



Relevancy of Khap Panchayat

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Abstract

Khap Panchayats are the self-proclaimed courts which enjoy full legitimacy and authority among the segments of their caste as the custodian of honour. These Panchayats have no constitutional basis and they are not legitimate courts. Under this unconstitutional system, all members crouch around a Chabutara in a village in order to take quick, unilateral and incontestable decision on multiple issues like social transgression, marriage, offences, property rights or regarding situation threatening tranquillity in a village. It is worrying to note that in the time when people make conversation via 3G technology, the Indian society has regressed to the Dark Age. Those living in a Khap are not allowed to marry in the same gotra or even in any gotra from the same village. Many young couples have been killed in the past defying khap rules. This paper is based upon the role of Khap Panchayats and trying to evaluate the position of khap panchayats that how can they come up in the changing modern society.

Keywords: Khap Panchayat, legitimacy, property, people

Introduction

Khap panchayat is the union of a few villages, mainly in north India though it exists in similar forms in the rest of the country. Lately they have emerged as quasi-judicial bodies that pronounce harsh punishments based on age-old customs and traditions, often bordering on regressive measures to modern problems.

The Khap^[1] Panchayat, like the caste system and joint family systems, is a traditional institution engaged primarily in dispute resolution and in regulating the behaviour of individuals or groups in rural North India. While the smaller issues are taken up by the village panchayats, the Khap Panchayats resolves disputes of wider concern within their operative territory. Sometimes active in the political sphere, they have mainly been confined to social issues. Historically speaking, the Khap Panchayats are very old. But they attracted the attention of scholars only when the electronic media highlighted certain of their decisions which violated the human rights of individuals. These decisions were mainly related to marriages which violated the traditional moral code of conduct, especially the concept of village bhaichara (brotherhood), gotra^[2] bhaichara (clan brotherhood) or Khap bhaichara (brotherhood of persons belonging to same khap, signifying equality within the Khap), which form the basis of community harmony in Indian villages, especially those in northern India. After Independence, the authority of these Khap Panchayats has been challenged by modern institutions of justice such as courts, which function on the principle of rule of law. Each caste has a council of its own, known as caste council/caste panchayat. Till recently, these caste panchayats exercised tremendous power over their members. Earlier, these panchayats acted only for a limited area, where only the caste members can meet each other. Today, with the development of communication and transport, these councils are having many branches all over the country.

The main function of the caste council/panchayat is to solve cases and punish the offenders among their caste members. Some of the offences dealt by these panchayats till recently were eating and drinking with other castes and sub-castes with whom such intercourse was forbidden, adultery refusal to fulfil a promise of marriage, non-payment of debt, petty assaults, breaches of customs, etc.

Usually, the mode of punishment included ostracizing or out casting, fines, feasts to other caste members, corporal punishment and so on. During the British period, these councils were so powerful that they could re-try the cases, which were already decided by the civil and criminal courts. The officials to these panchayats are either elected or posts are hereditary, or some may be elected and others may be hereditary.

According to sociologists, the lower the caste in the hierarchy, the stronger is the combination and efficient is its (caste council) organization. The procedure usually observed for trying cases is simple and informal. Moreover, in caste panchayats, there is no barrier of law of evidence, unlike other civil and criminal courts.

There are many examples where the caste councils have punished their caste members. Some of them are given by Kapadia, who refers to three periods of 1861, 1912, and 1962. Pointing to the period of 1861, he gives examples of a civil judge of Maharashtra, who married a widow.

The couple suffered a lot of humiliation from its caste council and committed suicide. One person was ex-communicated as he went to London and was permitted back into the caste after he paid fine. In 1912, a person was ex-communicated from his caste, as he had taken food from lower caste people.

Though, the caste council was legally deprived, in 1962, from its authority to enforce its norms upon its members by ex-communication, it continues to regulate the conduct and minds of its members. This shows how the power of the caste has

been gradually deteriorated. Today, the caste panchayats may hold some power in rural areas, but in urban areas they no longer hold any power.

Why Khap Panchayats remain popular among the people for a number of reasons: They do not involve any money; they are less time-consuming; there is a direct negotiated settlement between both parties before a large audience that includes persons of authority in the panchayat; they help to maintain social order among people of different castes; and they act as an important agency of social control. These factors have been responsible for its survival over a long period of time. The State and the local administration normally do not interfere in the functioning of the Khap Panchayats, avoiding any confrontation with them even when the courts decide against them, which is a pointer to the entrenchment of the Khap Panchayat in rural society. Sometimes, however, the decisions of the Khap Panchayats militate against the modern law of the land, and, therefore, violate human rights. This creates a contradiction between traditional system of dispute resolution and modern institutions such as the judiciary and the administration. In this chapter, I would like to focus on the Khap Panchayats, their brief history, structure and functioning through a comparative analysis of decisions between Khap Panchayats and the formal legalities.

There is lack of literature on the origin of the Khap Panchayat, but there are certain references in some studies that indicate the existence of multi-village organizations which are structurally similar to Khap Panchayats. There are records which provide evidence of a cluster of villages functioning as a single unit which was demarcated, in different instances, on the basis on clan (gotra), caste, administrative units or political allegiance [3]. In the Ludhiana Settlement Report [4], Gordon Walker writes that in the Samrala tehsil, the multiplicity of got (clan) among the Hindu Jat was a remarkable feature. The adjoining villages not only belonged to different gotras but inside each village, there were generally two or three sections 2 (patti) of distinct clans. Going by their appearances, the village founders came from different parts of the country and belonged to different gotas. The basis of village unity was perhaps a sense of belonging to the same general tribe. In the southwest of the district in some cases, however, the Jats settled in large but homogeneous groups. The existence of small villages in the eastern parts owed itself to the protection provided by an imperial authority strong enough to protect its subjects. In the other areas, on the contrary, no such protection was felt, and the people of a single tribe had to collect in large contiguous villages for protection. Grewal and Gill Jats had a cluster of 50 villages each near Ludhiana town and in the Jagraon tehsil, respectively, and they might not have needed any protection, since the Jat villages and others showed a sense of clan organization. They tended to band together for social comfort and self-defense. The existence and role of the Khap Panchayats were recognized during the Mughal period in much clearer terms. Emperor Akbar granted freedom to the Khaps in matters of religion and internal administration. They were exempt from taxes and the Khaps were allowed to perform their internal functions with full freedom [5], another mandate by Emperor Akbar said that 'every community and

the Khap of the Doab have the freedom to carry out their functions according to their old custom and laws within their respective Khaps'.

Origin of the Caste Councils

There is no precise answer to how and when the caste councils came into existing. However, there is a general agreement that these were created only after settled village life became possible. Since each village is composed of more than one caste, each caste has been following the norms, rules and behaviour pattern vastly different from other castes. The source of these norms and rules are the cultural scriptures and ethnic / cultural callings maintained by the Caste Councils.

Organization

In northern India, the caste council is generally composed of five elder members of the renowned families, persons of acknowledged qualities of leadership, wealthy and capable of impartial judgement. These five people are called Panchas. Head of the caste council is called Mukhiya or Pradhan.

Structure of the Khap Panchayat

According to Pradhan [6], the Khap could be defined as a unit of a number of villages organized 5 into a political council for the purpose of social control. The Khap area was inhabited either by a dominant caste that had control over most of its agricultural land, by a single clan or by more than one clan, each with a number of villages and being predominant in those villages. When a single clan had only few villages—say, four or five—other clans could also join into a common Khap for the purpose of their defence and control over their people. When a Khap was dominated by a single clan, its headship lay within that clan. When the number of clans exceeded one, the headship went to that clan that had more number of villages under its aegis.

The Khaps could be classified into the following types:

- (1) Those based on a single caste and a single clan: In this category, a particular geographical area was dominated by a single gotra of a particular caste. The gotra had a sizeable number of villages in that area, for example, the Dahiya Khap, the Hooda Khap, the Malik Khap, the Sangwan Khap, the Sheoran Khap, and so on—all of which were located in Sonapat, Rohtak, Bhiwani, the districts of Haryana—and the Balyan Khap in the Muzaffarnagar district of Uttar Pradesh. These Khaps had between 40–84 villages. The people of other gotras also lived in these villages, but they were fewer in number. While other castes like the Scheduled Castes and the Backward Castes also resided in these villages, the power and the major landholding lay with the majority gotras.
- (2) Those based on single-caste but multi-gotra: Such types of Khaps consisted of entire villages which were dominated by a single caste, with some of the villages dominated by various gotras. The Chaubisi organization of 24 villages of Meham in the Rohtak district of Haryana is an example of such a Khap.
- (3) Those based on multi-caste and multi-gotras: Such Khaps had villages in a particular geographical area, of which some villages were dominated by a particular caste and other villages by other castes but with different gotras. These different castes which dominated such Khaps enjoy more or

less equal status in the caste hierarchy and own the major landholding in these villages. The Bawal Khap of Chaurasi in the Rewari district is an example of such a Khap.

Khap Panchayat in India

Khap is a cluster of villages united by caste and geography. It is as old as 14th century started by upper caste jats to consolidate their power and position. The main rule is that all boys and girls within a khap are considered siblings.

Khap panchayat governs the khap formed by same gotra (clan) families from several neighbouring villages. Khap panchayats are prevalent in Haryana, western Uttar Pradesh and Parts of Rajasthan. Love marriages are considered taboo in areas governed by Khap panchayats. Those living in a Khap are not allowed to marry in the same gotra or even in any gotra from the same village. Many young couples have been killed in the past defying khap rules.

Khap panchayat imposes its writ through social boycotts and fines and in most cases end up either killing or forcing the victims to commit suicide. All this is done in the name of brotherhood and its honour. It is due to the inherent weakness of democratically elected Panchayati Raj institutions, Khap panchayats have been powerful. Even the government has not done much to control their power.

The 10-15 men who constitute a Khap settle disputes and control the lives of young people. Many village people also defend these caste panchayats as they deliver the verdict in one sitting whereas court cases drag for years. According to them, in many cases innocent people get harassed in the court and by police. Here as everyone is known so they cross check everything to ensure neutrality.

In some Haryana villages, the young girls are routinely threatened, abused and killed all under Khap verdicts. It is acceptable for the families to feed pesticide pills to the teenage girls and then dispose off their bodies by burning them without any police records. The entire onus of siblinghood rests on the girl. She is the keeper of village honor. Sometimes rules are bend for the boys but a girl is never allowed to bend the rules. If a couple run away then the families risk the boycott and hefty fines in lakhs of rupees. Even the other women of the house can suffer abuse.

In keeping with the khap rules, older villages try to keep the young people apart. Some schools are also forced to have separate timings for the boys and girls. Fearing their daughters would go astray, many parents marry them off at an early age. People have unquestionable faith in the justice of khap. The question of rights for women does not exist anywhere in the territories ruled by Khap panchayats.

Khap Panchayats in Haryana 337 Broadly speaking, there were four categories of Khap Panchayat: Sarv Khap Panchayat, Khap Panchayat, Tappa or Kanni Panchayat and the ubiquitous village panchayat. The Sarv Khap was the combination of many Khaps of neighbouring areas, but sometimes representatives of other Khaps from far away also participated in it. The size of the Sarv Khap depended upon the nature and seriousness of the issue involved. Participation in a Sarv Khap by representatives of other Khaps was voluntary but only on invitation. Women were not allowed to participate in panchayats at any level, whether it was the Sarv Khap, the Khap (Tappa) or even the village panchayat.

Women were not even allowed to put their views in the panchayat in cases related to women. Similarly, the lower castes and the Scheduled Castes did not participate in these panchayats. Sarv Khap Panchayats were held only when some serious issues were discussed. The panchayats were held very rarely. Such panchayats could also be caste-specific. The Khap for a dominant clan or caste included all castes falling under its jurisdiction. Each Khap had a pradhan, which was a post sometimes hereditary and sometimes nominated on the basis of the pradhan's reputation for fair play, his power of argument and his socioeconomic position in the area. Where the matter under consideration was of a wider significance, the decisions were binding on the other castes as well. In lesser matters, different castes could hold their separate panchayat on the pattern of that of the upper caste. If the dispute was inter-caste, it was decided by the Khap Panchayat of the upper caste or clan, in which the lower caste people also participated. The lower castes were expected to follow the norms and traditions of the upper castes who fell under the jurisdiction of the Khap. For example, the minority caste would also follow the principle of Khap bhaichara or gotra bhaichara. Therefore, the rule of exogamy was applied in cases of marriage among these castes. The Khap may be subdivided into sub-units consisting of two to 12 villages based on the principle of local contiguity, kinship proximity and ties of economic and social interaction between the villagers. Of these villages, one village is usually larger than the others. According to Pradhan^[7], a group of villages known as Tappa or Kanni or Ganawad, have some feeling of commonness that binds them into one unit. These villages can organise a panchayat which is known as the Tappa Panchayat or the Kanni Panchayat. These panchayats are open to participation and discussion irrespective of caste. It is only when this panchayat fails to resolve an issue that the matter is taken up at the Khap level. There is no hereditary pradhan at the tappa or kanni level. An influential person from the dominant caste who is considered a man of integrity and has the capacity to influence decisions is nominated as pradhan for a particular panchayat. Sometimes, lower caste people also invite into their panchayat an influential person from the upper castes to resolve issues to ensure that their decisions gain wider acceptance.

Meetings

Theoretically, the meeting of Caste Council can be summoned whenever there is a breach of the caste rules and such breach is brought to the notice of the caste council.

Some of the major offenses which the Caste Council takes cognisance are as follows:

- a) Breach of the caste rules
- b) Failure to fulfil marriage agreements or conditions
- c) Marriage that violates the caste norms and rules
- d) Divorce without mutual consent
- e) Elopement of one member of caste with members of other caste
- f) Breaches of rules of endogamy and exogamy
- g) Dispute between in-laws
- h) Inter-dining with those who are outcaste
- i) Refusing to pay community subscription
- j) Apart from the above, there are many petty offences which

are brought into cognisance of the caste councils.

Function of the Khap Panchayat

When I deal with the functions of the various Khap councils, my focus centres on how these councils help to maintain the social order by controlling fissile tendencies or by managing conflicts' within the jurisdictions of various councils (See Figure 14.1). These councils establish and maintain internal cooperation and external independence ^[8]. During the medieval period, the Khap and Sarv Khap councils had some executive and administrative functions such as land revenue Collection and the general administration of the Khap area. The panchayats also worked for the social welfare of the people falling under their jurisdiction. These functions had legitimacy in the traditional role of the Khap Panchayat. Sarv Khap Panchayat consists of neighbouring Khaps in an area. There is no fixed number of Khaps in the meeting of a Sarv Khap Panchayat. The numbers depend upon the seriousness of the issue under contention and whether or not an invitation has gone out to a Khap pradhan. The number of Khaps taking part in a Sarv Khap may range from eight to 50 Khaps, or sometimes even more. Participation in the Sarv Khap is open to all members of the khaps that come together Khap Panchayats in Haryana 339(MANOJ AND BAABLI CASE) on a particular issue. However, it is the pradhan of a Khap who calls the meeting of the Sarv Khap when an issue between two Khaps needs to be resolved or when the issue is of a serious nature. The Khap pradhan informally discusses the issue at hand with the other pradhans before participating in the Sarv Khap just in order to mobilise opinion in a manner that would appeal to a larger section of the community according to the past practice or norms of the moral code of conduct. The host Khap makes arrangements for tea, meals and the huqqa (smoking pipe) for the Khap pradhans and the other participants. The president or secretary welcomes the delegates. Since there is no hereditary pradhan of the Sarv Khap, one of the seniors among the Khap pradhans is nominated as the pradhan of the meeting of the Sarv Khap for that particular day. The nominated pradhan controls the proceedings of the Sarv Khap Panchayat till a decision is arrived at. The Sarv Khap pradhan asks the host Khap to present the issue before the gatherings of the Khap pradhans and other participants. After the detailed history of the case has been presented, the other Khap pradhans are invited to put their views before the meeting. After hearing out all the speakers, a smaller committee of 10–15 Khap pradhans is constituted to reach a consensus. Before the decision is announced, a hand count shows whether the decision of the Sarv Khap Panchayat would be acceptable to everyone. If issue is related to all the Khaps, it becomes the duty of each Khap to implement the decision in its respective jurisdiction. But if the issue is related to a particular Khap, then the concerned Khap is supposed to abide by the decision of the Sarv Khap. These decisions are informal but announced at the gatherings, so that they are accepted and conveyed to all the Khaps. If a decision is not implemented by the Khap in question, then a meeting of the Sarv Khap involving more Khaps is called again to reinforce the earlier decision. The effectiveness of the Sarv Khap decision depends upon the type of issue, the nature of the decision, community feelings, and

unity and solidarity between the different Khaps. The sense of community feeling, cooperation, a traditional value system and the feeling of bhaichara provide the main strength to the institution of the Sarv Khap Panchayat. The main role of the Sarv Khap is to maintain peace and harmony between various Khaps by settling disputes between them or by passing resolutions related to the social welfare of the people such as education of girls, ban on female foeticide and dowry, limited expenditure in marriages and so on. The Khap Panchayat is still considered a powerful institution for resolving disputes or in reinforcing traditional norms and value system. The Khap Panchayat acts as the sole adjudicative, rule-making and rule-enforcing body. When the decision of the Khap is violated by any individual, group, family or village, the Khap tries to act as an executive body. It also acts as a legislative body when issues are related to the welfare of the people. If the tappa or kanni, which forms the third layer of the Khap Panchayat, fails to decide the dispute, the matter is referred to the Khap. The complaint is sent to the Khap chaudhary, who calls a meeting of the representatives of the tappa or kanni pradhans along with other influential persons of the Khap, who can also participate in its proceedings. If the Khap is of single gotra, most of the participants are from the same gotra; but if Khap consists of multi-gotras, the representatives of the different gotras take part in it. Similarly, in case of a multi-caste Khap, representatives of the various castes take part in its proceedings. Once the decision is taken by the Khap with the consensus of its constituents, it becomes the duty of its clan or caste representatives of various tappas or kannis to see to it that the decision of the Khap is implemented. If somebody is found violating the decision of the Khap, sanctions are imposed by the Khap so that the sanctity of the Khap's decision is maintained. The Khap continues to be one of the most effective institutions of social control, at least in northern India. The next is the village-level panchayat, where common people can also express their views. This gives an opportunity to young people to show their capabilities of leadership. The procedure of decision-making here is similar to that in the Khap Panchayat. The village panchayat decides day-to-day issues by calling a meeting of influential persons in the village. When issue comes to the village pradhan, he asks the village chowkidar to announce the assembly of the panchayat, along with the date and the time of assemblage. Most of village elders usually assemble at the centre of the village and express their opinion freely. People from the neighbouring villages do not participate in village panchayats. Both contending parties are invited to put their views before the assembly, which can sometimes lead to heated exchanges. The village elders regulate the discussion by not allowing direct accusations by either party. The discussion helps both in letting off steam and in providing a solution to the problem. After listening to both parties, the panch move aside from the panchayat and discuss the issue. Before announcing the decision, the consent of both parties is taken that they will abide by the decision. Only then is the decision, which is now binding on both the parties, announced.

Social Sanctions

Social sanctions, the most important part of traditional dispute resolution systems, help the panchayat in the implementation

of their decisions. The fear of social sanction acts as a deterrent on the minds of individuals and families which might be tempted to violate traditional norms. Panchayats from the village to the Sarv Khap levels have their own methods of meting out punishment to their members, depending upon the manner of deviation from the norms of the village, caste or Khap or the type of crime committed. For acts such as theft, fraud, blackmail, physical violence, and so on, most punishments are in the form of fines. Murder, incest and intercaste marriages, on the other hand, invite far more severe punishment such as expulsion from the village or caste, an end to sharing huqqa, water or meals, and excommunication or ostracism from the caste or group or even from the village or Khap ^[9]. Of these, excommunication is considered as the most extreme form of sanction available to a panchayat ^[10]. Another extreme form of punishment is asking a person or family to leave the village or Khap territory. This kind of punishment is announced only in extreme cases such as rape, incest and inter-caste marriage. Inter-caste marriage is considered a serious crime only when a girl from an upper caste marries a boy from a lower caste, especially one of the Scheduled Castes.

The Concept of Bhaichara

The concept of bhaichara means that members of the same generation are classify category siblings (bhai-behan) and cannot intermarry ^[11]. This idea of bhaichara starts from village level and continues up to the Khap level. There exist three types of bhaichara:

1. Village bhaichara, in which members of one generation are treated as brothers and sisters as originating from a common ancestor and, therefore, related by blood. This is irrespective of gotra or caste; the 'siblings' cannot intermarry within the village. Even the Scheduled Castes enjoy the relationship afforded by bhaichara. The village is an exogamous community. This idea of bhaichara extends to the neighbouring villages, which share geographical boundaries, precluding the possibility of marriages between them.
2. Gotra or clan bhaichara, in which all members belonging to the same gotra in the same caste are treated as brothers and sisters, even if they belong to different villages. This is applied to both the dominant castes and the Scheduled Castes. The Khap of a particular gotra, such as the Sangwan Khap, the Dahiya Khap and the Hooda Khap (among the Jats) enjoy bhaichara on the basis of common lineage.
3. Families belonging to the same caste but with different gotras, which do not marry in the villages of the single gotra Khap because such Khaps are numerically dominated by a single gotra. All other persons living in a Khap area, irrespective of their caste or gotra, treat each other as brother and sister. Khap bhaichara is normally emphasised in the Khap Panchayat. There is an exception to the marriage rule in certain Khaps that are multi-gotra and multicaste, where the people can marry within the Khap. They include the Chaubisi of Meham in Rohtak district, the Chaurasi of Bawal in Rewari district and the Satrol (70 villages) of Hansi in Hisar district in Haryana. Similarly, villages that fall under one tappa or kanni also

do not permit marriage within the tappa, although marriage can take place in another tappa if the Khap consists of multiple gotras. 342 K.S. Sangwan The idea of bhaichara is not only restricted to the kinship system but also applies to social and political life. The notion of belonging to a particular Khap is an idea of egalitarianism only among the people of the dominant caste, which is extended by the leaders of the dominant caste to people of other castes in order to maintain peace, harmony and unity within the Khap.

Case Studies

In this section, I would like to discuss some cases which are of great significance in understanding the functioning of the Khap Panchayats. These cases can be classified in three categories:

1. Pre-Independence cases that fought against the excesses of the rulers.
2. Cases that related to disputes, dowry, social reform and so on.
3. Cases related to marriages that violated custom.

Category 1

Case 1

A Sarv Khap Panchayat was held in Sisrauli in Uttar Pradesh in AD 1760 under the leadership of Danat Rai to discuss the appeal made by the Maratha general, Sada Shiv Bahu, to fight the invasion by Ahmad Shah Abdali. The appeal (translated) made by Sada Shiv Bahu was: ^[12] To the Jats, Gujars, Ahirs and the Jats of 18 Khaps or Paals (theambas), or the heads of thok, and Panchayats, I send my regards. For the defence of religion it is the duty of every Hindu to help me in defending the country. Everyone will have to fight for the defence of the country against the coming invasion. From the ninth century [SB] the apostates have made this country their strong hold and are ruling over it. There will be no better opportunity than this [to drive them out]. Maharaja Surajmal has promised to provide 25,000 soldiers. The servant of the Hindu religion. This letter was read in the Sarva Khap Panchayat, which decided that the appeal for military help should be accepted in order to help the Marathas to defend the country. Every Khap was to provide one army contingent. Two thousand cavalry would be provided. Chaudhary Sheo Lal of Shoran village was to be appointed commanding general of the Sarva Khap armies. The representatives of the Khap were to take a religious vow to fight to the end and were to be prepared to sacrifice their lives. An army of 20,000 soldiers was raised and fought under the leadership of the Marathas in the third battle of Panipat against Abdali. The Marathas were defeated and most of the Sarv Khap army was routed and killed ^[13].

Case 2

A Sarv Khap Panchayat (Khap Baliyan) was held in Shoran in AD 1574 under the presidentship of Rao Landey Rai of Sisrauli village. Pradhan provides a useful analysis of political conditions in the country resulting from the advent of Mughal rule ^[14]. In response to Akbar's policy on religious freedom and autonomy for Khap panchayats, about 90,000 persons attended the Panchayat, at which the resolution passed was as follows:

1. Every Khap should organise and conduct its affairs within its Khap area.
2. Other castes should also organise and conduct their caste affairs within the jurisdiction of the Khap Panchayats.
3. The common interests of the Khaps should be discussed in the Sarv Khap Panchayat of all the 18 Khaps.
4. Each Khap should ask for its recognition by the royal court.
5. Either the Khap leaders should collect the land revenue from their own villages or Khap personnel alone should be appointed as sole contractors for collecting the revenue.
6. Agricultural tax should be levied by the respective Khap, which is then free to increase or decrease the revenue.
7. Khap Panchayats should be free to conduct their community affairs. Most of these claims were accepted by the Mughal court, as various royal mandates verified.

Case3

In the second decade of the 17th century, the Chaubisi Khap Panchayat of Meham in Haryana protested against the practice called Kola Pujana, brought in force by Nawab Murad Ali of Kalanaur. A newly married girl belonging to the Malik gotra and hailing from a village located near Gohana town, passed through Kalanaur, on the way to her husband's village. She learnt about this practice, where every newly married girl who passed through Kalanaur, had to spend one night with the Nawab before she joined her husband. She decided not to submit to the Nawab. She ran away from that route and returned to her native village. When asked about the reasons for her return, she informed the people of the practice of Kola Pujana. Subsequently, the village people convened a meeting of their own Khap and adjoining Khaps which included the Malik Khap, the Dahiya Khap, the Hooda Khap and the Chaubisi Khap of Meham. It was resolved that 344 K.S. Sangwan they would join hands and fight against the Nawab of Kalanaur. Although the Nawab was killed, the Khap Panchayat suffered a big loss in which many people from different castes died. From Nindana village in Meham Khap alone about 25 people were killed. Their memorial still exists in the village as a reminder of their sacrifice.

Case 4

This case is related to the third Nawab (1835–69) of Loharu in Bhiwani district of Haryana ^[15]. The Khap Panchayat of Sheoran protested against the tax revenue policies of the Nawab. In 1857, when the Nawab and his brother were away to Delhi, the Sheoran Khap attacked the Nawab's residence, looting costly items and damaging the building. Although the Nawab ultimately succeeded in controlling the protest with the help of the British, he had to change the method of tax collection. This helped the peasantry in getting relief from revenue collection. Again, during the reign of the fourth Nawab, Allaudin Ahmad Khan, who came to power in 1870, people raised a protest in 1877 against his excesses. The protest was crushed and one of the leaders of the Sheoran Khap, Badda Singh, was hanged. Even the last Nawab, Aminuddin, also faced protests from the people of the Sheoran Khap. On 6 June 1935, a meeting of the Khap Panchayat was called at Chahar Kalan village. Aminuddin invited fi ve

people of the panchayat for discussions but then arrested them. Later, the Nawab attacked the meeting, arresting another 50 people and confiscating their properties. On 29 April 1936, the people of the Sheoran Khap attacked the police station and captured ammunition and policemen. On 30 April, the Nawab sent in his army which fought a pitched battle in which many people died, many others were captured and some hanged. The struggle continued, with the Sheoran Khap eventually coming out victorious.

Category2

In this category, I would like to discuss those cases which are of a very serious nature and other case related to social reform that the Khap Panchayats resolved amicably.

Case 1: Atela Kalan

This case is related to the panchayat election in 1995 in Atela Kalan village in Haryana's Bhiwani district, which falls within the jurisdiction of the Sangwan Khap. Hostilities over candidature and the contest itself resulted in two deaths, one on either side of the dispute. One death was a result of stoning, the second of being shot with a privately-owned revolver. The cases led to convictions on both sides, following which negotiations began for a settlement. In the panchayat, there were Khap Panchayats in Haryana 345 long speeches about Khap bhaichara, long deliberations in which both parties expressed their views, which created an atmosphere of peace and harmony. The pradhan of the Khap announced the decision that both parties would live in peace and without any ill-will towards each other. Since both parties were on an equal footing, no punishment was meted out: they were simply asked to live like brothers and good neighbours.

Case 2: Butana

This case is related to Butana Barah (the 12 villages of Butana) in which 10 persons belonging to four families of the Butana villages were killed. The four families of Hukam Singh, Prithi Singh and his younger brother Chhotu Ram, Om Singh and Rameshar had some dispute over ownership of land. A decade earlier, Om Singh and Prithi Singh, the ex-Sarpanch of Butana, had had very close relations. The dispute over land led to the killings of two sons of Om Singh by the sons of Hukam Singh. Rameshar, who belonged to Om Singh's family, migrated to Rohtak after the killings. In retaliation, the sons of Om Singh killed the wife, son and daughter of Prithi Singh. The feud continued for many years. Some families migrated from Butana to other places. A meeting of the Sarv Khap was held on 28 May 2006. ^[16] In which many Khaps participated. The Sarv Khap Panchayat was called by the representatives of the Butana Barah Khap. The meeting continued for four hours, during which both parties presented their views. It was then decided that the disputed piece of land would be divided equally between the two parties and that hostilities would cease. The decision was accepted by both parties.

Case 3

In June 1983, a meeting of a Sarv Khap Panchayat was called by the pradhan of Chaubisi Khap Panchayat to check growing expenditure during marriages and other social issues which

were considered as burning problems of the people of Haryana. Representatives of many Khap Panchayats of the area participated and the following decisions were taken:

1. Expenditure in marriages should be minimised.
2. The barat should not have more than 25 persons in it, and no women would participate.
3. After a person's death, no feast would be organised.
4. Divorce cases would be resolved by the panchayat.
5. If a girl was divorced without it being her fault, the boy's family would be fined Rs 11,000 and would face excommunication from the community.
6. No liquor would be served at a marriage party.
7. Those who followed these decisions of the Sarv Khap Panchayat would be honoured. The Khap Panchayats, however, have not been very effective in implementing decisions related to social reforms.

Category 3

In this category, I would like to discuss those cases where Khap Panchayats took decisions consistent with the traditional concept of bhaichara but contrary to the principles of modern law. These decisions violated the human rights of individuals who then approached the courts for justice.

Case 1: Sheoran Khap

Dr. Sumer Singh and his wife Anand Kaur, both B.A.M.S. doctors, had been running a private clinic since 1992 in Badhra village in Bhiwani district, which falls in the jurisdiction of the Sheoran khap. Sumer Singh, a resident of village Paintawas, belonged to the Sangwan Khap, which adjoined the Sheoran Khap. Both Khaps had very cordial relations. The doctor couples were also running an English-medium high school in Badhra. There were other schools nearby that were owned by men who belonged to the neighbouring Sheoran Khap. Competing interests led to the trading 12 of charges and, eventually, violence. Sumer Singh was accused of raping a female patient and was imprisoned. His wife was obstructed from keeping the hospital open. Members of the Sheoran Khap were convicted for unlawful assembly, attacking the hospital and setting it on fire. At every stage of the escalation of conflict, the Khap Panchayats ratified the decisions: the hospital was, in fact, set on fire after a mahapanchayat of the Sheoran Khap. Despite the intervention of the courts, the protection of vested interests—to the extent that members of a Khap took the law into their own hands—was guaranteed by the Khap Panchayat.

Case 2: Jondhi

This case was related to the marriage of a boy belonging to Jondhi village in Jhajjar district of Haryana. Jondhi, Jat-dominated village, was, according to popular memory, founded some 500 years ago by a Jat named Jona. Jona, who belonged to the Gahlawat gotra, allowed a man of the Dagar gotra—who came from Meerut in Uttar Pradesh—to settle in the village. Of the 7,000 acres of land that Jona owned, Dagar and his family were given 2,000 acres. While the majority of people in this village belong to the Gahlawat gotra, artisan castes, Scheduled Castes and Brahmins also live in this village, although they are in a minority. The Dagar gotra, although it had less land and was in a minority, was ahead of

the Gahlawats in terms of education and good jobs. This success created tension between the Dagar Jats and the Gahlawat Jats. Between the two gotras, however, there prevailed the custom of village bhaichara, which meant that they could not intermarry. The violation of this bhaichara rule attracted a heavy penalty. Ashish, a taxi driver in Delhi who belonged to the Dagar gotra, married Darshana of Dabri village in Delhi on 1 February 1998. Since both families were poor, the marriage was simple, with 15–20 persons in attendance as Baratis. Darshana gave birth to a child after a year. Suddenly, it was disclosed that Darshana belonged to the Gahlawat gotra. This created a lot of tension. The Gahlawat Jats summoned a village panchayat in July 2000 in which a committee of about 25 persons was appointed. When the concerned parties consistently failed to appear before the panchayat, the latter took the following decision in absentia:

1. That the marriage of Ashish–Darshana was to be declared null, and that the couple could no longer be treated as husband and wife.
2. Darshana would no longer keep herself veiled because she was now like a daughter of the village; she would unveil herself in the presence of the village panchayat.
3. Darshana would tie a rakhi to Ashish, declaring him in public as her brother.
4. Since Darshana would become a daughter of the village, it would become the responsibility of the Dagar Jats to marry her off again. The expenditure would be borne by Ashish's family and the villagers would help her in finding a suitable match.
5. Ashish's family was asked to leave the village within a week and deposit Rs 5,000 in the account of his and Darshana's son.
6. The family was ordered to sell its property within two weeks, pending which it would be confiscated by the panchayat.
7. If the family failed to leave the village, the panchayat would not take responsibility for their lives and property.
8. Darshana's family at Dabri village was expelled from the community (bhaichara) of the Gahlawat gotra forever for having brought disgrace to it.

The Dagar family then mobilised itself and called a Khap Panchayat of the Dagar and Gahlawat gotras at Jondhi on 23 August 2000. The entire Dagar gotra appealed for a relaxation in the punishment. The Gahlawat family of Darshana also repented this act of marriage. The Khap Panchayat asked both gotras to submit a written declaration that the decision of the Khap would be binding on both parties. Both parties agreed. A committee of 11 members was constituted by the Khap Panchayat after a long deliberation in the panchayat.

The decision of the 13 Khap Panchayat was:

1. That Darshana's family was to be excommunicated from the gotra; it could no longer be called Gahlawat. No person of the Gahlawat gotra was to associate with this family.
2. Ashish and Darshana would continue as husband and wife but could not stay in Jondhi village and could not visit the village under any circumstances. Their son, however, could stay in the village.
3. All other members of Ashish's extended family in the village would face a boycott from village brotherhood for two years. Other people of the village would not share

Huqqa-pani (smoking pipe and water) with the people of the Dagar family. A meeting of the Khap Panchayat was called on 9 November 2004. The panchayat constituted a committee of five persons each from the Gahlawat and Dagar gotras. After long deliberations, the committee announced that while the judgment of the earlier Khap Panchayat held on 23 August was right, the circumstances had now changed. The couple could, therefore, stay at the outskirts of the village, on condition that they withdrew the case from the court. The panchayat re-emphasised the importance of village bhaichara and village exogamy. The district administration normally does not interfere in the functioning of the Khap Panchayats.

Khap Panchayat and modern law: A contradiction

Traditional panchayats, from the Sarv Khap Panchayats to village-level panchayats, have existed in India for many centuries. The importance of these panchayats was recognized by various rulers, especially the Mughals and the British.^[17] Although the British tried to create a modern legal system of dispute resolution by setting up courts of law, they rarely interfered in the functioning of the traditional panchayats. Before Independence, these traditional panchayats acted as a unified force in favor of or against the then rulers. The major basis of their strength was the concept of bhaichara on gotra, caste or territorial basis. This system believed in gotra, village and Khap exogamy but caste endogamy. In addition to this, the panchs—the five judges in a panchayat—were considered to be gods and their authority went unquestioned. The basis of this legitimacy for the panchs was drawn from their reputation for fair play, the absence of expenditure in proceedings and their attempts to arrive at negotiated settlements between contending sides involving the larger community and the maintenance of bhaichara at all levels. These panchayats not only acted as agencies of dispute resolution at the community level, but also helped in maintaining peace and harmony between different caste or communities living in their jurisdiction. Therefore, these traditional panchayats were considered the supreme authority by the people in the rural areas. The Mughals recognized the popularity and authority of the Khap Panchayats; therefore, emperors like Akbar and Bahadur Shah accorded them full freedom. In a letter to the pradhan of the Balyan Khap, Akbar wrote: 'Every community and the khap of the Jats of the Doab have the freedom to carry out their function according to their ancient customs and laws within their respective councils.'^[18] The introduction of modern law and the creation of courts by the British affected the functioning of the Khap Panchayats. After Independence, education, the recognition of individual rights, adult franchise, the introduction of panchayati raj institutions at village, block and district levels, state and Parliamentary elections, urbanization, economic independence and other such factors provided opportunities to the individual to come out of traditional system and the moral ideology of bhaichara. Today, individuals have other options to pursue their goals, options that were earlier confined to the family, the village or the Khap. However, the question that arose after the introduction of the modern legal system and other democratic institutions was that now that the individual could express his or her desire, and could get disputes resolved without the

pressure of gotra, caste or community, why and how were the Khap Panchayats to continue to be relevant? Analysing the support base of Khap Panchayats, it is obvious that the pradhans of the different Khaps and the masses at large feel that these panchayats take decisions on the basis of common moral values, old traditions, and customs prevailing in the society. The concept of bhaichara at the village and Khap levels is another factor in favour of maintaining solidarity within the community. Panchayats are held in the open, and people from different walks of life can participate in them: this makes it possible for the issue to be debated at length and consensus to be arrived at before a decision is announced. Khap pradhans are of the opinion that these Khap Panchayats do justice and do not announce decisions contrary to those pronounced in the courts of law. Since these decisions do not involve victory or defeat for either of contending party, there is scope for both parties to consent to the decision of the Khap Panchayat without continuing their hostility. These pradhans justify the relevance of the Khap Panchayats by comparing the dispute resolution by the courts and the Khap Panchayats. They say that getting justice in a court of law is beyond the reach of the common person. It is very time consuming, involves huge expenditure, and there are procedural problems like the destruction of evidence and witness hostility. The common people are not familiar with functioning of the legal institutions. Even if a decision is announced by a trial court, it can be challenged in a higher court by the other party. Legalities, therefore, not only consume a lot of time and resources, they could eventually leave people unsatisfied with a decision. Furthermore, even after coming out victorious, the hostility between the two parties could continue for many years.^[19] Since modern law recognizes the individual and his or her rights, and is based on rationality, the legal system, therefore, undermines the importance of the traditional concept of bhaichara— especially Traditional marriage norms based on village, gotra and Khap exogamy and caste endogamy. The moral ideology, which formed the basis of all these and other behaviour patterns, loses its force before modern law. In addition to the above factors, the individualistic approach to achieving one's goal has further affected the importance of the Khap Panchayats in modern times. The major contradictions which the Khap Panchayats are facing are that they still hold tradition and a particular morality very dear. The cases related to marriages where the individuals or families have violated the old tradition of village and gotra bhaichara on the other hand legal system favors the action taken by these individuals or families. The intervention of the courts in these cases has challenged the authority of the Khap Panchayats for having taken decisions which violate the rights of individuals. On the one hand, the Khap leaders have to behave according to the will of the dominant groups, a will that is based on traditional norms and customs and from where they draw their support. On the other, modern law tries to protect the human rights of the individual, especially when traditional systems violate them. These dichotomies have, in some cases, raised criticism of certain decisions of the Khap Panchayats. In October 2004, the Punjab and Haryana High Court asked the Government of Haryana about the functioning of the Khap Panchayats, which at times take law into their own hands and pronounce

decisions, which violate human rights. Neither the State nor the political 15 parties want to come out openly against the Khap Panchayats. The Khap Panchayats also do not want to come out openly against the verdicts of the courts. If we want to make the dispute resolution system more rational and effective, we have to involve local communities in such a manner that they also acquire some legal knowledge and understanding of human rights. There are positive aspects of traditional dispute resolution systems which cannot be completely discounted. Rather, we should be able to strike a balance between these community based forms of dispute resolution and modern justice systems.

References

1. Khap is a particular area inhabited by a lineage or caste or cluster of castes.
2. I have used gotra as synonymous with clan, meaning thereby that all those who claim to have descended from one common ancestor are known as gotra or clan. I have used gotra and clan interchangeably.
3. See Thapar, Romila. from Lineage to State. Bombay: Oxford University Press. Also, Sharma, R.S. 1965. Indian Feudalism. Calcutta: University of Calcutta, 1984.
4. Walker Gordon. Ludhiana Settlement Report, 1884, 45-79.
5. The text of the emperor's mandate has been quoted in Pradhan, MC. The Political System of Jats of Northern India, Delhi: Oxford University Press, 1966, 97.
6. Pradhan, op. cit., 1966, 114-15.
7. Pradhan, op. cit, 1966.
8. Schapera I. Government and Politics in Tribal Societies. London: C.A. Watts and Co., 1956, 123.
9. Pradhan, op. cit., p. 105; Hayden. Disputes and Arguments among Nomads, 1999, 49.
10. Mandlebaum David G. Society in India. Berkeley: University of California Press; Dumont, Louis. 1970. Homo Hierarchicus. Chicago: University of Chicago Press, 1972.
11. Dumont Louis. Homo Hierarchicus: The Caste System and Its Implications 2nd edition. Chicago: University of Chicago Press, 1980, 27-177.
12. Quoted in Pradhan, op. cit., 1966, 258.
13. Pradhan, op. cit., 1966, 259.
14. Ibid: 257. 16
15. Oberoy, Chander Bhan. Loharu Bawani Ka Itihas, Rohtak: Acharya Printing Press, 1997, 130-75.
16. Dainik Jagran, 2006.
17. Pradhan, op. cit., 1966, 96-97.
18. Pradhan, op. cit., 1966, 97.
19. These views were expressed by Khap pradhans at a seminar organised by the Department of Sociology, Maharshi Dayanand University, Rohtak, in March 2005. The seminar was entitled 'Khap Panchayats: Challenges and Prospects', in which, in addition to the Khap pradhans, affected parties, social activists, academicians and lawyers participated.