
ADOLESCENT CHOICES AND KHAP PANCHAYATS

Parthvi Singh, Jindal Global Law

ABSTRACT

This research paper tries to analyze the individual choices of young adults regarding sexuality and experimentation, especially after the age of consent has been increased post the Protection of Children from Sexual Offence Act 2012. The paper also tries analyze the increased age of consent with reference to the parallel social justice system like the Khap Panchayats who perpetuate more crimes in the garb of maintaining cultural norms.

Introduction

India has increased the age of consent for women to 18 years. It was celebrated by some in the society while the real implication means the Indian Legal System has failed to recognize adolescent sexuality. Most countries have their legal age of sexual consent lower than India, In the case of United States, United Kingdom and Canada it is 16 for both sexes. The question that lingers around is who decides the age of adulthood? The actual concern is regarding the manner in which the age of consent is interpreted and implemented in our country. In our conservative culture love is considered a taboo and public display of affection is frequently frowned upon.

Rural Adjudication

According to the World Bank rural India which comprises of 63.53%¹ of the Indian population which at present is dominated by local panchayats (Khaps). A Khap panchayat is a council of five elders of the village who look after the administration of the village. With the introduction of the Panchayati Raj System by the 73rd and 74th Amendment Act². Legal village panchayats have been established in India. Despite their official status, village panchayats in some parts of the country are mainly dominated by these informal social systems.³ Although the constitutionally elected Panchayats are endowed with several functions at the grassroots level, but the ground reality is it only performs civic functions. During one of the joint meeting of Khaps organized by Baran Kalan Khap of Bibipur village, an assembly of over 200 Khap Panchayats from across India to discuss issues related to female infanticide, honour killing and rape. When asked what are the functions of the elected Panchayat the reply of the Sarpanch was "*Our work is only limited to the repair and maintenance of drainage and streets*". Whereas the social matters in the village are taken up by the Khaps.⁴

The development of non-state parallel systems of adjudication has especially post-independence lead to formulation and construction of gender and sexuality, tradition and honour.⁵ These panchayats comprise of elderly men who are believers of deeply instilled

¹ World Bank Indicator, <https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=IN>.

² The Constitution 73rd Amendment Act 1992.

³ ANNAVARAPU, SNEHA. "Human Right, Honour Killings and the Indian Law: Scope for a 'Right to Have Rights'." *Economic and Political Weekly*, vol.48, no.50, 2013, pp-129-132. JSTOR, <http://www.jstor.org/stable/24479054>.

⁴ Maha khap Panchayat on female infanticide organized by Kandela Khap Panchayat in the village of Bibipur.

⁵ Supra note 3.

patriarchal notions. Khap Panchayats govern and adjudicate most issues in the rural society including criminal and marital cases, while 30% of urban Indian population is governed by laws implemented by the state a large proportion of rural India is still governed by these panchayats which have a deeply ingrained misogynistic attitude. The opinion of a Sarpanch is only taken if he belongs to a higher caste, that is if he belongs to the dominating Jaat community in Haryana, but the actual decision-making rests in the hands of the Khap members. Overall authority is held by the Khaps while the constitutionally elected Panchayat is responsible for the infrastructural development of the village and not the social aspects.

Elopement and Rape

When the country increases the age of the consent for sexual intercourse for women they are invariably trying to imply sexual urges develop post 18 years of age since the justification is that below 18 they are not mature enough to understand the consequences of their actions. In India, the stranger rape cases which make it to the breaking news on national television comprise of a very miniscule fraction, sexual assaults by relatives and at home are the highest but these are mostly under reported because of the complex structure of such cases.⁶ While a third of the reported rape cases are elopement and rape, where girls below 18 years elope with their lovers, subsequently the family is advised by relatives to protect the honour of the family and to file for statutory rape under POCSO Act, Section 375 and Abduction under Section 362. The Union Cabinet approved of amending the Section 4, 5 and 6 of POCSO Act to include stringent punishment in case of child sexual abuse which include minimum jail term of 20 years or life imprisonment and death penalty, which is left to the discretion of the court.⁷ Majority of cases being reported under POCSO Act are based on elopement by having such stringent punishments the state is attempting to turn a blind eye to sexual intercourse and experimentation among teenagers.⁸ This paper tries to understand the reported offences based on adolescent sexuality and role of Khap panchayats in perpetrating crimes under the garb of maintaining the rural society.

Conscience keepers of the society

The urban rural divide in India is vast in terms of development economically as well as socially.

⁶ FLAVIA AGNES. "No Shortcuts on Rape: Make the Legal System Work." *Economic and Political Weekly*, vol.48, no.2,2013, pp. 12-15. JSTOR, <http://www.jstor.org/stable/23391173>.

⁷ Section 4, 5 and 6 of Protection of Children from Sexual Offences Act,2012.

⁸ *Supra* note 6.

Time and again the Supreme Court has clarified the Khaps and parallel social systems (Darul Qazas) that their decisions have no legal implication.⁹ But, in the case of Khap panchayats the social implication outweighs the legal consequences. The diktats of a khap dominant livelihoods of most Indian villages. What is more surprising is that the constitutionally elected panchayats are almost controlled by the Khaps or incase the seat is reserved for a Scheduled caste or Scheduled tribe, the khaps being from the jaat community which make up the majority in the village plus they are financially better off, therefore the SC or ST requires their support to win the election.¹⁰ Women and ST/SC have reserved seats but they are essentially puppets in the hands of the khaps, they are never consulted, called for any meetings or decision making.

When the age of consent is raised to 18 years for women it has far-reaching implications. Though there are argument that it reduces child marriages and child sexual abuse but according to the National Family Healthy Survey conducted during 2019-20 about 16.2% in the age group 20-24 years, they had all been married before the age of 18 years¹¹. This shows that even though there may be a legal age of consent there are still people who are getting married before that. The very purpose of the implementation of the increased age of consent gets defeated because families are still getting their children married early in certain pockets of the country. Khaps follow typical feudal customs and norms which are compatible with the ideology of a custodian of rural society and protector of morality. These Khaps have inherently patriarchal ideas of an ideal society, women are put under various restrictions from not being allowed to carry mobile phones to no wearing jeans as it increases rapes and love marriages. It is invariably women who are constantly opposing the Khap Panchayats and standing against them publicly.¹² As mentioned before these informal institutes have more power than statutory Panchayats in states such as Haryana and UP. They even order harsh regressive punishments against women from time to time.¹³

The Khaps in the past have given outrageously gruesome punishments for something as simple as falling in love. In the village of Bhawanipur, Uttra Pradesh, a 20-year-old boy Chetan eloped with a girl called Pinky. She belonged to an influential Yadav family whereas he was a barber.

⁹ Vishwa Lochan Madan v. Union of India AIR [2014] SC 2957.

¹⁰KAUR, RAVINDER. "Khap Panchayats, Sex Ratio and Female Agency." *Economic and Political Weekly*, vol. 45, no. 23, 2010, pp. 14–16. *JSTOR*, www.jstor.org/stable/27807097.

¹¹ National Family Health Survey-(5) 2019-20 Report. http://rchiips.org/NFHS/NFHS-5_FCTS/NFHS-5%20State%20Factsheet%20Compendium_Phase-I.pdf.

¹² PREM CHOWDHRY, Crisis of Masculinity in Haryana, *Economic and Political Weekly*, 5 December 2005.

¹³ BHUPENDRA YADAV, "Khap Panchayat: Stealing Freedom?", *Economic and Political Weekly* 44, No. 52, December 2009.

The Khap ordered the couple to be traced and also ordered the boy's mother Sia Dulari to be raped by the member of the high caste Yadav family. As her son had dishonoured the Yadavs, the mother of the boy was later burnt alive. The police in the area knew about these heinous crimes being practiced but the Khaps are more dominating.¹⁴

However, now that the age of consent is increased it becomes even more complex for young adolescents to experiment with their sexuality or in general have sexual intercourse. With reference to rural India those young couples who do not get the approval from the society, the only solution they have is of elopement. By any chance they get caught they would be killed by the orders of the Khaps, in order to save the honour of the families. But, now even the legal system works against the youth because the parents file a case for statutory rape if the girl is below 18 years which makes consensual sexual intercourse a criminal offence. Documentation regarding date of birth in villages is not available most of the times, so the parents purposely claim the daughter to be younger than 18 years, which leads to young boys being convicted for rape or abduction.¹⁵ And at times when the couple are apprehended the girl is pressurised by the family because of which she does not voice her opinion and gives a testimony regarding there being lack of consent from her end.

Purity and Honour

This becomes a problematic area as this fortifies the deep-seated idea of honour and chastity. A girl desiring sexual pleasure is frowned upon and sexuality is controlled to a large extent. Crimes related to sexual assault invariably attract more attention in general. During the 2012 Nirbhaya rape case it gained momentum across India but vaginal penetration is not the only way women are humiliated. Parading, stripping, acid attack and stabbing are equally violent and are criminal offenses. During the ongoing Nirbhaya protests in 2012, a boy in Mumbai had stabbed his girlfriend several times and then stabbed himself. This is equally gruesome as a rape but we as a society attach more relevance to vaginal penetration.¹⁶ This stems from the underlying notions of vagina and purity. In the case of Khaps and rural India the ideas remain

¹⁴ TARUN SEHRAWAT, *A Taliban of Our Very Own*, *Tehelka Magazines*, Vol 6, Issue 32, August 15, 2009)

¹⁵ *Supra* note 5.

¹⁶ FLAVIA AGNES, "No Shortcuts on Rape: Make the Legal System Work" *Economic and Political Weekly*, Vol. 48, No. 2 (Jan 12, 2013), pp 12-15.

the same which is why there are several restrictions on women like on wearing jeans,¹⁷ using phones¹⁸ or driving. The Khap panchayat in order to protect the honour of the family which is based on the purity of the women try to coming up with these outdated and illogical measures, in doing so they actually end up committing ghastly crimes. Honour killing is common in Haryana, Punjab, Uttar Pradesh and Rajasthan. The undisputed torch bearers of morality are these Khaps which ensure the society remains pure and untouched from western ideas.¹⁹

Caste and Diktats

In case where a Dalit boy eloped with a Jat girl the Khap ordered the sisters of the Dalit boy to be raped since their brother had dishonoured the higher caste. In this case Justice J. Chelameswar sought response from the Uttar Pradesh Government on plea against the diktat of raping two Dalit women.²⁰ Caste plays a vital role in most diktats of the Khap panchayat. The Khap ordered the two sisters to be raped and paraded naked with their faces blackened as a form of punishment against what their brother had done. Evidently, it's the women of the lower castes who are subject to the worst brutalities and punishments by the Khap Panchayats. BR Ambedkar spoke about the importance of inter caste marriage in his book Annihilation of caste- *"I am convinced that the real remedy is inter-marriage. Fusion of blood can alone create the feeling of being kith and kin, and unless this feeling of kinship, of being kindred, becomes paramount, the separatist feeling — the feeling of being aliens — created by caste will not vanish. Where society is already well-knit by other ties, marriage is an ordinary incident of life. But where society is cut asunder, marriage as a binding force becomes a matter of urgent necessity. The real remedy for breaking caste is inter-marriage. Nothing else will serve as the solvent of caste."* Rape and sexual offence are a form of showcasing domination and power which is why cases of Dalit women getting raped is more than the sexual act of satisfying lust but also suppressing lower caste women. While Ambedkar believed inter caste marriages are one the best ways to resolve the issue of caste, we still have Khap panchayats

¹⁷ BHASKAR MUKHERJEE, Khap bans jeans and T-shirts for girls in Hisar, Jan 8, 2013, <https://timesofindia.indiatimes.com/india/Khap-bans-jeans-and-T-shirts-for-girls-in-Hisar/articleshow/17933563.cms>.

¹⁸ JAIDEEP SARIN, From chowmein to skirts, Haryana's strange diktats, Deccan Herald, Mar 23, 2013, <https://www.deccanherald.com/content/320961/from-chowmein-skirts-haryanas-strange.html>.

¹⁹ Gitanjali Gayatri, "Till 'honour' do them part", report dated 30 September 2013, National Legal Research Desk-Shakti Vahini Initiative.

²⁰ APROOVA MANDHANI, "Dalit women petitions SC against Khap Panchyat's order to rape her sister and the sisters of the brother, Aug 29, 2015, <https://www.livelaw.in/dalit-woman-petitions-sc-against-khap-panchayats-orders-to-rape-her-and-sister-for-brothers-actions/?infinite-scroll=1>.

who prohibit inter caste marriages.

More horrors under the Khap regime

The idea of honour is so deeply ingrained in our society and this honour is mostly gendered. Society attaches family value to the manner in which the society respects women of that family, women are valued for the honour they bring and punished for the shame they bring by the transgressing the existing social norms.²¹ In a horrifying case where the brother on finding out his sister was living with her boyfriend dragged her out and beheaded her on a street and carried the her head to the police station placed the murder knife and her head on the police officer's table. Since pre martial relations are a transgression from the norms and the consequences of transgressing the social norms in the Khap dominated belts are horrendous.²² In Khoraon village in Uttar Pradesh a 17-year-old girl was killed by her father for having an affair with someone from another religion. Honour killings are common in Northern India but they are not uncommon in South, a 19-year-old woman from Sangameshwar in Karnataka was killed and burnt by her parents for a premarital affair.²³

Rescue for love

With rise in caste based violence and honour killing perpetrated by Khap Panchyats. Haryana decided to open 'Shelter home' for the couples who runaway and marry under the Haryana government "formulation policies on runaway couples". According to an international digital centre working towards honour based killings- Honour Based Violence Network there are about 1,000 honour based killings per year which are reported, actual number can be higher because they are frequently unreported as the families are themselves involved.²⁴

Supreme Court has been constantly giving judgements about the right to choose a partner of one's choice after the attainment of majority.²⁵ Haryana opened these shelter in order to protect a newly-wed couple fearing violence and social ostracization by Khaps and the village. These comprise of two rooms in a shelter which are shared by 10 couples at a time, rooms are mostly

²¹ JOHN ALAN COHAN, "Honour Killings and the Cultural Defense," *California Western International Law Journal*: Vol 40. <https://scholarlycommons.law.cwsl.edu/cwilj/vol40/iss2/2/>.

²² CHAITRA ARJUNPURI, "Honour Killings" Bring Dishonour to India, *Aljazeera* (Dec 27, 2012) <https://www.aljazeera.com/features/2012/12/27/honour-killings-bring-dishonour-to-india>.

²³ *ibid*

²⁴ Honour Based Violence Network 2016 Report.

²⁵ *Salamat Ansari & Ors v State of UP*, CRIMINAL MISC.WRIT PETITION No.- 11367 of 2020.

in government buildings which are constantly guarded by policemen.²⁶ According to a study 74 per cent of honour killing cases take place in the Jaat dominated areas like Sirsa, Fatehabad, Jind, Rohtak, Sonapat, Panipat and Karnal.²⁷ These Shelter homes are the only place they have where they can be legally protected from their families but over the years these shelters are getting overcrowded as more and more couples elope. The standards of hygiene maintained in these shelters are very low, with chipped walls and undergarments of strangers drying all over the place but this is the only place to escape.²⁸

Story narrated by one of the couple from the shelter Sahil 21 and Nisha 19, they both met at a wedding in their hometown in Sonapat, they kept in touch after that and fell in love. But, when they talked about marriage Nisha's family did not agree seen she belonged to the Jat community where as he was a Khatri. "*Marriages between the two communities have never taken place,*" Nisha remarked. Love marriages are a fear for most families in Haryana as it brings shame and dishonour because premarital relations are unacceptable even if they are from the same caste. That's why the couple eloped and later got married started living in the shelter despite the conditions at the shelter.²⁹

But, these shelters only safeguard individuals above the age of 19 not when the girl is below 18 years of age. The father files a complaint for rape and abduction, the consent in cases of statutory rape is immaterial which invariably leads to young adolescents being convicted for raping their own lovers.³⁰ In some cases girls prefer to stay in Nari Niketan until they attain the age of majority than stay at home because they fear their families would shame and taunt them or get them married to break ties with their lovers. In a case before Patna High Court the girl was 16 years and eloped with a boy from the village after which the father filed a case under Section 363, 366A, 468, 471, 385, 504 and 506 with 34 of the Indian Penal Code. The girl preferred to stay in the Nari Niketan even though the conditions of these homes are substandard and inadequate because she did not wish to go back to her home. Thereafter Patna High Court declared "*sending Minor Girls To Nari Niketan In Cases Of Elopement Cannot Be Treated As*

²⁶ ANKITA JIOHARI & SUKHBIR SIWACH, When Love hits a wall: Little has changed for couples at Haryana 'safe homes'. (Jan 26, 2018) <https://indianexpress.com/article/india/when-love-hits-a-wall-haryana-safe-homes-for-married-couples-5033017/>

²⁷ SATNAM SINGH DEOL, Honour Killings in Haryana state, India: A content Analysis 2014 International Journal Criminal Justice Sciences (IJCJS), Vol9 (Dec 2014) <http://www.ijcjs.com/pdfs/deolijcjs2014vol9issue2.pdf>

²⁸ Supra note 26.

²⁹ Supra note 26.

³⁰ FLAVIA AGNES, "Controvers over Age of Consent", Economic and Political Weekly, Vol. 48, Issue No.29, Aug 2017, <https://www.epw.in/journal/2013/29/commentary/controversy-over-age-consent.html>.

*Illegal Confinement*³¹

Conclusion

Khaps and local village social groups play a vital role in controlling choices made by young adults. Under POCSO it becomes even easier to convict a person when the family doesn't approve of him, the legal system in doing so tries to ignore sexual urges among young adults. When one third of the reported cases of rape are statutory rape cases where the father avenges the lost honour of the family by either the legal mechanism i.e. by charging him for statutory rape and abduction or by following the outrageous diktats of the Khaps.

Experts say the average age of puberty worldwide is going down to 9-10 years for girls and 10-11 for boys, so are the average age of losing virginity is going lower across nations. The biological aspect was not considered while increasing the age of sexual consent thus ignoring sexual experimentation and intercourse among the youth.³² For lovers who break the caste boundaries their only options are if they are above the majority age to live in Shelter homes and if they are under age then to see their lovers being convicted for rape and abduction, while they can stay in the Nari Niketan until they attain the age of majority. Indian legislation needs to reconsider the increased age of consent of women as families are misusing this lacuna by avenging lovers they do not approve of, ultimately snatching away female agency, amplifying the idea of caste and honour.

³¹ Ashok Pandey v. State of Bihar & Ors [2019] 1355.

³² DEBARATI SEN, "Teens getting sexually active ever", Times of India(April 2012), <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/Teens-getting-sexually-active-than-ever/articleshow/6119246.cms>.