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## ***Khap Panchayats (Clan Council) and State law: Negotiation and contestation***

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### ***The social organisation of Jats***

Jats are a closed caste group which is divided into 12 clans and 300 *gotras* (patrilineal/agnatic descent group who traced the same lineage) which follow caste endogamy and village & *gotra* exogamy in a marriage alliance. Each Jat clan has a compact geographical area of its own. The village in which a clan is settled is organized into a clan council, and the area under its jurisdiction is called the *Khap*. Each clan has a headman and the clan headman is also the headman of *Khap Panchayat* (caste/*gotra* council for Jats) (KP henceforth). The close correlation and interaction between several kinship groups (i.e. the family, lineage and clan) and the political institution of KP show that the two complement and support each other and produce social cohesion among Jats. A clan is divided into two main parts one is maximal and another one is minimal. The depth of span of the maximal lineage may vary from ten to fifteen generations from living adults and a minimal lineage from three to five generations.

*Khap Panchayat* is a peculiar system of social administration and organization of Jats in this region. *Khap* literally means a cluster of villages (which often coincides with a certain *gotra*) and *panchayat* means caste council. Every *gotra* has its own KP which deals with the issue related to their marriage customs, cultural norms, agrarian matters and personal disputes. At the top of these KP, a *Sarv-Khap Panchayat* (central council for all *khaps*) serves as a supreme body for the whole community.

However, Jats being an agrarian class historically, KPs also played a significant role in resolving the day-to-day disputes of land, irrigation and other agricultural matters in Haryana. One of the greater emphases, however, of KPs is on enforcement of caste and kinship codes which interrelates matters of caste and *gotra* on one hand with the gender on the other.

The justice system of KP is carried out through *panchs* or council members, who sit in a Panchayat meeting to settle cases or disputes and are regarded akin to five gods endowed with qualities such as justice, impartiality and fair play. The ideal *Panchpanchpameshwar* (five god-like *panchs*) epitomizes the ethos of Jats. This dispute resolution system was done through public participation where people from a certain *gotra* or entire community come and sit together to resolve the disputes. Women, however, are strictly excluded from this process. The KP is an all-male institution where women are not allowed to participate and if there are cases related to women they are to be represented by their male relatives (father, brother, husband or son).

A *gotra* signifies an exogamous kinship unit where descent is claimed from a common ancestor. The exogamous *gotras* of the Jats are in fact clans and the various exogamous, localized clans of the Jats are referred to by *gotra* names. The concept of social structure has been taken to comprise the persistent or consistent and constant groups in society and to include those social relations between persons or groups which are repetitive in nature.

As marriage provides the structural links between kinship and caste, closer surveillance is accorded to marital alliances. Kinship linkages provided by marriage, and relations established through marriage, give a caste group its strength, recognition and leverage in wider society and polity and any violation in these caste linkages brings down the status of not only the immediate family but the clan/*gotra* and finally the entire caste group.

### ***Sexual norms of the community: women and honour***

The ideology of honour among Jats has a gendered notion. However, both men and women embody notions of honour, but differently. The woman is the repository and men are the regulators of this honour. One common phrase in the community is, *ladkikesaathuske kutumbkiizzatjudihuihai* (the honour of the family is connected with their girls). Honour comes to be located in the woman's body. A woman dishonours her family by what is considered shameful physical behaviour. This stretches from observing *sharm* (modesty) and *lihaaz* (difference) with respect to her sexuality. *Honour is the overarching concept that regulates and puts into effect the practice of purdah (veil) and its attendant ideology of seclusion as a controlling device* (Mandelbaum, 1988). The question that arises here is, why does honour lie in the body of a woman? The answer lies partly in the specific construction of procreation, which is conceived in terms of the male seed germinating the female earth or field (Dube, 1986). Here, the male semen is perceived

to create, while the woman is seen as the passive recipient. The social perception of the male creative ability acts as the foundation upon which the notion of honour is built. The ideology of the seed and earth forms a part of the literate tradition as well as part of customary law and popular consciousness. According to this the blood that circulates in a child's veins comes from the father's 'seed' and gives a child (particularly a male child) its identity as belonging to the father's lineage. Semen is commonly considered as concentrated blood and there is a clear notion of a common bloodline for agnatic kin continuing through male members who serve as links for the passing of common blood to the next generation through semen. The practice of caste endogamy, preserving caste boundaries and caste purity, ensures this patriliney and lineage. It implies the need for control of a woman's sexuality to ensure the patriliney and lineage.

### ***Reproduction of hierarchy: A complex system of exogamy and endogamy***

The principle of hierarchy and equality in caste groups in Haryana are articulated in complex ways. For example, all Jat *gotra*, as known in Haryana, are considered equal. This exogamous patrilineal clan whose members are thought to share patrilineal descent from a common ancestor, yet there is a social hierarchy within the caste, and especially among different *gotras* within a village, which involves notions of dominant and subordinate *gotra*. Often, there is considerable disagreement concerning the rank order. Attempts at strict enforcement of a ban of marriages between certain *gotras* in Jats can be seen as attempts at enforcing a hierarchal and ranked order. In doing so, it suggests a reproduction of the caste system within a caste group, effectively suggesting a reproduction of the caste system within a caste.

Difference and hierarchy are the two most widely acknowledged and characteristic features of the caste system (Gupta, 2000). To maintain this characteristic, the principle of strict caste endogamy has to be maintained, any violation of these marriage customs threatens to blur the differences and disturb the recognized hierarchies.

The customary rules regulating marriages are quite distinct from the State law (Hindu Marriage Act, 1955), where legal restrictions on the choice of marriage partners are almost non-existent. This implies that under the State law *sagotra* (patrilineal line of descent whose members claim the same descent from the same *gotra* ancestor) marriages are allowed. Yet, customarily there are a variety of rules and practices and degrees of prohibited relationships observed with respect to marriage among Jats in Haryana, where

they uphold caste endogamy and adopt the rule of *gotra* exogamy. Jats follow a rule of three or four *gotra* exogamy. A person is not allowed to marry into his or her own *gotra*, nor into the *gotra* of his mother, his father's mother, or usually the mother's mother. The last bar is, however not universal. The *gotra* rules also prohibit marriage with first cousins. In other instances, the principle of *gotra* exogamy is enlarged by clustering several other *gotras* represented in the same village into an exogamous block. Marriage between these *gotras* is prohibited as well.

In extension to 'kinship exogamy', there is a rule of territorial exogamy. Jats forbid marriage within the same village and with every village which shares a border with the natal village, or in which other clans of one's village are well represented. The combined effects of these rules of exogamy are that, apart from three or four *gotra* rule, large numbers of *gotras* have to be kept outside the purview of marriage. The inhabitants of a particular village cannot intermarry in large numbers of villages, especially adjacent villages of those that fall within the *Khap* area (the area controlled by a *gotra*). In all these villages the customs of the dominant *gotra* are followed by all *gotras*. While looking for a marriage alliance families follow *gotra* hypergamy. If the dominant *gotra* avoids certain *gotras* for the purpose of marriage, all other *gotras* in these villages will also follow this avoidance pattern. This large chunk of *gotra* exogamy introduces considerable complexity. The division in *gotras* is similar where women of some *gotras* of higher status cannot marry into *gotras* whose status is lower than theirs. However, it is possible for a woman to marry into a family whose *gotra* status is higher than hers. This was not the case earlier when all the *gotras* were seen as equal. This derived from the belief that they came from the same descent group. However, there is now a discernible hierarchy among the different *gotras* of Jats. Interestingly, this tradition of hypergamy does not have any identifiable concept in Jat communities in Haryana and the claims of higher status *gotras* over others seem to be based sometime on material and sometimes on political clout and not defined traditionally (will explain further in case studies).

Culturally village exogamy translates into a complex web of 'relationships' where all the men and women of the same clan and same village are bound by the morality of 'brother-sister' and, therefore, both sex and marriage are prohibited between members of any of these units (Hershman, 1981). This extends to the *Khap* area involving more than one village and more than one *gotra*. Significantly, terms like *bhai* (brother) and *bahan* (sister) are used in the village even for persons who are not related to each other. Transcending ties of biological kinship, they embrace all males and females of the village of one's

generation, notwithstanding caste affiliations. In this relationship, *bahan*'s care and protection is the *bhai's responsibility* and it is his duty to safeguard her and not to 'violate' her. These prohibitions create *bhaichara* (brotherhood) and challenge hierarchy in an idealized sense. Cultural concepts like *aika* (unity), *izzat* (honour), *biradari* (community) and *bhaichara* (brotherhood) are contingent upon maintaining these traditional marriage prohibitions.

It is a breach in these prohibitions that provokes the *biradari* to use the traditional tools available to them in the form of *Khap Panchayat* to prevent such attempts. The term *biradari* is variously defined according to usage. For instance, the term *biradari* refers not to just one concrete structural unit at the village level but rather to patrilineal connection, real, putative or fictional, at any level of segmentation (Marriott, 1962). Although usually, it is the agnatic kin who form the *biradari*, in some instances, it may include cognates as well (Das, 1976). As can be seen, the use of terms like *bhaichara* and *biradari* are not fixed in that sense but flexible. Similarly, while there is no religious or ritually sanctioned hierarchy within the different *gotras* among Jats, the notion of a dominant *gotra* within the village community as well as in *gotra* exogamy works in many ways. It is in this context that marriage or elopement between this prohibited pool of *gotras*, *sagotras*, and territorial *bhaichara* translates into a violent response for the couple, families and relatives. This comes to be seen as the breaking of 'traditional' norms and customs of the community and the resultant punitive action comes with a certain degree of social approval.

In the process of protecting traditional customs and norms of the community three important things emerge. The idea of *izzat* (honour), *naitikmulya* (moral value) and *sanskriti* (cultural) form decisive factors in constituting the community's distinctiveness.

### ***The demand for inclusion: fixing of customs***

The demand for inclusion of the prohibition of *sagotra* marriages within State law can be viewed as a demand for space within the State's legal sphere, making it a case for formal legal pluralism, as has been defined by Hoekema (2005). According to Hoekema, the

inclusion of local law within the State law creates the situation of formal LP which eventually has practical effects on the day-to-day life of the community. Since the form of this demand has been to include one amongst many norms of the Jats in HMA 1955, it suggests that it is more a call for inclusion within State law than a call for recognition of their distinctive norms.

This is further corroborated when we look at the way in which KP leaders have chosen to frame their customs and norms closely resembling the logic of recognition by the State. In recognising cultures and identities as different and unique the State assumes the culture to be static, freezing it through the act of recognition. This freezing of the culture is in fact required in order to establish the 'exclusivity' of a community like Jats, where distinctiveness cannot be established on the basis of fluidity but needed to be 'well defined' and 'specific'. The 'well defined' and 'specific' qualifications suggest a structural neatness which ought not to be presumed in descriptive theory. As Hobsbawm and Ranger's (1983 1<sup>st</sup> ed., reprinted 2000) formulation of the invention of tradition reminds us, it is not in the nature of customs to remain invariant.

Marriage customs play an integral role in regulating the conduct of members of the Jat community, closely related to the idea of honour. In their relation to one another, members of the community recognize certain rules of conduct as binding. These were, however, subject to change. The community did not have fixed boundaries for regulating their conduct but through negotiation remained fluid and were re-shaped under different circumstances and with different social experiences. The process of fixing boundaries began in the colonial period through codification and institutionalisation and continued along similar lines in the post-colonial period. Community leaders, who are in a dominant position not only in the community's sphere but have also established their dominance in the larger political sphere of Haryana through electoral politics (discussed below), also employ similar reasoning employed in the colonial period in the process of codification in order to define themselves as a distinct community.

### *Shifting bases of customs and norms*

The emergence of Jat identity as a dominant caste in Haryana and in relation to the colonial State was based on possession of the land. While the colonial State practised a policy of non-intervention in the day-to-day lives of the Jats and recognised their own mechanisms of customary law, this also influenced the shape that this customary law took. Customary

laws of KPs were not simply ‘left alone, but were transformed within the context of the colonial State, as was demonstrated in the previous chapter in the case of the practice of *karewa* (widow remarriage). Further, the intermediaries and *dubashies* (interpreters) played a significant role in this process, where customary law was institutionalised through the process of codification in the colonial period. Through recognising certain norms and customs as such and institutionalising other new elements, the process of codification contributed to the active construction of a Jat identity. For example, the designation of ‘martial race’ to Jats greatly transformed their social status from a backward community to a dominant one in the local context. Further, the dominance of Jats in Haryana was facilitated by the Punjab Land Alienation Act of 1900. The colonial State notified only 16 caste groups to have ownership over land and the majority of the other castes were excluded from it. Even among these notified castes, Jat received the maximum share and in the following years, they became dominant.

In post-colonial India, the character of the State changed from a coloniser to an independent government. However, the basic framework did not change and the post-colonial State continued to follow a policy of ‘non-intervention’ in the day-to-day practices of the Jats. They were given the choice to follow their own rules and regulation in their own areas. Given the already-dominant position of Jats, electoral politics provided a new avenue of power for them given their numerical strength, at least at the regional level and they came to dominate State politics. Since the formation of the state in 1966, Haryana has always had a Jat Chief Minister. Participation in electoral politics served as an important means to extend their dominance beyond their own community to other castes and communities in the region as well. Further, this was accompanied by a wider acceptance of their norms and customs as ‘normal’ and part of popular culture. For example, their practice of hypergamy has been adopted by other communities in Haryana, besides the Jats.

Persons who have achieved positions of leadership through these means and outside the traditional institutions consolidated their power by remaining within the institution of KPs as well. These two levels of leadership complement each other by wielding power within the traditional system by participation in the broader political sphere and vice versa. A person having consolidated his position outside the community system also attempts to achieve status roles within the traditional system. To achieve this he has to live up to the norms dictated by a KP’s ideology; and in doing so he upholds his belief in this system, thereby reinforcing its authority. Further, the prestige and political ascendancy of such

persons is used by traditional councils to command allegiance and exercise social control both within the community, over inter-caste relations as well as at a broader political level.

In the context of changes within the Jat community, the introduction of neoliberal reforms in 1991 and the subsequent opening up of the economy holds an important place. Social and economic changes brought about with the onset of the neoliberal era greatly affected the whole landscape in Haryana. As a result, we see the community in a process of re-organising itself in order to adapt to these changes. It marks a change in land use patterns. While in the past land was seen as *dhartimaa* (mother earth) and *aan-dhatri* (food giver) and closely associated with honour, it was now converted into a property that was primarily invested with economic value. Land as an economic asset came to be valued primarily in two areas: industrial development and real estate. These two areas received a boost from the economic reforms, with a proliferation of urban centres and large-scale foreign investment in industries. With an increase in the demand for land, the value of land skyrocketed as a result. This, combined with the decreasing profitability of agriculture, led many to sell their land. This has reduced the quantity of agricultural land. This shift from *dhartimaa* to the property has also transformed the relationship between community and land. Where the community was centred on land and forged its identity primarily as agrarian, this recent transformation around land has brought about changes such as weakening of community ties where voices of dissent against certain customs are coming up, including marriage norms. The dispossession of land use then becomes an important entry point for confrontation within the community.

Moreover, factors like modern education and the opening up of new possibilities outside the agrarian economy also contributed to members of the community developing social ties outside the traditional structure. In pursuing status roles which are outside the traditional system, an individual 'need not' necessarily observe the traditional code of values.

While electoral politics served to strengthen and even expand the dominance of Jats in Haryana, the dispossession of land beginning in the 1990s saw the erosion of the material base of the community. The impact of these changes on community ties saw subsequent turbulence within the norms and customs of the community as well and more broadly in the cultural sphere. Change in one sphere is bound to influence the other. The cultural norms and customs of a community and its social and material base, two cannot be viewed separately. However, Khap leaders, in an attempt to maintain their hold in the community are seen to hold back the process of re-envisioning the sphere of culture. Khap leaders are

keen to maintain the status quo that has allowed them to retain their status and power within the community.

The political success of Jats in local politics in Haryana has meant a close intermingling of KPs with local State bodies. The next section takes a look at this aspect.

### ***The relationship between State and customary governance***

The sphere of governance of KPs and the State comes to be intermingled at the local level. By virtue of Jats occupying the majority of local State offices such as in the police and administration as well as in local legislative bodies, KPs have great influence in the local State. Through this mechanism, KPs appropriate the State's prerogative to define the contours of justice and rights. That is to say, the way that justice and rights are defined in this region is heavily influenced by the way these notions are defined in KPs.

For example, State schemes for the empowerment of women are undermined and not allowed to be implemented when opposed by KPs, with little intervention from the State to implement it. Another instance of this is often seen when testimonies of victims of violence as a result of KP rulings are not recorded in local police stations. Local politicians also refuse to get involved in these rulings passed by KPs. Local practices of policing, whereby the police are hand-in-glove with the family, detain adult women and fabricate criminal cases against both the woman and her partner. The police may position a woman as accused or abettor of a crime, although technically she is named as a victim.

Further, when couples who have eloped after breaking community norms and customs of marriage attempt to take shelter in the State's legal system, they are met with criminal charges against them. State law does not prevent an adult from taking an autonomous decision regarding whom to marry and does not criminalise premarital sex nor punish women for adultery. However, laws of rape, abduction, and kidnapping are used against men (claiming the girl is underage) to break the couple up and prevent marriages of choice. As happened in the case of Manoj and Babli, both adults eloped willingly but male relatives from Babli's house filed a complaint of abduction of their daughter by Manoj and later killed both of them.

In such cases, domestic regulation of local norms takes the form of public violence, with quiet acceptance by the local State even while it is in conflict with state law and other constitutional mechanisms. This includes cases of intra-*gotra* or same-*gotra* marriages, inter-caste or religious marriage. Sooraj Singh, *Pradhan* (Headman) of a Khap Panchayat

explains that Khap Panchayats are invested with a *'divine right'* to adjudicate marriages of choice that transgressed caste/community normativity. *"We cannot allow love (choice) marriages and don't recognize court marriage either"*. Common forms of punitive action against transgressors of caste boundaries include beating, revenge killing, burning down of houses and forcing them to leave the village. Governance of the community by KP includes resolution of not only disputes between members of the community but also passing effective pronouncements on matters deemed to be relevant to what they believe is *'honour'* of the community and ensuring the execution of such pronouncements.

The relationship between KPs and Gram Panchayats (elected village councils), the State at the village level, is similarly seen to be complementary. Made up of village members, Gram Panchayats reflect the relations of power that exist within the village and are therefore also controlled by Jats through KPs. Even where certain seats within Gram Panchayats are reserved for women and lower castes, the dominance of Jats continues to work, and the reservation of seats does not serve its desired purpose of empowerment of weaker sections. Therefore, Gram Panchayats are often supportive of violent rulings, even killings, by KPs. The decentralisation of State structures is embedded in local power relations to maintain stable social geography. The statement of a local police officer reflects the way in which the State relates with KPs at the local level, *"Caste plays an important role in village life and the State does not have any business to intervene in their (KP) activities, for democracy essentially means minimal State intervention"* (quoted in Baxi et al 2006).

However, with the active intervention of civil society organisations in matters of violence, particularly in the context of marriage, judicial responses have challenged this complementary relationship between the State at the local level and KPs.

### ***Judicial Response***

Activists who are fighting against the legitimacy of KP view them as, *"all male groups of self-proclaimed guardians of caste interests and 'honour' which have the support of the richer sections and enjoyed political patronage. The most powerful of these caste panchayats function as a parallel judicial structure and elected panchayats are either subordinated to or co-opted by them. It is through these caste panchayats that the most regressive social views are sought to be implemented"* (Karat 2004).

In response, several recent judgements have been passed that challenge ‘honour killings’ or crimes against the people who love each other and want to get married according to their wishes (Sujit Kumar vs. the State of UP). The court takes note of the accounts published in the newspapers to support its observation that ‘honour killings’ have been permitted by the State machinery.

*“The barbaric practise of ‘honour killings’ that is, killing of young women by their relatives or caste of community members for bringing dishonour to the family, caste or community by marrying or wanting to marry a man of another caste, community or whom the family disapproves of, is frequently reported to take place in Pakistan which is a State based on feudal and communal ideology. However, this Court has been shocked to note that in India also, which boasts of being a secular and liberal country ‘honour killings’ have been taking place from time to time, and what is deeply disturbing is that the police and other authorities don’t seem to take steps to check these disgraceful and barbaric acts. In fact, such ‘honour killings’, far from being honourable are nothing but pre-mediated murders”.*

This judgement denaturalises ‘honour crimes’ that do not find a place in a ‘modern’ nation state and place it alongside another imagery – that such crimes are located in primordial temporalities and backward spaces in rural societies. The Indian State is pictured as ‘secular’ and ‘liberal’, where such ‘barbaric’ and ‘disgraceful’ acts are found to be intolerable. The judicial discourse on honour crimes then becomes a site for contestation that debates the place of such violence within the space of law.

In recent years there has been a rise in the visible display of ‘authority’ by communitarian forms of justice of KPs, which is marked by the tension between communitarian forms of governance and State judiciary. This also shows the refracted responses of the State’s arms – the Police and the Judiciary. The relationship between State and customary law is, therefore, a complex one reflecting a constant process of dialogue and negotiation between the two. This can be seen particularly in the context of the recent demand for the inclusion of the prohibition of *sagotra* marriage within State law.

### ***Negotiation with State law***

The demand for inclusion of their marital custom, to prohibit the *sagotra* marriage among Jats and make it an incestuous relation, prohibited in State law, can be located in the turbulence resulting from changing material base of the Jats.

An important element that emerged out of discussions within KPs on honour crimes was a sense of pride and achievement experienced by them for having punished the 'guilty'. "Why should they (people who indulge in killings) hide it? They have done nothing wrong", commented one Khap leader. KP leaders' opinion is heavily in favour of punishing those who 'violate social norms of the community so that others can learn a 'lesson'. The local politicians also condone this attitude and action. They openly defend the right of the local communities like Jats to punish anyone who breaks the community's rules and code of honour. Regarding infliction of extreme violence in certain cases, KPs see the killings as 'executions' and 'just punishment' awarded for breaking caste norms and boundaries of community's honour. This act of violence has two aspects: while State law sees these acts as 'barbaric' and 'disgraceful', KPs see them as '*essential*' to save the honour of the community. An influential KP leader Shieshpal Beniwal explains, '*nuksaan to ek percent kahogaaurakalninyaanave per cent koaayegi*' (the loss by killing the transgressors of community's norms, will affect only one per cent members but the other 99 per cent will take a lesson from it, of not breaking the community's norms). In all such cases, KPs prioritise the village and caste *izzat* (honour) where those who are involved in the violent act of killing are not treated as criminals but with due respect.

The ideological and cultural patterns working behind the concept of honour are substantiated by material realities. Indeed, under the changed political economy of post-independent India, the material conditions have come to assume even more importance in the operation of 'honour'. With women being given legal rights to inheritance and the right to marry whom they wish, the question of honour has surfaced in a big way. One of the major changes that strengthened the so-called concept of honour is the enactment of the Hindu Succession Act of 1956. The Act enabled, for the first time, daughters, sisters, widows and mothers (along with the male members) to inherit land with full proprietary rights to its disposal (Carroll 1991). This has aroused tremendous anxieties in rural society. The danger of its proper implementation presents a threat to the patrilineal and patriarchal system of control over the property. This Act affected greatly the code of honour regulating marriage alliance that is village exogamy and caste endogamy. For instance, the land of the village is taken to belong to the male descendants of ancestors who originally settled and worked on it, the male agnatic descendants, as members of localised clans, alone are considered to have revisionary rights in the estate. The land is ordinarily not to be alienated outside this group.

The only ideal and honourable pattern of inheritance are acknowledged to be by males from males. This means that daughters and sisters who are potential introducers of fresh blood and new descent lines through their husbands are to be kept away from exercising their inheritance rights. The introduction of a rank outsider into the family who can and may claim the property on behalf of his wife needs to be effectively stopped. As an outsider, he remains outside the influence of the family and community rules and ethics which ensure a patrilineal inheritance.

Similarly, the location of a married daughter within the natal village also spells danger to patrilineal inheritance as it facilitates and could lead to the claim of land inherited by her. This has been significant in contributing to the *sarv-khap* panchayat's demand for an amendment in the Hindu Marriage Act, 1955 which allows such marriages to take place, instead of transforming it into the prohibited category of incest. In this form, incest constitutes a very wide category embracing all inhabitants of a village; all *gotras* represented in a village who may be located anywhere, as well as the inhabitants of those villages which share a boundary with it, by creating a fictive brother-sister relationship between them. However, the specific demand being made of the State presently is to recognise and declare *sagotra* (intra-gotra) marriage as incest and prohibit it. Any breach in this is considered a serious transgression and dealt with summarily. Yet, the charge of incest is not applied uniformly to all caste groups in the village. In such a case as one of the parties is of a different caste, the issue is altogether different. It then becomes a caste issue and not one of incest.

Moreover, incest within the family is something not talked about or avoided purposely.

The concept of incest is not extended to family relationships involving unequal power relations between senior male members and junior female members or any other prohibited category of people. This counterposes fictitious versus real incest. Activists from the Jat community working on women's issues in Haryana believe that incest has assumed truly frightening proportions. However, women often do not come out against it for fear of its implications for the 'honour' of their family in particular and their community in general, for which they feel responsible. These issues do not get highlighted in any of the meetings in KPs. Cases come to light only when they result in suicides or murders. The few cases which are brought to the notice of KPs, however, do not do justice to the graveness of the cases.

The *KPs* are clearly uncomfortable and unwilling to deal with the question of incest within the family. However, *KPs* stringent prohibitions in the case of the wide and ambiguous use of the notion of incest reflect the significance of land and property in regulating marriage and sexual norms. Moreover, coming from powerful and affluent sections of the community, the limited use of the category of ‘incest’ for the purpose of including it in State law also points towards its use as a tool for mobilising the Jat community so as to strengthen the power and control of Khap leaders.

As the Hindu Act of Succession evoked great tension in rural society, the landowners of Haryana and Punjab were unanimous about the urgency of rejecting it in order to uphold their ‘honour’ of their ‘timeless customs and norms’. On the one hand, they tried to abolish it through legislative procedures and on the other hand they accelerated their attempts through *KPs* to control its fallout effects. Consequently, three to four attempts were made in the State legislative assembly (1967, 1977, 1979, and 1989). All these moves failed. The recent demand of *KPs* to amend the Hindu Marriage Act, 1955 is yet another attempt but with a different stimulus. This time the State did not play an active role in ‘taking away their right to self-govern, as it was felt in the formation of the Hindu Succession Act, 1956. This time the confrontation has emerged from within the community itself leading to the demand to declare *sagotra* marriage as incestuous in State law.

The confrontation has also been accentuated by the intervention of civil society/NGOs members who have challenged *KPs* authority to pass verdicts against the free will to marry. They are demanding actions against the *KP* leaders as well as the culprits who, most of the time are members of the family. The naming of ‘honour crimes’ as a form of violence against women has located the *place* of sanctioned violence in caste courts in India. Recent campaigns against ‘honour crimes’ have pointed out that *KPs* are illegal, and that the State must intervene in preventing such bodies from violating the individuals’ liberty. In fact, one High Court even refused to accept that *KPs* exist. An organisation that has been active in the campaign against ‘honour crimes’ is the All India Democratic Women’s Association (AIDWA).

Interacting with Jagmati Sangwan, the State President, she explained, “a few years ago no one was ready to take up the issue of honour crime in the public sphere, as it is socially acceptable to kill women in the name of honour and only killing will retain their status”. She further explained, “this demand for inclusion of a ban on the *sagotra* marriage in HMS, 1955 has come from a political vacuum where *KP* leaders failed to understand the internal

dynamics of the community and the loss of the material base of customs and norms, i.e., land, did not lead to any re-thinking process”.

In this matrix, State and customary law are entangled with each other in complex ways. On the one hand, the translation of caste or community transgressions into violent crimes against the transgressors with no substantive legal action against such crimes demonstrates the manner in which the politics of honour overrides State law. On the other hand, ironically State law comes to be used strategically by perpetrators of the crime in order to escape legal intervention where the police do not take any action against perpetrators. This disrupts the understanding that bases itself on a framework of legal pluralism, where there is constant interaction, at times overlapping and at others conflicting, between State and customary law to the extent that either cannot be viewed without the other.

In post-colonial legalities, the case of Jats and *KPs* demand to include their marriage norms shows how a dominant community tries to produce a form of formal LP, which in its desired inclusion, would strengthen their already powerful position in local as well as in the broader political sphere. This case is quite contrary to the situation where marginalized communities like indigenous people or *Adivasis* in India demand to include their local laws and norms in State law, which come from a position of historical marginalization.

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