

Inter-caste Marriages along with an Introduction to Khap Panchayat

Shubham Phophalia^{1,*}, Sushil Goswami²

Scholar¹, Assistant Professor (Law)²

Gujarat National Law University,

Attalika Avenue Knowledge Corridor, PDPU Rd, Koba, Gujarat, India

Abstract

The wrongness or wisdom of a community's practices and perspectives, their intrinsic impact on autonomy, liberty and self-worth, as well as the parents' concern over impulsive and unreflective choices—all these factors are backbone and crucial to the forefront of fulfilling caste obligations. Believed to be as a sacred institution, marriage binds man and woman in a pious relation and an obligation to fulfil during lifetime. It provides a relation to their meaning. Marrying within similar caste implies that both boy and girl are from the same community. At village level, Inter-caste marriage generally means that boy and girl are from different castes where one of them is from a lower caste. The three most important elements, the 3Cs which are kept on the high priority list are caste, creed and culture. Indians had an orthodox and traditional mindset from many years that marrying outside the caste is a sin and, therefore, they can't even imagine such marriages. They still carry this conception in their mind that marriages are only possible in the same caste and community, and the same is still in many parts of our country a taboo for most people in the earlier days and even at present too. But with the passage of time, things changed, and inter-caste marriages also became a part of the society. Inter-caste marriages are being considered as the religious and prominent social customs and hence, were viewed as the best means to remove the barrier of caste system. It is believed that when the Almighty created woman and man, he did not assign any caste to them, so how we human beings can separate this God's created world into castes and communities by our own. Customs and religious practices were so strict and merciless that even sometimes the boy and girl were hacked to death by their parents due to the pressure from the society. But in this moving and changing phase of social transition, the tensions as well as the conflict between past social practices and an individual freedom constitute important points of the community's ability to contemplate and provide for least hurting or painful solutions. Yet the problem is the menacing phenomena of repressive and deadly social practices in the name of honor killing and all which triggers violence and hatred from the influential members of community. And how best to tackle it is the question and thus in this background, the role of law to grasp such situations assumes greater significance. Inter-caste marriages in today's life are mainly confined to metro and urban cities and areas. The rural parts of the country still have a long way to go to come out of the arena of separating them from these harsh and illegal religious practices like Khap Panchayats and adopt inter-caste marriages.

Keywords: Community, Conflict, Honor Killing, Inter-caste marriage, Social practices

***Author for Correspondence** E-mail: sphophalia2001@yahoo.com

INTRODUCTION

“Her Parents were ready for their Inter-Caste Marriage...

The Jealous Society brainwashed their minds...

One more time,

The true love was sacrificed...

Because of the narrow-minded people...

Present in our society”

There is a well-known saying that marriages are made in heaven, which means that when the marriage of two persons is solemnized, it is believed that this is the wish of God. Marriage is a sacred institution, which binds both the woman and man in a pious relationship, but some human beings are so selfish that they have virtually spoilt the sacredness of these relations. Marriages in India have always been

the biggest concern for Indian families. Lot of importance is given to the surname carried by the bride or groom, because a kind of respect and dignity are attached to them. The bride and the groom surely have to match each other's religions, language, culture, and many a times region.

Inter-caste marriage means that girl and boy are from different castes, where one member belongs to lower caste, as seen in some of the cases. Inter-caste marriage is legal in India. Such marriages are sanctioned by the Special Marriage Act, 1954, and are also permitted under Hindu Marriage Act, 1955. For years, Indians are having this orthodox belief that inter-caste marriages are a sin to their values and traditions and that marriage is possible in the same caste and community and moreover, even talking about inter-caste and inter-religion marriages was a taboo in some of the areas of our country and still today, it does persist in some of the backward or rural areas of some specific states like Rajasthan, Haryana, etc. Even today, it is a pre-dominant struggle for Indians to come out of this social menace [1].

Today, in India, though we can see inter-caste marriages, but they are very much confined to the city culture. When it comes to rural areas, the customs and religions practiced are so strict and merciless that sometimes the boy and girl are hacked to death by their own family members due to the pressure from the society. Sometimes, young hearts are separated by marrying them off to some other boy or girl of the same caste. No one in these areas is allowed in the community from keeping any relation with the family where an inter-caste marriage has taken place.

A series of incidents can be traced from the long past where we can find the merciless punishments inflicted by the opposition parties of the inter-caste marriages. Even in this 21st century, honor killing is still practiced in most parts of northern India when there are cases of inter-caste marriages against wishes of family members. Caste is such a rigid and water-tight compartment in Indian society that it is almost impossible to think of a marriage between a higher and a lower caste. But it is expected

that with modernization, development and increase in educational level, the impact of various social forces like caste, religion, various taboos, etc., would become weaker. Modernization is touching almost every section of society and it is leading to increase in acceptance of inter-caste marriages in urban and metropolitan areas and societies, but still rural parts of the country are lagging and have a long way to go.

Yet there are ugly faces of caste marriages which are still not cleaned. People here still oppose inter-caste marriages and restrict members of different castes if they encounter any such incident. Reference can be made to the rural areas of Rajasthan and Haryana where inter-caste marriages are still opposed, and brutal punishments are awarded by Khap Panchayats prevailing there. The traditional mind set of the people of opposition of inter-caste marriages still ingrains fear in the minds of lovers and is a threat to the security of the married couples. The concept in detail is explained here with the help of statistics and case laws.

HISTORY OF INTER CASTE MARRIAGES

The term inter-caste marriage is used in South Asia and Middle-Eastern countries for a marriage where the couples are from two different social groups such as different races, clans or castes. Here the concept is related to exogamy, wherein the marriages is allowed only outside of a social group and opposed to marrying inside the social group along with arranged and forced marriages. As stated before, caste-system is being practiced from a very long past originating from the times of kings and queens. Earlier, it was a customary duty to marry in the same caste and if anyone disobeyed, severe punishments were imposed. A complete boycott was done of the family which indulged in inter-caste marriage. Severity of the punishment was such that even boy and girl were hanged till death by their own family members under the pressure of the society and if they did not do so, torture was to be faced by them in the form of social boycott. Similarly, in India, people had a confined mindset whereby they did not think beyond their caste, community, and religion. It was a

mandate that the marriage should be in the same caste and community and whosoever dared for the inter-caste marriage faced the consequences in terms of violence, social boycott, family boycott, and death of the boys and girls.

In India, during marriage lots of importance is given to the surname carried by the bride or the groom. The respect and dignity of a person is derived from his or her surname, as it dictates who were their ancestors and to whose family name they belong to. The first thing which is taken into consideration is the caste, creed and culture of the parties to the marriage. It is essential that the bride and the groom surely must match each other's religion, community, language, culture and region. In fact, each other's religious and financial status is also matched. Inter-caste marriages could not even be imagined in the Indian society. A perception flows that a marriage can be solemnized only in the same community and caste. It was a taboo prevalent in the earlier days. However, this strict attitude has diluted, and inter-caste marriages have since come into practice. We know that marriage is the most important social custom; therefore, it can be viewed as the best means to remove the barrier of caste system.

TYPES OF INTER-CASTE MARRIAGES

During the British period, it was widely accepted that a Hindu marriage is a sacrament, and one of the ten necessary *sanskaras*. It also came to be known that every and any Hindu can marry and the only prohibition that was recognized was on the basis of caste, religion, *gotra* or blood relationship. Some of these prohibitions are based on rules of endogamy and exogamy. Broadly, Inter-caste marriages are of two types, *anuloma vivah* and *pratiloma vivah*. This classification of marriage was done based on Hindu caste system prevailing in India. This rule has a greater significance for the caste structure of Hindu society than for the marriage pattern of the Hindus. This classification is prevailing from the Vedic period.

Anuloma Marriage

Anuloma marriage is also known as hypergamy in which a boy of upper

varna/caste/class can marry a girl from lower *varna*/caste/class. This kind of marriage was applicable only for the first three *varnas* of classes of the then society which were Brahmins, Kshatriyas and Vaishyas. It was not applicable to the fourth class, i.e., Shudras. The Dharmashastrakaras say that either a girl should marry in her own *varna* or she should marry a boy of a higher *varna*. This kind of marriage got associated with polygamy and led to the practice of demand of dowry. For the same, males in India used to marry several girls to collect a huge amount of dowry from them. Even in respect of girl, the urgency to find a bridegroom of equal strata or of higher strata led to the practice of child marriage [2].

Pratiloma Marriage

Pratiloma is also known as hypogamy, in which a man of lower class/caste/*varna* marries a girl of higher class/caste/*varna*. This type of marriage is also applicable to the fourth class and even cases of Shudra-Aryan connections are also recorded in the Vedic texts. Dharmashastrakaras placed a mixed opinion wherein few of them permitted the practice of pratiloma while others condemned it. During the time of Dharmashastras, it was greatly disapproved [2]. Similarly, in these marriages, the marriage of a Brahmin/Kshatriya/Vaishya girl with Kshatriya/Vaishya boy was more preferred than with a Shudra boy.

Out of both the marriages, *anuloma* marriage was considered preferable to *pratiloma* marriage. Pratiloma marriage was very much discouraged and even condemned. It was not even supported by the society. Pratiloma marriage was termed as marriage of untouchables [3].

In the post-Vedic period, the Hindu sages approved of *savarna* marriages and disapproved of inter-*varna* marriages. Later, this prohibition was extended to various *jatis*. During British period, the *pratiloma* marriages were considered as invalid in all schools of Hindu Law, but *anuloma* was valid in the state of Bombay [4], Assam and west Bengal [5]. Mixed marriage could be performed only as a custom or as a civil marriage under Special

Marriage Act of 1872-1923 or under Arya Marriages Validating Act, 1937.

ILL EFFECTS OF NOT APPROVING INTER-CASTE MARRIAGES

Hampering Growth of Society

Changing circumstances and changing scenario in Indian society requires acceptance of both the parties who intend to enter into marriage and no consent of parents is necessary, except in case of child marriage, but because of job and business opportunities spreading across India and abroad, youth is left with no option but to proceed to that place and make his or her career, and possibilities are high that youth may fall in love with some person working there, and so if their love is not accepted by the society at large, then the society won't be able to nurture newborns and continuous killing of these couples will definitely destroy the coming society.

Creating Fissures among Different Social Groups and Castes

Different castes live in India and each caste has its own way and ideology of living but there are some castes which are progressive while some may be orthodox in nature, and the progressive one will surely accept the description of inter-caste marriage while the orthodox won't and this creates a tussle in the society where each caste wants to establish its authority and thus ideologies clash leading to fissures.

Posing a Threat to National Unity

Inter-caste marriage has already become a reality, but still non- acceptance is coming from various orthodox religious groups and society, especially in North and South India, and this continuity of non-acceptance can surely pose a threat to the working and nurturing of Indian society and unity at the same time as clashes will prevail among various castes and their working and ideologies.

Couples either Ending Their Lives or Getting Killed

Indian youth nowadays is very adamant and non-acceptance of their choices with regard to the boy/girl whom she/he loves, often takes them to opt for this criminal and most harmful

step of ending their lives together by committing suicide and the best example can be taken of Haryana, where a majority of couples committed suicide and even were killed as they went against the caste system and did inter-caste marriage, thereby creating a feeling and emotions of violence among their caste's prominent supporters and followers, e.g., Khap panchayat.

STEPS TO BE TAKEN TO ACCEPT THIS SYSTEM

It is the responsibility of younger generation to make their elders realize that the rigid caste system is morbid and has a dark future ahead. The youngsters can take various steps on their part to demolish this system:

1. The girl or boy should be introduced as a friend in the family and be allowed to earn their love and respect.
2. The qualities of the person you love should be highlighted in front of family members.
3. Try and learn the customs of each other's caste, which will enable the person to earn respect of his/her family members.
4. Try and show the family members how this kind of family systems are obstructing the progress of nation.

STEPS THAT HAVE ALREADY BEEN TAKEN

1. Government of India has made different laws to encourage inter-caste marriages.
2. Social activists and groups are actively contributing to create awareness among people of hazards of not accepting inter-caste marriages.
3. Movies, street plays, demonstrations, etc., have been used to demonstrate that such marriages need to be allowed in our society.
4. Even after so much is done to curb this system, yet it remains a social taboo. People of all castes need to stand together and fight against this evil.

CHANGING INDIAN ATTITUDE TOWARDS INTER-CASTE MARRIAGE

Marrying a person of different caste was impermissible in the Indian society in earlier times and the obligation was to marry in same

caste and religion and consequences of not following this obligation might sometime lead to death of that person by killing him or her. Parents themselves used to select bride or bridegroom within their family background and the thing to be noticed is that they won't be of the same *gotra*. But because of modernization and the concept of nuclear family being there at present and also of awareness of the people, inter-caste marriages are no longer treated to be as a great taboo in the Indian society [6]. Many of the parents, especially those living in urban cities, don't feel the necessity of looking for the match, as the younger generation is capable of finding a match for themselves, thereby eliminating the 'caste rule', as now people have very well realized that marrying within a same caste won't lead to successful marriage, rather it is constructed on the principles of compatibility and mutual understanding. It depends on how both understand each other's feelings and beliefs and respect and compromise with each other. It is not necessary that you must belong to the same community or caste to understand your spouse better. Today, there are enough numbers of cases when two individuals from very different castes and way of life meet up and want to spend their life together. Education has expanded the fringe of reasoning and helped individuals create investigative forces. It has adjusted their discernment about existence, as well as about social concerns; for example, marriage and relationship. Inter-religious and inter-caste marriages fill in as a signal light for social equity. Marriage is for the most part subject to true love and believing, and once this is accomplished, standing and religion all wind up auxiliary issues. With more globalization and increment in instructive offices, there is incredible change in the perspectives of individuals. As modernization has influenced each area of society, entomb position relational unions have likewise got acknowledgment from the general population in urban and present-day social orders. There has been wide change in the social situation. Guardians and relatives of the sweethearts have been concocting more receptive outlooks with wide acknowledgment of inter-caste marriages outside their own standings. However, in a few areas which need

presentation to the education and current society culture, things have stayed unaltered. A decent connection needs understanding and commitment from kid and young lady to bloom. In the event that there are acts of neglect like position framework, at that point there will be undesirable conjugal relations who increment the rate of separations and common errors. However, the majority of the families in India, have begun tolerating their youngsters' directing between position relational unions, yet there still countless are left in the nation who need to comprehend that there is nothing more essential than the bliss of their kids and they have to shape their perspectives in agreement to the changing occasions and acknowledge their kids' decisions for their cheerful wedded life. Government should approach to make such arrangements and tenets which can empower marriage between the individuals from two unique ranks. There ought to be some kind of gratefulness from the administration with the goal that more entomb standing relational unions can occur. Although legislature has found a way to enhance the circumstance yet at the same time there is an extraordinary need to execute more measures to make the circumstance more joyful.

Encourage inter-caste marriages/inter-religion marriages, and one day there will exist no religion, except humanity.

KHAP PANCHAYAT

Khap is community organization mainly among the Jat people of Haryana, Rajasthan and Uttar Pradesh. It is an idea of the man-centric culture and depends on standards of *Bhaichara* (fellowship) and *Hukka Paani* (people's groups living and eating together). Every individual conveys the name of his/her town and *gotra*. Two individuals having a place with the same *gotra* or two individuals having a place with an alternate *gotra* yet falling under the ward of the same Khap panchayat can't get hitched. Such a marriage is viewed as perverted. This is on account of individuals from the family sharing the same patrilineal drop. The presence and part of the Khap panchayats was first perceived amid the Mughal time frame in clearer terms. Emperor Akbar even allowed opportunity to the Khaps

in issues of religion and inward organization. They were exempted from charges and the Khaps were permitted to play out their inward capacities with full opportunity (Pradhan, 1966). They were framed because the sufferers of outfitted clashes and wars settled together and composed themselves into tribes. It gave them a feeling of belongingness and character. A Khap panchayat oversees a gathering of at least five towns and sorts out themselves into a chamber of individuals chosen by voting. Their fundamental work includes settling common debates identified with marriage, property and so on. At whatever point, there is a debate, the panchayat is requested to settle it. The participation of all board individuals is necessary for Khap gatherings. These individuals direct the preliminary within the sight of the villagers and the choice which is viewed as best under the common conditions is rendered. This choice is authoritative on both the gatherings. On the off chance that there is a complaint by any of the gathering, the Khap pioneers can revive the issue and choose in like manner. If there arises a marital alliance between position relational unions, the most extreme discipline Khap panchayats can force is to criticize the couple, exclude them from the network or stop their *hukka-paani*. Greater part of Khap panchayat pioneers deny scandalous respect killings that occur because of bigotry between rank/between *gotra* relational unions or decline to remark on such delicate issues. The caste chambers or panchayats famously known as 'Khap Panchayats' attempt to embrace the picked course of 'moral vigilantism' and implement their diktats by expecting to themselves the part of social or network watchmen in light of the fact that they trust that the couple who have hitched outside their position or religion have conveyed disgrace to the town and their family. In such cases, the cure accessible to the couple is to look for police assurance and there are separate rooms in the police headquarters where they can look for shield until the point when the danger stops to exist. For the most part, the couples escape from their local towns and disjoin every social tie. The legitimization given for these killings is that the relatives feel that the kids have conveyed disgrace to their families by wedding inside the same *gotra*. The Manoj-Babli honor killing case was the honor murdering of Indian lovers Manoj

Banwala and Babli in June 2007 and the progressive court case which verifiably sentenced litigants for a respect executing. The individuals involved in the murder included relatives of Babli (grandfather Gangaraj who is said to have been a Khap leader [7], brother, maternal and paternal uncles and two cousins). Relatives of Manoj, exceptionally his mom protected the relationship. Sibling, maternal and paternal uncle and two cousins). Relatives of Manoj, exceptionally his mom protected the relationship. The executing was requested by a Khap panchayat (Khap), a religious position-based board among Jats, in their Karora town in Kaithal locale, Haryana. A large number of such wedded couples have even lost their lives. As per their *gotra* [8] affinity, the Khap Panchayats consider them as brother and sister. The Khap Panchayats try to legitimize their actions by quoting historical antecedents of uncertain origin to support their practices. They are of the opinion that the Khap panchayat is an age-old institution, having its foundation in the early medieval period. The untrammelled power that the Khap Panchayats wield without any legal basis to it, the obstructionist and dogmatic attitude of people at large in villages, the shocking inaction of the police, the reluctance of the state government to catch the proverbial bull by the horns shows that Haryana and other states where Khap Panchayats have their presence still have a long way to go in jettisoning outdated beliefs of caste marriage and gender base violence.⁹ The ire of the Khap Panchayats is, without an exception, always targeted at the women of their community. Khap or caste Panchayats wield much more power than the statutory Panchayats in states like Haryana, western U.P and order harsh punitive measures against women [10].

VIOLATION OF WOMEN'S RIGHT

In 2004, in Bhawanipur village in Moradabad, Uttar Pradesh, 20-year-old Chetan eloped with Pinky, the daughter of an influential Yadav family. The boy belonged to the barber caste. The Tevatia Khap ordered that while the couple should be traced, Sia Dulari, Chetan's mother, should be raped turn-after-turn by the members of the Yadav family, since her son had dishonored the Yadavs and later she was burned alive. The police knew about it but did nothing. Only after activists intervened were

some arrests made but everyone was later released on bail [11].

In Jind district, dancing by girls at social functions was banned by a Panchayats saying that it was a “crime against women” [12]. A Khap Panchayat in Hisar village has banned mobile phones for youngsters and ordered girls not to wear jeans and T-shirts or carry mobile phones in 2013 [13].

In a decision like that of Afghanistan’s Taliban, in March 2007, the Ruhel Khap banned DJs from playing in marriage parties in Rohtak, citing the ‘disturbance to milch animals’ as the reason. The real reason for the prohibition was the determination to stop girls from entering dance floors [14]. *Madhavrao v. Raghavendrarao* [15] involved a Deshastha Brahmin couple and the two-judge bench comprised Harilal Kania, the first chief justice of independent India, and PB Gajendragadkar, who became CJI in the 1960s. The substance of the case was whether ‘sagotra’ marriage or marriage inside the same *gotra* was substantial under Hindu custom. The court in the wake of going more than a few court decisions on the confirmation to demonstrate a custom, the seat reasoned that the marriage being referred to between a couple having a place with same *gotra* (*sagotra*) was substantial.

CONDITIONS UNDER HINDU MARRIAGE ACT, 1955

The conditions of a valid marriage under the Hindu Marriage Act, 1955, require under Section 5 [18] show that if the conditions as aforementioned are satisfied then, there is no bar to marriage. It follows that these conditions remaining fulfilled an individual who is governed under the Hindu Marriage Act may enter into a matrimonial alliance with any person of her choice. This is the correct legal position. The bar to marry a person within the degrees of prohibited relationship means that no marriage is valid if it is made between persons related to each other within the prohibited degrees, unless such marriage is sanctioned by the custom or usage governing both the parties. The custom, which allows a marriage between people who are inside degrees of disallowed relationship, must satisfy the prerequisites of a substantial

custom. The standards identifying with ‘degrees of precluded relationship’ are recommended in the definition proviso of Section 3(g) and have been examined under that condition. Marriage inside restricted degrees is certainly not a legitimate marriage. As such if the lady and groom are not identified with each other inside the degrees of precluded relationship as delineated in Section 3(g), at that point there is no bar to wed. Khap Panchayats’ demand of intra-*gotra* marriage is not based on the laws rather marriage between man and woman is prohibited on territorial basis, a claim not recognized in eyes of law. According to the Country Reports on Human Rights Practices—India, 2011, the problem of honor killings should be the cause of concern for Indian government, especially in Punjab and Haryana, where as many as 10% of all killings were honor killings [17].

JUDICIAL PRONOUNCEMENTS

On the lines of the judgment of the Delhi High Court in the case of *Ravi Kumar v. State* [18], wherein it was held that a girl aged above 15 and below 18 marries at her own will, then a case will be registered against her husband with the order of custody of the girl.

The Supreme Court of India recently in a landmark judgment of *Lata Singh v. State of Uttar Pradesh* [19] ruled that in cases of inter-caste or inter-religion marriages there is no bar on it under the Hindu Marriage Act, 1955. Anyone who harasses, threatens or subjects such a couple to acts of violence will be prosecuted for the same. It is a 2006 judgment wherein a major girl named Lata Singh who was a major at her own will got married to Brahmanand Gupta of a different caste as of her. They married at the Arya Samaj Mandir in Delhi. In reaction to the marriage, the brothers of Lata Singh namely Ajay Pratap Singh, Shashi Pratap Singh and Anand Pratap Singh went furious that she married a boy of other caste and had an inter-caste marriage. They were against this marriage. In revenge of the marriage, her brothers took the step of violence against the husband and his family; they took possession of the agricultural land as well as the shop of the husband by illegal means. They even lodged a false FIR regarding kidnapping and wrongful

concealment or confinement of Lata at Sarojini Nagar police station in Lucknow. The muscle power and the ugly caste system again showed its face when the police instead of arresting the brothers, imprisoned the family of Brahmanand (husband) with a refusal of bail.

Her brothers even threatened to kill the husband and his family. To save their life, the couple fled to Jaipur and approached the Rajasthan Women's Commission in Jaipur, where her statement was recorded and forwarded to the superintendent of police (SP), Lucknow, for necessary action. A letter was also written to the National Human Rights Commission and the chief secretary, Uttar Pradesh, for their intervention in the matter.

The Session's Court released the accused as they committed no offence but unfortunately through this process, they had already spent six months in jail. The court provided armed security to Lata. The court also recorded Lata's statement under oath that she had married Brahmanand of her free will with no external force applied on her. In spite of this, a trial was initiated as her brothers filed a petition challenging the mental condition of Lata which was baseless as a team of doctors declared that Lata was not suffering from any mental illness. The matter was still pending before the session's judge. Aggrieved by this, Lata filed a writ petition before the Supreme Court claiming that the matter pending before Lucknow High Court arising out of the false FIR by her brothers be quashed. She contended that several acts of violence were done against them; their property was illegally taken over with continuing threats issued against them. Referring to above judgment of *Ravi Kumar v. State*, Supreme Court concluded that Lata was a major at the time of the marriage. The court said, "she was free to marry anyone she likes or live with anyone she likes". Most importantly the court stated that there was no bar to inter-caste marriage under the Hindu Marriage Act, 1955. The court found Lata and her family innocent and quashed all the charges against them. The whole act was an abuse of the process of the court as well as of the administrative machinery. It was all based on the revenge of the brothers for the inter-caste marriage.

The court even stated that, "this is a free and democratic country, and once a person becomes a major, he or she can marry whomsoever he/she likes". In case the parents of the couple do not approve of the inter-caste marriage or inter-religious marriage, at maximum they can do is cut off social relations with their ward; they cannot use any violent measure and unnecessary use of the judicial mechanism.

A well-established precedent was set, and an order was passed to the administration along with the police authorities that in case of an inter-caste or inter-religious marriage, if both the parties are major, it is the duty of the police to take care of them and give security to them. They should make sure that no act of violence is committed against them and if so a criminal proceeding should be immediately instituted against the person indulged in the act of violence or harassment.

A few years back on April 20, 2011, Supreme Court through a Bench consisting of Hon'ble Justice Markandeya Katju and Gyan Sudha Misra held in a judgment of an appeal filed by an Arumugam Servai of Tamil Nadu in the case of *Arumugam Servai v. State of Tamil Nadu* [20], who was accused of making casteist remarks during an altercation, that inter-caste marriages are in "national interest" as a unifying factor in a nation where caste system is a "curse". "The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation. Inter-caste marriages are, in fact, in national interest as they will result in destroying the caste system" [21].

The court criticized the caste system as it plays a crucial role in promoting families to indulge in "honor killings". They reminded that India is a democratic country where after reaching the age of majority a person can marry "whosoever he/she likes". Justice Katju quoted that "There is nothing honorable in honor killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder" [22].

In *Shakti Vahini v. Union of India and Ors* (2010) [23], the court held that “till such time legislation regulating such bodies is enacted, we will issue whatever direction which is legal and proper, and suggested that the guidelines could be implemented as a pilot project in few of the worst-affected districts where Khap-dictated violence against matrimonial alliances had been recurring.

Even criticizing the Khap panchayats and comparing them to “kangaroo courts”, they said that in Khap panchayats instant justice is meted out without any reference to judicial process of the country. The court said that the couple who performs inter-caste or inter-religious marriage falls victims to their institutionalized “atrocities”. The court said that, “We have in recent years heard of ‘Khap panchayats’ which often decree or encourage honor killings or other atrocities in an institutionalized way on boys and girls of different castes and religions, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out.”

The court quoted the above-mentioned judgment of Lata Singh case and said, steps to be taken to enforce this judgment, they directed the government to immediately suspend any District Magistrate or Collector and SSP/SPs as well as other officials concerned, charge sheet them and proceed against them departmentally if they failed to act against any instance of casteist violence despite knowing about it in advance or if they fail to “promptly” apprehend the culprits and institute criminal proceedings against them.

An order was also passed to circulate copies of the said judgment to the state High Courts and chief secretaries, home secretaries and director generals of police in all states and union territories.

Recently in March 2018, a Supreme Court bench consisting of Dipak Mishra CJ, Justice DY Chandrachud and Justice AM Khanwilkar reserved the judgment on petition by NGO Shakti Vahini seeking directions to curb honor

killings and interference of Khap panchayats in inter-caste marriages.

The bench reaffirmed, “Where two consenting adults agree to enter into matrimony, regardless of caste, creed or religion or background, no third party shall interfere therein or harass the couple.”

In view of the suggestions filed by Amicus Curiae Raju Ramachandran, the bench agreed to not use the term ‘Khap’ panchayat – “We may regard it as ‘any assembly, group or collective’” [24].

At a previous hearing, the Panchayats had expressed concerns regarding the above suggestion, “Honor killing is too respectable a term for these hate crimes. However, only 3% of these murders happen on account of *gotra*. As many as 20 panchayats have passed resolutions prohibiting honor killings, so the use of term ‘unlawful assembly’ amounts to defamation. But bench made it very clear that even if the marriage is null and void, then also a third party can’t interfere [25].

CONCLUSION

India is still all around a conventional society with inflexible caste framework. Castes assume a critical part in the choice of mates in relational unions. To most Indians, it is hard to consider marriage past the respective caste. In any case, it is very cheering to see that the power of the caste in marriage choice is progressively extricating after some time as around 10% of the marriages in India are accounted for to be between different castes. This is a decent start to totally destroy the caste framework in India. This adjustment in the marriage design in India is an exceptionally ongoing marvel because of the effect of modernization, financial advancement and globalization of Indian economy. Different financial and statistics factors likewise influence the example of inter-caste marriages in India. There is a critical spatial variety in the example of inter-caste marriages. There is, by all accounts, higher inter-caste marriages in socio-monetarily created states like Punjab, Haryana, Assam, Maharashtra, and Karnataka in examination with the socio-financially in reverse conditions

of northern India to be specific Uttar Pradesh, Madhya Pradesh, Bihar and Rajasthan. It is normal that the rate of such marriages will increment with level of modernization and financial advancement. There is a strong glorifying need for the same, give media introduction and empower such relational unions keeping in mind the end goal to diminish the barrier of caste in Indian culture.

Also, during the past few years, marriages within 'gotra' (clan) of the Jat community have come into limelight. Frequently, those couples who have eloped have been brutally murdered by the diktats of the elders – these are known as "honor killings". Many such incidents have occurred in Haryana, Western Uttar Pradesh, and the rural belt of Delhi. Preventive measures, in India, there are an immediate need of specific legislation with stringent provisions that specifically criminalizes forms of violence, faced by people, within the context of the Khap panchayats. Such comprehensive legislative approach would encompass not only the criminalization of all forms of violence against women and the effective prosecution, punishment of perpetrators but also the prevention of violence, support and protection of survivors. There must be an explicit provision in the Indian Penal Code, 1860, to deal with honor killings. The need of the hour is implementing laws that will punish these Khaps when they violate women's rights and civil rights through their diktats. At a time when a younger generation of women is becoming more independent, the Khap panchayats are becoming desperate to maintain traditional control over women and property. The Supreme Court, as public defenders of the law, should expeditiously frame guidelines for the regulation of working of Khap Panchayats until the law is passed. Government should initiate more gender-responsive financial planning in a comprehensive manner. Mentality of the people has to change. And when it comes to change the mentality of the parents, I mean to say that parents should accept their children's wishes regarding marriage as it is they who have to lead a life with their life partners and if they are not satisfied with their life partner then they will lead a horrible married life which might even end in suicide. Secondly, we

need to have stricter laws to tackle these kinds of killings. There is a need to make our law more powerful on the issue of 'honor killing'. An important amendment in the Section 300 of Indian Penal Code, 1860 must be done by adding a new definition of 'Murder' in the form of 'Honor Killing'.

This amendment will make it easier for the judges to classify the 'honor killing' cases.

"I think Love is not about finding the right moment of acceptance, but searching for 'those' moments, that makes love, a little more acceptable."

REFERENCES

1. Saroja K. Inter-caste marriage and social Dynamics in India: A critique. *The Journal of Social Work*. 1999; 60(2): 183-92.
2. Ambedkar BR. Castes in India: Their mechanism, genesis and development. In: *The Essential Writings of BR Ambedkar*. Valerian Radrigues (Ed). New Delhi: Oxford University Press, 2002; 241-62pp.
3. Diwan P. *Modern Hindu Law*. 2013; 93 (22 ed.).
4. Bai Gulab v. Jiwan Lal. 1922; 46 BOM 471; Natha v. Mehta. 1931. 55 BOM.
5. Kastoori v. Chiranjit. 1960 All 446.
6. Kannan CT. *Inter-Caste and Inter-Community Marriages in India*. Allied Publishers Private Limited, Bombay. 1963.
7. Murder Reference No. 2 of 2010 Criminal Appeal No. 479-DB of 2010 and Criminal revision No. 2173 of 2010 in The High Court of Punjab & Haryana, Chandigarh at <http://nlrd.org/wp-content/uploads/2012/01/Manoj-andBabli.pdf>
8. Gotra is synonymous with clan, meaning thereby that all those who claim to have descended from one common ancestor are known as gotra or clan.
9. Khaps Call the Shots Tough Steps Needed to Stop Honor Killings. *The Tribune*. 13 August 2009 at <http://www.tribuneindia.com/2009/20090813/edit.htm>, Last accessed Sept 17, 2018
10. Yadav B. Khap Panchayats: Stealing Freedom? EPW. Dec 26, 2009.

11. Sehrawat T. A Taliban of Our Very Own. *Tehelka Magazine* Aug 15, 2009; 6(32).
12. Sarin J. From chowmein to skirts, Haryana's strange diktats, *Deccan Herald*. Mar 23, 2013 at <http://www.deccanherald.com/content/320961/from-chowmein-skirts-haryanas-strange.html> Last Accessed on Sept 17, 2018.
13. Mukherjee B. Khap bans jeans and T-shirts for girls in Hisar, Jan 8, 2013 at <http://timesofindia.indiatimes.com/india/Khap-bans-jeans-and-T-shirts-for-girls-in-Hisar/articleshow/17933563.cms> Last accessed on Sept 17, 2018
14. *Ibid*
15. Madhavrao Raghavendra and Ors. vs Raghavendraro and Ors. AIR. 1946 Bom 377.
16. Hindu Marriage Act, 1955.
17. United States Department of State. 2011 Country Reports on Human Rights Practices – India, 24 May 2012, available at: <http://www.refworld.org/docid/4fc75a94c.html> [accessed 17 Sept 2018]
18. 124 (2005) DLT 1.
19. UP 2006 (6) SCALE 583.
20. (2011) 6 SCC 405.
21. *Inter-caste marriages in national interest*. Archive. *Indian Express.com* - Indian Express. Sept 17, 2018, 9:28 PM. <http://archive.indianexpress.com/news/inter-caste-marriages-in-national-interest-sc/778458/>.
22. *Ibid*
23. Shakti Vahini v. Union of India and Ors Writ Petition (C) No. 231 of 2010.
24. <https://www.livelaw.in/protection-inter-caste-couples-sc-reserves-judgment-likely-issue-directions/>
25. Vikas Yadav v State of UP (2016) 9 SCC 541.

Cite this Article

Shubham Phophalia, Sushil Goswami. Inter-Caste Marriages along with an Introduction to Khap panchayat. *Journal of Family & Adoption Law*. 2018; 1(1): 7–17p.