, community facilities, places of worship or any other necessities of life.
- (iii) Divesting or dispossessing the couple or their family of any land or property belonging to them.
- (iv) Any other act of harassment whether physical or mental.

4. criminal intimidation

Any member or members of an unlawful assembly or any other person acting at their instance or otherwise who, with a view to secure compliance with the illegal decision of that assembly in relation to the marriage that is being

objected to, indulges in criminal intimidation of the couple or either of them or their relatives or supporters shall be punishable with imprisonment for a term of not less than one year but which may extend to three years and shall also be liable to fine up to thirty thousand rupees provided that if the threat be to cause harm or injury of the description referred to in second part of Section 506 IPC, the maximum punishment shall extend to seven years of imprisonment instead of three years and fine extending to thirty thousand rupees. Explanation: The expression ‘criminal intimidation’ shall have the same meaning as is given in section 503 of the Indian Penal Code.

5. Provisions of IPC remain unaffected

The provisions in Sections 2, 3 and 4 shall be in addition to and not in derogation of the provisions in the Indian Penal Code, and is further clarified that the specific offences under the above provisions shall be punishable under this Act, regardless of punishment for any corresponding offence under any other law.

6. Presumption.

Every person participating in an unlawful assembly, shall be presumed to have also intended to commit or abet the commission of offences under Section 3 and 4 of the Act.

7. Amendment of Act 43 of 1951.

In the Representation of the People Act, 1951, in section 8, in sub-section (2), after clause (c), the following shall be inserted, namely :-

“(d) any provision of the Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Act, 20__.”

8. Power to prohibit certain acts and taking preventive measures.

Power to prohibit certain acts and the duty of authorities to take preventive measures. [a] The sub-divisional Magistrate or District Magistrate shall receive

any request or information from any person or persons seeking protection from any assembly of persons or from members of any family who are likely to or who have been objecting to any lawful marriage. [b] Where the SDM or District Magistrate receives information from any source that there is a likelihood of convening of an assembly openly or in secrecy to condemn as objectionable any marriage proposed or solemnized, he shall, by order prohibit the convening of such assembly and doing of any act towards the commission of any offence under this Act by any person in any area specified in the order. [c] The SDM or District Magistrate may take such steps as may be necessary to give effect to such order including giving appropriate directions to the police authorities concerned. [d] The SDM or District Magistrate shall also take such steps as may be necessary to ensure the safety of the persons targeted pursuant to the illegal decision taken by the unlawful assembly. [e] The SDM or the District Magistrate shall be in direct supervision of the protection and safety of the persons concerned. [f] Every official called upon to act in terms of the above provisions shall be accountable for their lapses, omissions or failures and the State Government shall provide for and take such action against them as may be deemed fit for their lapses, omissions or failure to act.

9. Trial of offences under this Act.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be triable by the Court of Sessions presided over by the District and Session Judge or any other Sessions Court presided over by an officer of the rank of Sessions Judge or Additional Session Judge in the district concerned as may be specified by the High Court in a notification.

(2) The Court of Sessions so notified may take cognizance of any offence without the accused being committed to it for trial upon receiving a complaint of facts which constitutes such offence, or upon a police report of such facts.

10. Power of Special Court with respect to other offences.

(1) When trying any offence under this Act, the notified Court of Sessions may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial of any offence under this Act, it is found that the accused person has committed any other offence under this Act or any other law, the notified Court may convict such person also of such other offence and pass appropriate sentence authorized by that law.

11. Offences to be cognizable, non-bailable and non-compoundable.

Notwithstanding anything contained in the Code of Criminal Procedure, all offences under this Act shall be cognizable, non-bailable and non-compoundable.

Annexure III**The Prevention of Crimes in the Name of 'Honour' & Tradition Bill, 2010
august 2010****Statement of object and reasons:**

A spate of murders and dishonourable crimes in the name of 'honour' whether of a family or caste or community have been reported in the recent past and are continuing to be reported. Though most of these killings and crimes are being reported from the States of Punjab and Haryana, Delhi, Western U.P and other parts of Northern and Western India, the problem is not confined to these areas alone and almost every part of the country has been witness to such incidents. A crime in the name of 'honour' is one of a range of violent or abusive acts including emotional, physical, and sexual abuse and other coercive acts. In each of these cases, the family of the girl who has chosen to exercise her choice to marry is implicated. The family, sometimes alone, and often in association with other relatives/friends, and/or a certain body of persons like the 'caste' or 'khap' or community based panchayats, is instrumental in committing these killings and crimes. On certain occasions, the main perpetrator of these crimes and killings are the 'caste' or 'khap' or community panchayats. These panchayats or associations, through various kinds of coercive and punitive actions, want to create terror and stop marriages and associations on the basis of choice from taking place. However, these actions in the name of 'honour' are due to a variety of self seeking reasons but are commonly justified on the basis of custom and tradition. These actions are also violative of certain fundamental rights in the Constitution of India, including the right to life, and liberty which includes the right to bodily integrity, and the right to choose whom to associate with. The actions of the parents of the girls to stop her from exercising her choice also result in curtailment of her freedom to movement and expression. A valid consent to a Marriage is also an essential prerequisite under the law. However, no laws which punish crimes in the name of Honour

exist in India. There are also no laws which punish the illegal and often barbaric actions of the Khap or community panchayats or other caste or religious associations. Some offences under the Indian Penal Code, 1860 are invoked to sometimes book offenders in these cases but these offences do not cover the entire gamut of illegal actions perpetrated in the name of Honour or prescribe adequate punishment for these barbaric acts.

Preliminary

Chapter I

1. This act may be called The Prevention of Crimes In The Name Of ‘Honour’ & Tradition Bill, 2010.
2. It shall come into force on such date as the Central Government of India may, by notification in the Official Gazette, appoint.

Chapter II

3. All persons including young persons and women have the right to control their own lives, a right to liberty and freedom of expression, and a right of association, movement and bodily integrity. They have a right to choose their own partners in marriage or otherwise and any action to prevent the exercise of these rights shall amount to an offence under the provisions of this Bill.
4. If any person or persons, whether he or they are members of the victims family or person or persons acting in concert with , or, at the behest of, a member of the family or a member of a body or group of the caste or clan or community or caste panchayat (by whatever name called), kills or kill , a woman or her partner(or any person/persons associating with her or them) causes grievous hurt or any form of injury or to persecute her or them for exercising the rights stated in Section 1, or participates or incites such an act ,

shall be guilty of murder or any offence and shall be punishable with the punishment prescribed in the Indian Penal Code, 1860.

Explanation I – For the purpose of this section, all members of the caste or clan or community or caste panchayat, present or participates or incites the commission of an act by which death is caused was ordered, shall be deemed to be guilty of having committed such act.

5. If any person or persons, whether he or they are members of the victims family or person or persons acting in concert with, or, at the behest of, a member of the family or a member of a body or group of the caste or clan or community or caste panchayat (by whatever name called) harasses or harass a woman or her partner (or anyone connected with them) for exercising the rights in Section 1 or attempts/attempt to prevent either one or both of them from exercising these rights they shall be punished with imprisonment for a minimum term of one year and a maximum term of ten years and shall also be liable for punitive fine.

Explanation I – The acts of harassment and prevention in this Section shall include both physical and mental acts such as

- i. Declaring the couple, who have got married, a brother and sister, provided that they are not children from the same natural parent and such marriages are recognised by any law or custom for the time being in force
- ii. Extraditing the couple or their family or relatives from the village or area they live in,
- iii. Asking the couple or anyone associated with them or harbouring them to pay a fine,
- iv. Imposing social sanctions or social boycott on the couple or their family or anyone associated with them,
- v. Imposing economic sanctions or boycott on the couple or their family associated with them,

- vi. Divesting the couple or their family including the family of the male partner of any land or property belonging to them,
- vii. Repeatedly harassing the couple or either of them not to meet or associate with or live with each other, by physically visiting them or through any means of communication,
- viii. Threatening the couple or either of them or their family or anyone associated with them of retributive action of any kind whatsoever,
- ix. Causing harm or injury to the girl or the couple or anyone connected with them.
- x. Any other act or acts of harassment or intimidation, whether physical or mental or psychological, to stop the couple or either of them from meeting or being in the company of each other

6. If any person or persons, including a body of persons by whatever name it is called, eulogises or publicly supports or incites , the harassment or killing or any kind of violence against the couple or either of them or any member of their family, he or they shall be punishable with a term of imprisonment upto two years and with punitive fine.

7. Burden of Proof – Where any person or persons is or are prosecuted for an Offence under Sections 4, 5 or 6, the Burden of proving that he or they have not committed the offence or offences under the said sections shall be on him or them.

8. Power to prohibit certain acts –

(1) Where the Collector or the District Magistrate is of the opinion or has received information that any of the offences under Sections 4,5 or 6 are likely to be committed, he shall by order prohibit/prevent the commission of such offences and further prohibit the meeting of any persons or body of persons likely to discuss the commission of the said offences.

(2) Whoever contravenes any order made under Sub-Section(1) shall be punishable with imprisonment for a term which shall not be less than six months but may extend to two years and with fine.

(3) When an Executive Magistrate receives information that any person or persons acting in concert with , or, at the behest of, a member of the family or a member of a body or group of the caste or clan or community or caste panchayat (by whatever name called), is likely to commit any wrongful and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person or persons acting in concert with , or, at the behest of, a member of the family or a member of a body or group of the caste or clan or community or caste panchayat (by whatever name called),to show cause why he/they should not be ordered to execute a bond with sureties for keeping peace and maintain good conduct for such period, not exceeding one year, as the Magistrate thinks fit.Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction. When a Magistrate acting under this provision , deems it necessary to require any person to show cause under such section he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

9. Declaration by a Couple of intention to be together- Any two persons desirous of marrying each other, or associating with each other shall be entitled to declare their age and willingness to be together, in oral or in writing, before any Government official who shall send the said information to the nearest Police Station and no action shall be taken by the Police and or any other authority or at the instance of third party, against the said couple.

10. Obligation of certain persons to report about commission of the offences under this Bill –

(1) All officers of the Government are hereby required and empowered to assist the police in the execution of the provisions of this Bill or any rule or order made there under.

(2) All village officers and such other officers as may be specified by the Collector or the District Magistrate in relation to any area and the inhabitants of such area shall, if they have reason to believe or have the knowledge that any of the offences mentioned under Sections 4, 5 or 6 is about to be, or have been committed in the area they shall forthwith report such fact to the nearest police station.

(3) Whoever contravenes the provisions of sub-section (1) or subsection (2) shall be punishable with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

11. Bill not in derogation of any other law – The provisions of this Bill shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

12. Procedure – Save as otherwise provided in this Act, all proceedings under the Act shall be governed by the provisions of the Code of Criminal Procedure, 1973.

13. Power to make rules – (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament.

14. Appeal –

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law an appeal shall lie from every judgment or order under this Act to the High Court.
- (2) Every appeal under this Section shall be preferred within a period of thirty from the date of the judgment or order under this Act.
- (3) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, order or decree under this Act.
- (4) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more judges.

Amendment to the Special Marriage Act, 1954

15. In Section 5 of the Special Marriage Act, 1954, the words “for a period of not less than thirty days” shall be omitted.