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**LAW RELATING TO PANCHAYTI RAJ INSTITUTIONS WITH SPECIAL
REFERENCE TO THE ROLE OF KHAP PANCHAYATS IN THE STATE OF
HARYANA**

"India does not live in its towns but in its villages. But if the cities want to demonstrate that their populations will live for the villagers of India the bulk of their resources should be spent in ameliorating the condition of and befriending the poor. We must not lord it over them, we must learn to be their servants. When the cities realize that they must live for the welfare of the poor, they will make their palaces and institutions and the life of their inhabitants correspond somewhat to our villages."

-Mahatma Gandhi¹

I: GENERAL

India does not live in its towns but in its villages. This statement of Mahatma Gandhi stands aptly proved in Current India also. Despite 32.75% urbanization rate of Indian population², a major section of population still lives in villages. According to Census 2011, out of 1210.2 million population of India, 833.1 million people live in rural areas, which is 68.84% of total population.

State of Haryana is not an exception to these trends. Out of 2.54 crores people of Haryana, 1.65 crores of people live in rural areas and mere 88.42 lakh lives in urban areas. Hence 64.96% of total population in Haryana lives in villages. In Haryana there are 6955 villages out of which 6764 villages are inhabited and mere 191 of them are uninhabited.³ To administer this huge rural population, panchayats have been the backbone of the villages since the beginning of the recorded history. In villages, as is evident from ancient literature Rig Veda etc, mode of governance has been the Council of five which latter on became famous by the name KHAP PANCHAYAT. From time immemorial, this system has exercised powers both

¹ Mahatma Gandhi, *India of My Dreams* 244 (Rajpal & Sons, Delhi, 2009).

² Population Census Trends 2015, India, *available at*: <http://www.statista.com/stastics/271312/urbanisation-in-india/> (Visited on Oct 16, 2016).

³ Provisional Population Totals at a Glance Figure : 2011 – Haryana *available at*: http://censusindia.gov.in/2011-prov-results/data_files/haryana/1-Figures%20at%20a%20Glance.pdf (Visited on Oct 16, 2016).

executive and judicial. This village government took decisions and actions based upon religious values and customs and traditional conventions with respect to various matters. The system of Panchayati Raj is thus deeply rooted in our tradition.

Gandhiji's dream of every village being a republic has been translated into reality with the introduction of a three tier Panchayati Raj System. On 23rd April 1993, 73rd Constitutional Amendment came into force which granted Constitutional Status to Panchayati Raj Institutions. According to it Panchayats shall be given power and authority to function as institutions of self government. **Jurisprudential essence** behind introduction of Panchayati Raj system in Constitution of India was the need of 'Democratic Decentralisation' and 'People's Participation in Rural Reconstruction'. Mahatma Gandhi underlined the importance of the individuals in Panchayati Raj Structure. To quote him:

"In this structure composed of innumerable villages, there will be a never winding, never ascending, circles. Life will not be a pyramid with apex sustained by the bottom, but will be an oceanic circle, whose center will be the individual, always ready to perish for the village, the latter ready to perish for the circle of villages, till at last the whole becomes one life composed of individuals, ever humble sharing the majesty of the oceanic circle of which they are integral units".⁴

In Haryana, local government operates both in urban and rural areas and is, therefore, designated as; Urban Local Government and Rural Local Government, respectively. The former manifests itself as Municipal Corporations, Municipal Committees, Town Area Committee, Notified Area Committee, Cantonment Board, Township and Port Trust and the later as Zila Parishads, Panchayat Samitis and Gram Panchayats.⁵ The study of Urban Local Self Government is not a subject matter of this research, so the researcher will be more concerned about the Rural Local Self Government. In regard of Rural Local Self Government, statutory as well as traditional Panchayati Raj Institutions are in existence. Chart-1 shows the hierarchy of Panchayati Raj Institutions present in Rural Haryana. The statutory Organisations are governed by Haryana Panchayati Raj Act, 1994 (Haryana Act no 11 of 1994) and Haryana Panchayati Raj

⁴ Mahatma Gandhi "Socialist Pattern of Society" *Harijan* 236 (28-7-1946). available at: <http://www.mkgandhi.org/momgandhi/chap51.htm> (Visited on Oct 16, 2016).

⁵ Pradeep Sachdeva, *Urban Local Government and Administration in India*, 52 (Kitab Mahal, New Delhi, 1983).

Elections Rules, 1994. The Act provides for a three tier mechanism of administration in villages. It establishes Gram Panchayats, Panchayat Samitis and Zila Parishads for the administration of rural areas and matters connected with.

In Haryana, it is the responsibility of the panchayats to organize Gram Panchayats and Gram Sabha meetings and ensure peoples' participation in this process. This aids in making the panchayats more responsive to peoples' needs and its functioning more effective. The agenda is prepared, discussions held and then decisions are taken by the majority of the members, or if necessary, then by vote.⁶ A total of 6083 village panchayats and 119 Panchayat Samitis have been established all over the State. Bhiwani District of Haryana alone has 460 panchayats operating in it⁷.

These Village Panchayats form a counter balance of power to the caste politics. It can be used to counter the dominant center of power. Administratively also it is desirable if local communities decide what is best for them (those who are inhabitants of villages, are more aware of the needs of them). Those who live in State capital would not have a clue as to where to build a road and which locality needs better drainage. It helps in making an average citizen more conscious of his rights. Further, it helps in removing the elements of fear from the minds of ruralites. According to Rajni Kothari⁸,

“Operating through Panchayati Raj institutions, a new kind of political functionary has emerged at local level that may in the course of time, become more powerful than the elected representatives at state and national levels. Politicians in national parties are beginning to realize the potentialities of new institutions. They often prefer positions in Panchayat Samitis and Zila Parishads, to being elected to the state legislature.”

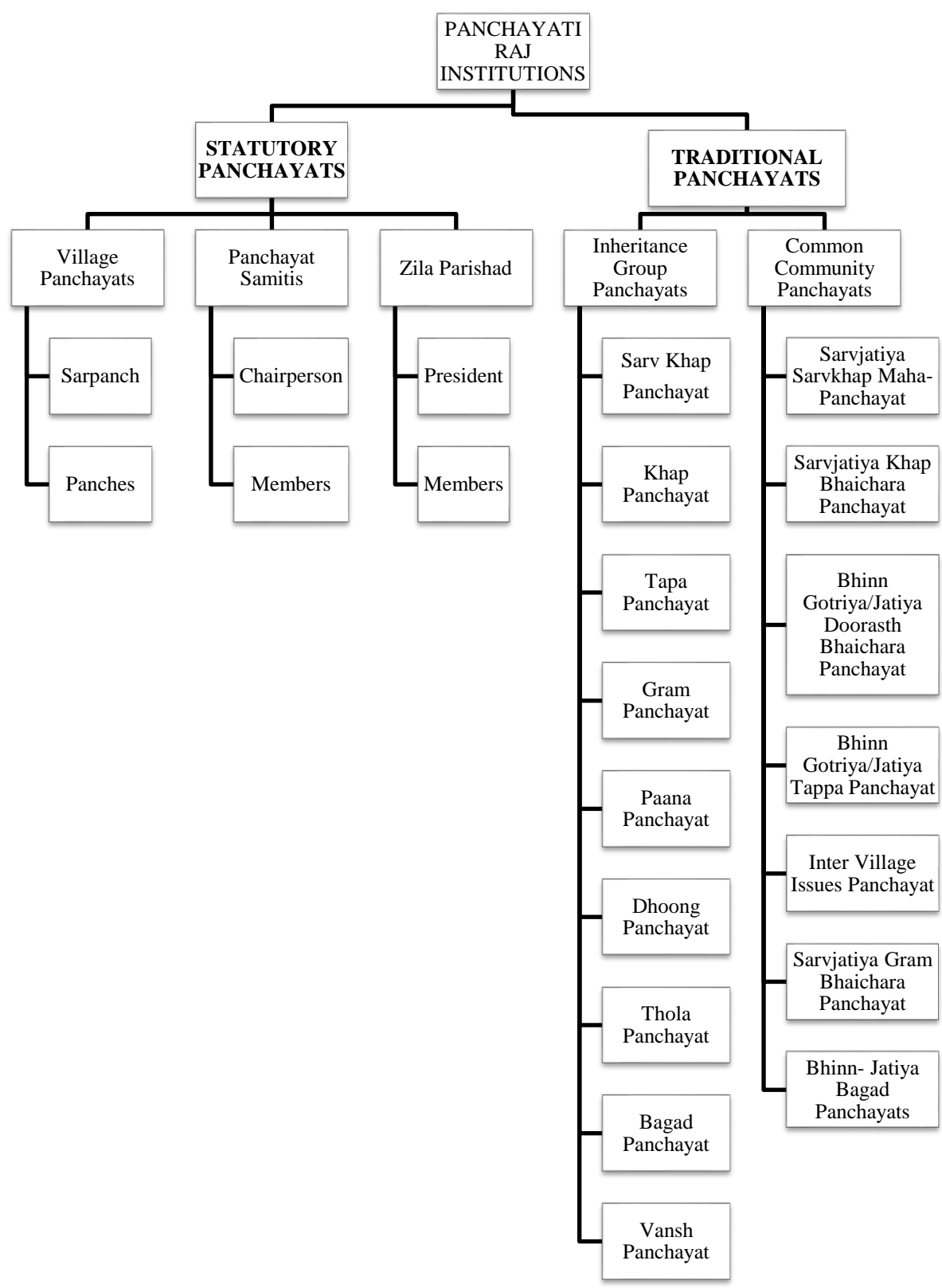
Hence, administratively Panchayati Raj system has bridged the gulf between the bureaucratic elite and people. Socially it has generated new leadership having a modern and pro social outlook. Finally moved from the development angle, Panchayati Raj system has enabled the ruralites to cultivate a progressive outlook.

⁶ S.K. Sharma, *Functioning of Panchayats in India* 12 (Sublime Publications, Jaipur, 2008).

⁷ Development & Panchayats Department, Haryana available at http://www.harpanchayats.gov.in/hidden/-/asset_publisher/BIldmM0nyFKQ/content/state-of-panchayat-haryana/5579304 (Visited on Oct 16, 2016).

⁸ Rajni Kothari, *Politics in India* 132 (Orient Longman, New Delhi, 2005).

Chart-1 Hierarchy of Panchayati Raj Institution in State of Haryana

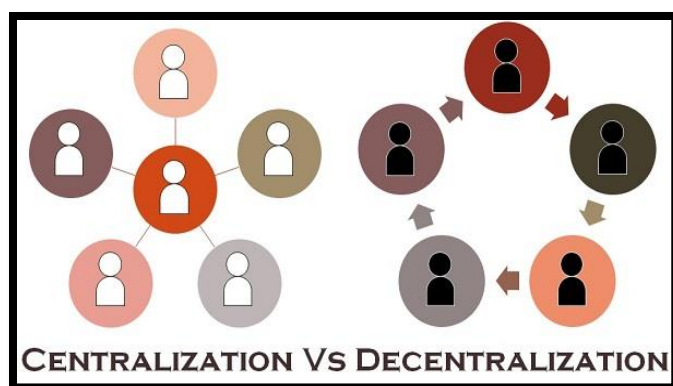


II

DEMOCRATIC DECENTRALISATION OF POWER:

The sine qua non of any effective democracy is to have devolution of powers and authority at different levels viz. Centre, State and Local, the last level perhaps the most significant as it is the level of government, which comes in direct contact with the people the most. India has a long tradition of local democracy. It is widely recognized that self-governing economies had existed in India from the earliest time. Local self-government is an ancient institution embodying the individuality of a man's group activities, reflecting the spirit of liberty. It is an integral part of politics of a country recognized or created under law for the management

Picture 1: Centralisation v. Decentralisation



of local affairs of human settlement with geographical boundaries. The full benefit of democratic government cannot be realized till all the problems in their incidence are provided decision at the place, and by the people by whom the incidence is most deeply felt.⁹

Democracy is a system of governance where everybody has a 'SAY'. According to Mahatma Gandhi,

“democracy requires that man or woman should realize his or her own responsibility in governance”.¹⁰ In this context decentralisation is the best suited to mean, a state or a pattern of organization, in which specific responsibilities are delegated to the lower unit, with the implication that delegation is process and decentralisation is the resultant embodiment.¹¹

In light of it, a model of decentralisation having ‘a pyramid type government orientation’, with power flowing from the top to bottom was put forth.¹² The lower is the level of the government; the greater would be the participatory element and the satisfaction of democratic

⁹ M.A. Mutalib and A.A. Khan, *The Theory of Local Government* 3 (Sterling Publisher, New Delhi, 1982).

¹⁰ S. Narayanswami, “Role of Gram Sabha in the New Panchayati Raj System” 46(7) *Kurukshetra* 11 (April 1998).

¹¹ Sudhir Krishna, “Restructuring the Institutional Arrangements to Strengthen the Panchayat Raj”, in A. Mukherjee (Ed.), *Decentralisation: Panchayats in the Nineties* 189 (Vikas Publishing House, New Delhi, 1994).

¹² United Nations Food and Agriculture Organization- Corporate Document Repository on Decentralisation, available at: www.fao.org/docrep/005/y2006e/y2006e05.htm (Visited on Nov 1, 2016).

urges of the people. This was reasoned with the sheer proximity of the policy and decision making authority.¹³ Decentralisation was an essential condition for development and was needed for both democratic governance and planned development. The process of ushering in a social change and economic development in developing country like India required adequate dissemination so that local committees and individuals could participate and bring local energy, enthusiasm, initiatives and resources under ideal local conditions to work out local developmental activities.¹⁴

Decentralisation can be viewed as an extension of delegation. When a part of the work is entrusted to others, it is known as delegation. Decentralisation extends to the lowest level of the organisation. A few definitions are given below:

1. "Decentralisation refers to tire systematic effort to delegate to the lowest levels all authority except that which can only be exercised at central points." —Louis A. Allen¹⁵
2. "Decentralisation means the division of a group of functions and activities into relatively autonomous units with overall authority and responsibility for their operation delegate to timd of cacti unit.'—Earl. P. Strong¹⁶
3. "Decentralisation is simply a matter of dividing up the managerial work and assigning specific duties to the various executive skills."—Newman, Summer and Wairen¹⁷

Thus, decentralisation is concerned with the decentralisation of decision-making authority to the lower levels in managerial hierarchy.¹⁸ Since Independence India is making efforts to bring about rapid and sustainable development and socio-economic transformation in rural livelihood. It has adopted an integrated approach towards improving the quality of life of rural poor by ensuring quality and maximum people's participation.

¹³ Y. Ahmed Rafeek, "Panchayati Raj in Karnataka" 47 *Social Action* 6 (January-March 1997).

¹⁴ T. Rajendaran and B. Kumaresen, "Panchayati Raj and Rural Development: 73rd Amendment" 46(7) *Kurukshetra* 59 (April 1998).

¹⁵ T. Manichander, *Elementary Education: Decentralisation of Educational Planning and Management* 26 (Laxmi Book Publication (Creative Commons Attribution 2.5), 2nd Ed. 2016).

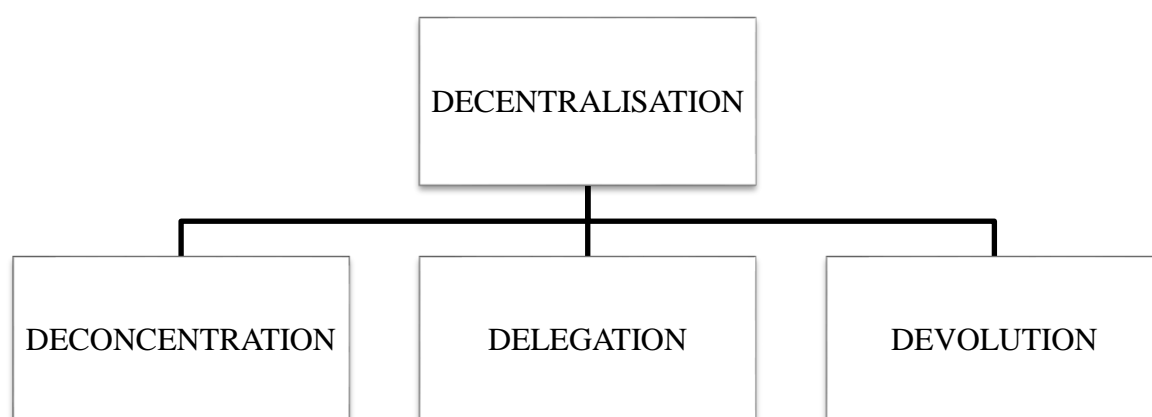
¹⁶ *ibid*;

¹⁷ *ibid* at 27;

¹⁸ Samriti Chand, "Decentralisation: Meaning, Advantages and Disadvantages of Decentralisation" available at: <http://www.yourarticlelibrary.com/organization/decentralisation-meaning-advantages-and-disadvantages-of-decentralisation/25703/> (Visited on Nov 1, 2016).

These programs are focused on poverty eradication through special employment generation programs, productive asset transfer through institutional credit and subsidy programs, programs of rural housing, drinking water and sanitation etc. Strong thrust was given to social security programs for providing assistance to the destitute and poor families. The government has undertaken various activities for the development of wastelands, desert, drought prone areas and various land reforms in the country. Assistance and encouragement to voluntary agencies and training of functionaries engaged in rural development forms part of the emphasis on accelerated rural development.

Chart 2: Types of Decentralisation



India is a democratic country. Participation and control of governance by the people of the country is the essence of democracy. Such participation is possible only when the powers of the State are decentralized to the district, block and village levels, where all the sections of the people can sit together, discuss their problems and suggest suitable solutions and plans and execute as well as monitor the implementation of the developmental programs.¹⁹

The prefixation of the word democracy widens the implication of the term decentralisation. Democracy as a form of political organization is an attempt to direct the people's participation in day-to-day affairs of the government. In a broader and general sense it means government of the people, for the people and by the people (Abraham Lincoln)²⁰. Though

¹⁹ R.P. Joshi, *Panchavati Raj in India: Emerging Trends across the States* 11 (Rawat Publications, Jaipur, 2005).

²⁰ S. Bhatnagar, *Rural Local Government in India* 5 (Light and Light Publishers, New Delhi, 1995).

democracy has been defined differently by the different political thinkers, yet the idea of maximum participation by the people is the common point. Democratic decentralisation aims at associating the people to the maximum possible extent and as such is one of the modes of public participation. It is an extension of the democratic principle or extension of people's right to manage their own affairs in a local area without any undue interference from regional or national authorities. Democratic decentralisation means devolution of power by parliamentary statutes to the representative bodies of the people that are not only democratically constituted, but also function democratically.²¹

In India, the scheme of democratic decentralisation in its institutional form is known as 'Panchayati Raj' and is an entirely Indian concept emerged as the logical development from the community development programme. The Panchayati Raj system was introduced in order to facilitate the work of local development through a body which is locally represented and constituted on democratic lines. In Panchayati Raj system, the people of India would perform themselves through their representatives from the Panchayats to Parliament and thus, the democracy travel from Lok Sabha to Gram Sabha. Panchayati Raj thus reflects the concept of inter connected democracy from Gram Sabha to Lok Sabha.²²

Democratic decentralisation through Panchayati Raj Institutions (PRIs) is an effective source of people's empowerment at the grassroots level. It facilitates the local people's participation in decentralized governance.²³

III

LOCAL SELF GOVERNMENT VIS-A-VIS 73RD CONSTITUTIONAL AMENDMENT, 1992

Though the Panchayati Raj Institutions have been in existence in the country for a long period, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsible people's bodies due to variety of reasons including

1. Absence of regular elections
2. Prolonged supersessions

²¹ V.K. Sharma Bhat, *New Panchavati Raj System* 14 (Printwell, Jaipur, 1990).

²² Amitava Mukherjee, "The Seventy-third Amendment: Next Steps and Conflict Resolution" in A. Mukhrjee (Ed.), *Decentralisation: Panchayats in the Nineties* 211 (Vikas Publishing, New Delhi, 1994).

²³ Arvind K. Sharma, "People's Empowerment: Context and Strategies" in Ramesh K. Arora (Ed.), *People-Centered Governance* 90 (Aalekh Publication, Jaipur, 2001).

3. Inadequate representation of weaker sections like Scheduled castes and women
4. Insufficient devolution of powers, and
5. Lack of financial resources.

In view of these shortcomings a new Part IX relating to panchayats has been added in Constitution of India by the Constitution (73rd Amendment) Act, 1992.²⁴

Eighth Five Year Plan (1992-1997) was launched from 1st April 1992 against background of two years of poor economic performance. It offered Liberalisation, Privatisation and Globalisation. Government observed that under the new system, people may become passive observers and receivers of doles. Hence it also created a decentralized system with Panchayati Raj Institutions at focal point for organization and implementing rural development programs. This approach was consistent with the view of Mahatma Gandhi and recommendations of Ashok Mehta Committee on Panchayati Raj Institutions.²⁵

Hence 73rd Constitutional Amendment was brought up in Indian Constitution. It added Part IX (The Panchayats) and Schedule XI (Matters in respect of which schemes for economic development and social justice are to be implemented by Panchayats- Under article 243G) to the Constitution of India. This part consists of provisions from Article 243, 243-A to 243-O; and Eleventh Schedule lists 29 functional items that panchayats are supposed to deal with under Article 243-G. This amendment also implements Article 40 of the Directive Principles of State Policy, which says that “State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.” Hence it has upgraded this right from non-justifiable to justifiable right. One which was once Positive Right has now become a Negative Right, as it now lays a constitutional obligation upon States to enact the Panchayati Raj Acts as per provisions of the Part IX and simultaneously gives Right to Participate in Local Self Government to people.²⁶

The provisions of the amendment have been divided into Mandatory Provisions (in terms of structural organization of Panchayati Raj Institutions <herein after referred to as PRIs>) and

²⁴ G.S. Jaswal and B.S. Chawla *The Punjab Panchayati Raj Act, 1994* 8 (Chawla Publications, Chandigarh, 4th Edition, 2010).

²⁵ Prof. R. Suryanarayana Reddy, *Rural Development Through Democratic Decentralization*, available at: http://tsipard.gov.in/cdpa_Resources/Rural%20Development%20Through%20Democratic%20Decentralization%20-%20-%20-%20-%20202.ppt. (Visited on Nov 2, 2016).

²⁶ Constitution 73rd Amendment and Panchayati Raj in India, available at: <http://www.gktoday.in/blog/constitution-73rd-amendment-and-panchayati-raj-in-india/> (Visited on Nov 2, 2016).

Optional Provisions (in terms of functional aspect of PRIs). The Mandatory provisions which the State statutes will have to provide for are:

1. Creation of a State Elections Commission to conduct elections to PRIs,
2. Governor of State shall constitute a Finance Commission to review financial position of Panchayats after every five years,²⁷
3. Every PRI shall continue for five years from the date appointed for its first meeting and, if dissolved earlier, fresh elections to be held within six months,²⁸
4. Creation of PRIs at the village, intermediate and district levels in accordance with the provisions of Part IX of Constitution of India,²⁹
5. The minimum age for contesting elections to PRIs to be 21 years³⁰,
6. Reservation of seats not less than one-third of total number of seats for women belonging to Scheduled Castes and Scheduled Tribes in panchayats,³¹
7. Reservation of seats for Scheduled Castes and Scheduled Tribes in panchayats (chairman and members) in proportion to their population in State,³²
8. Indirect mode of election to the post of chairman at the intermediate and president at district level,³³
9. Organisation of Gram Sabhas at village level³⁴.
10. Constitution of District planning Committee³⁵ (Added by 74th Constitutional Amendment).

Mandatory provisions have helped solving problem of lack of Uniform structure, dominance of upper castes and vested interests, irregular elections and frequent super sessions. The provisions which the state statutes are at option to provide for are as follows:

1. Direct Election of Gram panchayat chairman.

²⁷ Article 243-I of the Constitution of India, 1950.

²⁸ Article 243-E of the Constitution of India, 1950.

²⁹ Article 243-B of the Constitution of India, 1950.

³⁰ Article 243-F of the Constitution of India, 1950.

³¹ Article 243-D of the Constitution of India, 1950.

³² *ibid*;

³³ Article 243-C of the Constitution of India, 1950.

³⁴ Article 243-A of the Constitution of India, 1950.

³⁵ Article 243-ZD of the Constitution of India, 1950.

2. Role and Scope of Gram Sabha.
3. Powers and functions of each tier.
4. Financial devolution.
5. Maintenance and Audit of Accounts.
6. Composition and functions of District planning Committee.
7. Reservation to Adhyakshas post at Gram Panchayat, Taluk Panchayat and Zila Parishad level by rotation.

Evolution of Eleventh Schedule:

As local self-government is an item in the State List, the State governments have been given a reasonable discretion to take decisions in the following areas. The Eleventh Schedule of the Act enumerates 29 subjects which fall in the purview of the panchayats. The Act has refrained from putting those into the Seventh Schedule of three lists for the simple reason that States are free to determine the Panchayati Raj activities and adjust this Eleventh Schedule as per situations and resources. The Schedule is quiet flexible and exhaustive. **The Eleventh Schedule lists the following 29 subjects:**

1. Agriculture including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food-processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.

13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation program- IRDP (integrated Rural Development Program), JRY (Jawahar Rojgar Yojna).
17. Education including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

Effect of 73rd Constitutional Amendment on State of Haryana:

The Panchayati Raj Bill was passed by the Indian Parliament in 1992. Accordingly, a three tier Panchayati Raj System was established in each district of Haryana. It has three vital elements Gram Panchayat, Panchayat Samiti and Zila Parishad. The tenure of gram panchayat as well as that of city committee is five years. After every five years, these self-governing institutions elect members for themselves under the watchful eye of the Election Commission of the state. The self-governing institutions of villages and cities make plans for the economic development of the residents.

These make plans for delivering social justice to the masses and also implement them. These have the rights to impose some taxes and fees on the citizens as well as collect the same

from them. The State Government also gives grants to such institutes. Every village has a village panchayat, called gram panchayat. The voters of each village elect the members of their gram panchayat through direct elections. This procedure is carried out in the presence of the representatives of the election commission of the State. The gram panchayat works for a period of 5 years.

There are provisions to include women, STs and SCs in the gram panchayat of each village. One-third of the seats to be filled by direct elections on every gram panchayat are reserved for women. At least one-third of such seats are reserved for women as are reserved for the SCs and STs.

So much so, there is also reservation for the post of Chairman of the gram panchayat. There is a provision to make a member of SC or ST or a woman as the Chairman of the panchayat. Every gram panchayat makes plans for the social and economic development of the villagers whom it represents. It has the right to levy some taxes or fees on the villagers. Some issues or areas of operation of gram panchayats are: land reforms; small canals; khadi and village industries; fuels; roads, ghats; education; health; elimination of poverty; chakbandi (land demarcation); animal husbandry; potable water; cattle feed; bridge; rural electrification; local fairs; family welfare; and public distribution system.

Thus, following changes have been effected by the passage of Panchayati Raj Bill:

1. Elections shall be held for all the seats of the panchayat.
2. One-third of the seats shall be reserved for SCs and STs.
3. One-third of the seats shall be reserved for women.
4. Out of the seats reserved for SCs and STs, one-third of the seats shall be reserved for women of these very categories.
5. There shall be reservation of seats for the SCs and STs for the post of the chairperson of the panchayat.
6. There shall be reservation of seats for women for the post of the chairperson of the panchayat.
7. SCs and STs shall not be debarred from contesting elections for such seats as are not reserved.
8. Women shall not be debarred from contesting elections for such seats as are not reserved.

a. As to Panchayati Raj Institutions:

Panchayati Raj Institutions are operating at the grassroots levels in Haryana. Their performance is commendable. The Haryana Panchayati Raj Act has been modified to make such institutions efficient. Some of the features of the Panchayati Raj in the State are as follows:

1. According to the modified Act, gram sabha must be held at least twice a year on 13 April and on 2 October.
2. The post of Sub-Sarpanch has been quashed. The provision of bringing a no-confidence motion against the Sarpanch has also been quashed.
3. The Sarpanch has to give up his charge (duties) within 7 days from the date of publication of the election schedule.
4. If a Sarpanch keeps a cash amount that is 21 per cent in excess of the stipulated amount, then he would be liable to pay punitive interest at the rate of 21 per cent.
5. If a Sarpanch or panch is reluctant to appear in a court case, then he may be suspended for a period of six years.
6. Lavatories are being constructed in rural areas. The rates of subsidies for general persons and STs are 50 per cent and 90 percent respectively. STs give 10 per cent as the unskilled labour put in by them to make such lavatories.
7. The State Government gives loans to dig well, install tubewells, construct shops and erect staff quarters.
8. The State Government grants minimum Rs. 2400 and maximum Rs. 8400 to Village Panchayats. In addition to this, Rs. 25 lakh are being granted to Panchayat Samities and District Council. This amount of money will be spent on the maintenance of their buildings.

b. As to Civic Institutions:

There are Nagarpalikas, Municipalities and Municipal Corporations for small, medium-sized and large cities, respectively. The elections of members for these institutions are carried out through the direct election method. Such elections are organised under the watchful eye of the Election Commissioner of the state or his representatives.

For all these organs of the local government, there are provisions for reservation of seats for women, SCs and STs. One-third of the seats have been reserved for women. The seats for

SCs and STs have been reserved in the ratio of their respective populations. There are reservations (for the posts of Chairpersons) for women, SCs and STs as well.

The tenure of each Nagarpalika, Municipality or Municipal Corporation is 5 years. Elections are held after every five years. These institutions have been entrusted with the tasks of making plans for the development and implementing them (in the areas of their jurisdiction). These institutions have also the rights to impose some taxes, duties and fees on the people of the areas under their jurisdiction. The state Government also gives them grants.

The subjects or areas given to these institutions are : city planning; bridges; hygiene and cleanliness; improvement of dirty colonies; socio economics development plans; education; street light systems; environment improvement; roads, provision of potable water; fire- fighting services; plans for removal of urban poverty, medical facilities; birth and death records; transport facilities; and maintenance of parks and gardens.

IV

PANCHAYATI RAJ INSTITUTIONS IN HARYANA: CURRENT POSITION

Panchayati Raj Institutions have important and leading-roll in Development of Haryana which was carved out of the State of Punjab in 1966 in name of tribes (casts) of agricultural orientation. Haryana is primarily an agrarian State and panchayats have a major role in life cycle of Haryana people. Concept of Panchayats and community mobilization is quite old phenomenon in Haryana.

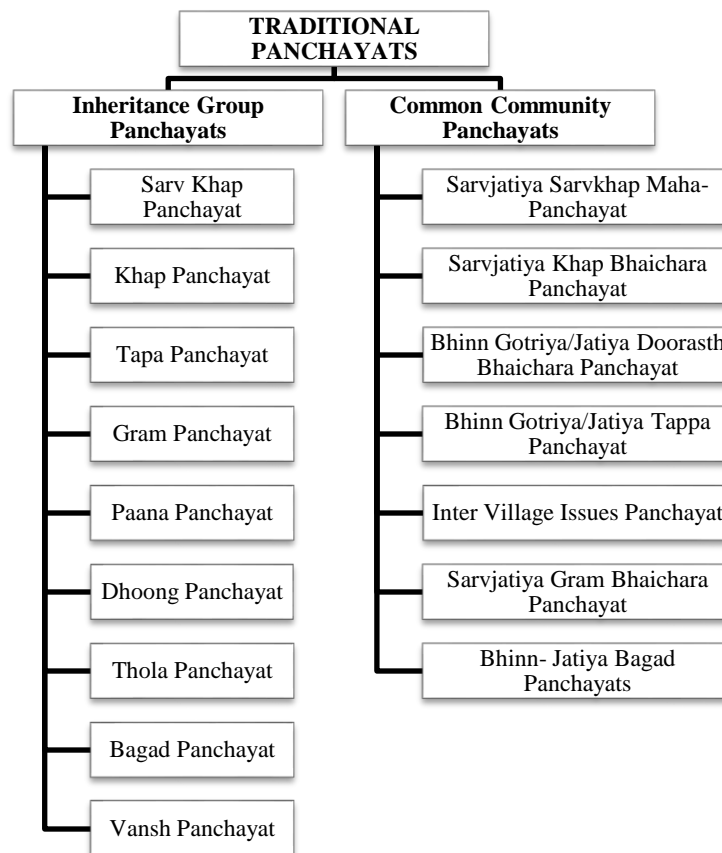
1. TRADITIONAL PANCHAYATI RAJ INSTITUTIONS

The concept of 'Panchayati Raj' is not a concept of recent origin. Traditionally by the name of 'sabhas', 'samitis', 'sarv khap' etc, panchayats were prevalent in ancient Haryana. A mention of these institutions is backed by our ancient text Rigveda. These institutions are still prevailing in current Haryana even without any statutory backing from moder laws. Hence their study become important for making the current research valuable and more guided. To make this section more comprehensive and easily understandable, researcher will divide Traditional panchayats in two categories:

1. "Jatiy evm Kshetriy karar ke adhaar par" (Common Community Panchayats)
2. "Samgotra vanshpranali adhaar par" (Inheritance Group Panchayats).

These two basically run over the idea of genetic similarity (*Kinship and Headmanship in a family locally called as 'Parivar'*) but both may work interactively too by entering each other's domain which further depends on nature of case and the mutual choice of both parties. Any individual can take its grievance to any level up higher in model hierarchy condition to providing reason for surpassing the lower level.

Chart 3- Hierarchy of Traditional Panchayats prevalent in State of Haryana



A. Inheritance Group Panchayats:

It is based on genetic pedigree. The individual or family across caste/creed/gender is the lowest unit of ladder in this system. This is the smallest gradient for all kind of public opinions, issues and disputes. There can be two types of disputes at this level, first Intra-family Disputes and second Inter-family Disputes. They are resolved at family level by participation of all the Kartas. The Karta may be male or female depending on situation of family and other circumstances.³⁶ If they fail to reach any settlement then Vansh or Bagad panchayats are approached. If the disputant families belong to same line of Inheritance (if having same caste or

³⁶ *Shreya Vidyarthi v. Ashok Vidyarthi* AIR 2016 SC 139.

creed), then inheritance Group Panchayats are approached, otherwise Common Community Panchayats settle their disputes. Matters related to Rights associated with the Land, built up property, cattle and material articles, material wealth and money, human abuse or mishandling, violence and injury, matrimonial alliance and human rights violations etc are under their jurisdictional watch. In addition, wages, casteist remarks, social abuse, threats, defamation etc by an individual or one family against the other are also taken care of.

A brief explanation of all inheritance group panchayats is as follows:

i. Vansh Panchayat:

It is the primary unit of Inheritance group Panchayats. It works on basis of the kinship hierarchy and remains effective up to 3 to 4 generations upwards in the clan. It is chiefly constituted of experienced elders from both genders.

ii. Bagad Panchayat:

Bagad is a slang for the modern day Residential Welfare Associations (RWA). It is protected community dwelling in which several families from different vanshes live together. The layout plan of a Bagad were alike fortresses with only one main entry gate closed from all sides except the mouth of one the single street. Main function of such Panchayats/Guardians is preparing and implementing security and liberty measures within Bagad in exactly the similar way as of modern day RWAs do in cities.

iii. Thola Panchayats:

Thola constitutes interests extending up to 7 to 10 generations up in the clan. Name of each Thola is found on the name of common forefather (referred as DADA) some 7 to 10 generations ago. Their main task is to take care of sanitary, sewage, water and all other facilities for Thola and making dialogues with other Tholas and village as a whole.

iv. Dhoong Panchayats:

Dhoong interests mainly extend up to 20 to 25 generations in the clan. Dhoong is subset of Paanna and found across all castes and creed in a village. Various Tholas on merging together constitute a Dhoong. Dhoong is the level from where political groupings usually begin in villages. These Panchayats act as a launching pad for becoming a public representative as the contestant gets full consensual support of whole dhoong.

v. Paanna Panchayats:

Paanna is made of more than two Dhoongs and known by the name of their very first or publically renowned ancestor. A village with average population would consist of 2 to 5 Paannas. These are above the Dhoong, bigger bastions of political bargaining in Haryana villages. They ensure protection, share and contribution of and for each other in all common to village matters. Paanna Panchayats used to keep a vigil on inter-paannas clashes in order to maintain the village unity and peace.

vi. Gram Panchayats:

This gram panchayat is the social panchayat which is totally different from the constitutional or statutory village panchayat. It is constituted of two or more Paannas in a village. Social gram panchayat meets only for specific causes and occasions mostly common to all. Constitutionally elected Panches and Sarpanch may also be called if any issue related to their intervention comes into light.

vii. Tapa Panchayats and Bhinn Gotriya/Jatiya Bhaichara Tapa Panchayats:

"Tapa" stands for nostalgia philosophy, i.e. with whom you are compatible in maximum matters of mutual interest external to village. Tapa is constituted by many villages having common understanding and mutual interests. The base of these panchayats is either "Blood Lanes" or "Common Interest". Tapa Panchayats (Inheritance Group Panchayat) and Bhinn Gotriya/Jatiya Bhaichara Tapa Panchayats (Common Community Panchayat) are found identical to each other on maximum matters except genetic bonding. The "Tapa" on the basis of Blood line usually refers to group of same gotra neighboring villages falling under a common constituency or a Tehsil. Bhinn Gotriya/Jatiya Bhaichara Tapa Panchayat (Common Interest Bhaichara base) usually consists of 9 to 12 villages often called as "Naugama" or "Baraha" respectively. A village may have both of them. At times of conflict, traumatized village used to send a call on its letter-pad to other brother villages for calling a meeting with reason and schedule, this process is termed as Chitthi Paadna. Any panchayat called without following this procedure is taken as a self-styled gathering only. The process is generally followed if any threat to sovereignty, prestige, public property like public animals (Gaam wala Jhota/Khagad), border land issues between two villages arises.

viii. Khap Panchayat:

This is where the real beauty of democratic philosophy of Khap system shines with full charm, meaning to fact that it is the total sum up of all same gotra fellows and fellow villages falling under one surname in one particular caste. Khap is a term for a socio-political grouping and used in a geographical sense. The word ‘Khap’ is probably derived from Latin word ‘*corpus*’ which means an organization of individuals. Other parallel terms are Pal, Ganas, Ganasangha, Janapada or republic. According to Bhim Singh Dahiya, the word Khap is perhaps derived from the Saka word **Satrapy** or **Khatrapy**, and means an area inhabited by a particular clan.³⁷

They are the legacies of the tribal councils, formed by various tribes with a purpose of facilitating resolution of intra-tribal disputes and inter-tribal inter-course.³⁸

Traditionally these assemblies settle disputes between individuals and villages. However these bodies lack any constitutional or legal basis. Hence, *Khap Panchayats* are undemocratic in origin. They have unwritten laws and their decisions are clearly illegal and unconstitutional. Without application of law and acting on their whims and wishes, they impose self-created norms backed by sanction in the name of preserving morals and values of the society.³⁹



Picture 2: Khap Panchayat meeting held in Jhajjar district of Haryana.

Khaps could be classified into following categories:

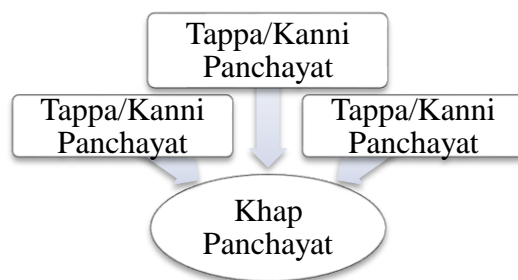
- a. Based on Single Caste and Single Gotra
- b. Based on Single Caste and Multiple Gotra
- c. Based on a Multi-caste and Multiple Gotra

³⁷ Bhim Singh Dahiya, *Jats the ancient Rulers (A Clan Study)* 92 (Sterling Publishers. New Delhi, First Edition, 1980).

³⁸ Ranbir Singh, “The Need to Tame Khap Panchayats”, XLV No 10 *Economic and Political weekly* 17 (2010).

³⁹ Kavita Kachhwaha, “Khap Adjudication in India: Honouring the Culture with Crimes”, 6 Issue 1 & 2 *International Journal of Criminal Justice Sciences*, 298 (January- June / July – December 2011).

Chart 4: Organisation of Khap Panchayats



(a.) Based on Single Caste and Single Gotra:

A particular geographical area is dominated by a single Gotra of a particular caste. The Gotra has a sizable number of villages in that area.

(b.) Based on Single Caste and Multiple Gotra:

When the entire villages and area is dominated by a single caste, with some of the villages dominated by different Gotras, it is considered as Single Caste and Multiple Gotra system.

(c.) Based on a Multi-caste and Multiple Gotra:

This system is renowned as having villages in particular geographical area of which some villages are dominated by a particular caste and other villages by other castes but different Gotras.⁴⁰

Issues heard in this level of Panchayats are as follows:

1. Settling down the inter-villages high risk (*which could become a danger to existence and brotherhood of village*) social disputes of its descend.
2. Seen as third prime most body in overall hierarchy and topmost in same gotra hierarchy. People seek their quality justice especially against unjustifiable vices of traditions like dowry, unwanted money power use, discrimination against women etc.
3. Khap leads and motivate its people to abstain from unnecessary show off during marriage ceremonies, Mrityu Bhoj (Kaaj), access use of alcohol etc. It even dictates its people to abstain from such social evils.
4. It promotes events and investments from which social unison and welfare could be benefitted.

⁴⁰ K.S. Sangwan, "Khap Panchayat in Haryana", Available at: <https://www.jatland.com/home/Khap>, (Visited on Nov 2, 2016).

5. Works on matters like marriage, customs and social values. For example leaving the Gotra of Grandmother for the marriage of her grandchildren, if she is not alive.
6. They hold the network for developing a Social Security Force. These forces were more common pre-independence of India. The smallest unit of these forces used to be "Dasta" at each village level.
7. They work to fill the void created due to law and system failure (*both on call from public administration or if necessary then public interest but after observing the response of public administration*) and/or to curb the unjustified activities of governments and rulers.⁴¹

Contemporary Socio-Legal Challenges Associated with the Khaps:

Honour Killings:

There is no specific definition of honour killing. However these honour killings are murders committed by family members and the people belonging to concerned caste on the verdict of *Khap Panchayats* or family members of such who are believed to have brought shame or dishonour on family name. The apparent shame is caused by a victim refusing to enter into an arranged marriage or for having a relationship that is considered to be inappropriate by the family or community. The perceived dishonor is normally the result of the following behaviors, or the suspicion of such behavior⁴²:

- (a) Dress in such a manner which is not acceptable by the community;
- (b) Marriage by own choice (against wish of family or community);
- (c) Engaging in certain sexual acts, including those with opposite or same sex.

Forced Marriages:

In *Khap* regime, sometimes marriage is performed by pressurizing one or both the parties and without their free will and free consent. The victim of such marriage is forced through coercion, fear, abduction, threat, inducement and deception. A forced marriage can take place, between the people of any group, children, an adult and a child or between adults. The victims of forced marriages experience torture, abduction, mental or physical threats and are even forced to commit suicide.

⁴¹ *ibid*;

⁴² Baij Nath, "Honour Killings: Violation of Human Rights of Women", *Indian Journal of Socio Legal Studies* 133 (2014).

Female Feticide:

Despite of number of articles in newspapers, magazines and efforts made at a large scale by the volunteers, social activists and governmental and non-governmental organizations, the female feticides rate is growing at an increasing rate in the entire nation, especially in North India, where it is highest. The case of female feticide is recorded to be the maximum in the North Indian states of Haryana and Punjab. The sex ratio in these states are recorded to be a shocking figure of 877 (females)/1000 (males). Boys are comparatively considered superior to girls as per the practices of female feticides. Giving a birth to a girl child is almost a sin in the regions in which *Khap Panchayat* exists. So, these people resort to killing of the baby girl inside the fetus or the moment a mother gives birth to a girl child, the baby is killed. To restrict the killing of female child, the government has passed the Pre-Conception and Pre- Natal Diagnostic Techniques (Prohibition of Sex election) Act, 1994. This provides for prevention of the misuse of pre-natal diagnostic techniques for the purpose of pre-natal sex determination leading to female feticide. To avoid the indiscriminate abortion of female fetuses, the Medical Termination of Pregnancy Act, 1971 permits abortion only in limited cases. Apart from this Act, the I.P.C under Sec. 312 to 317 also imposes restriction on termination of pregnancies.

Non- Participation of Marginalised sections: Women and Dalit

In Haryana, Women sometimes do not attend meetings due to socio-cultural factors like that of not being allowed to sit with their male counterparts. Besides this, when women attend meetings, men start gossiping against them, pass comments and laugh at them. Due to this, they get discouraged and start avoiding meetings.⁴³

When it comes to presiding over the meetings, in the case of female-headed panchayats, it is usually the husband or a male relative of the lady sarpanch who preside over the meeting. In Haryana it has been found that out of the six female-headed panchayats, the meetings are presided over by husbands in five panchayats. Despite the reservation for women in panchayats, they are unable to get an opportunity to exercise their power because of male dominance in the society.

Prohibition on Sagotra Marriage

Khap Panchayat prohibits *Sagotra* and inter-caste marriage. The marriages are governed by *Khap* on three important principles; those are:

⁴³ S.K. Sharma, *Functioning of Panchayats in India* 9 (Sublime Publications, Jaipur, 2008).

- (a) Marriages within the same *Gotras* is forbidden since in that case a boy and girl are regarded as a brother and sister;
- (b) Marriages in the different *Gotras* are forbidden if a boy and girl belong to the same village or physically adjoining villages;
- (c) Inter-caste marriages are strictly barred.⁴⁴

Sagotra Marriages are not prohibited by law whatever may be the view in olden times. The Hindu marriage Disabilities Removal Act, 1946 was enacted with a view to dispel any doubts in this regard. The Act expressly declared that marriage between the Hindus belonging to same *Gotras* or *Parivara* or different sub-division of the same caste is valid. The Hindu Marriage Act, 1955 does not prohibit *Sagotra* or inter-caste marriage. The views of village elders or family elders or family elders cannot be forced upon the willing couple and none has a right to use force or impose far reaching sanctions in the name of vindicating community honour or the family honour. There are reports that drastic actions including wrongful confinement, persistent harassment, mental torture, infliction of severe bodily harm are resorted to either by the close relations or some third parties against the so called erring couple either on exhortation of some or all the *Panchayats* or with connivance. Social boycotts and other illegal sanctions affecting the young couple, the families and even a section of local inhabitants are quite often resorted to.⁴⁵ In *Arumugam Servai vs. State of Tamil Nadu*⁴⁶, the Supreme Court strongly deprecated the practice of *Khap Panchayats* taking law into their own hands and indulging in offensive activities which endangers the personal lives of the persons marrying according to their choice.

ix. Sarv Khap Panchayat:

The *Sarv Khap* (or all Khap) Panchayat represents all the Khaps. The individual Khaps elected leaders are sent as delegates to represent the Khaps at the Sarv Khap level. It is a political organization, composed of all the clans, communities, and castes in the region. This panchayat is the supreme body of all gotra based Khaps throughout all castes individually like amalgamation of all gotra Khaps Panchayats of Jats only or Brahmins only or Gujjars only and so on.

⁴⁴ Sakaar Srivastava, "Honour Killing in India", available at <http://www.academia.edu/4806197> (Visited on Dec 25, 2016).

⁴⁵ Law Commission of India, "Unlawful Interference Of Caste Panchayat etc. with marriages in the name of honour, accessed" available at: <http://www.lawcommissionofindia.nic.in> (Visited on Dec 25, 2016).

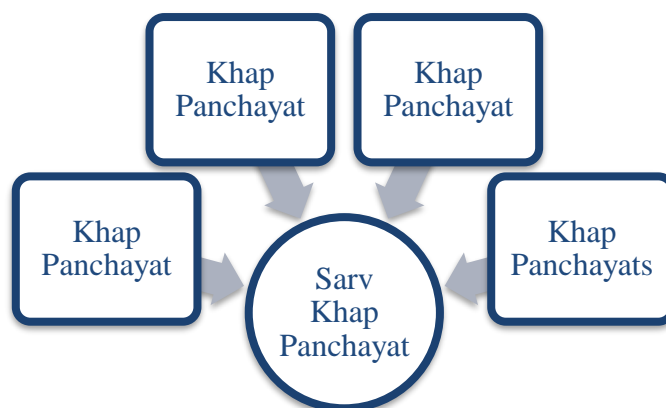
⁴⁶ *ibid*;

One major area of their action is to avoid clashes due to one community's action which has impact on rest of communities. It also raise and support the voice for common to community interest matters like the Jat reservation movement. They never intervene or act at single village or Tapa level. They come into actio when it comes on whole community.



Picture 3: Haryana Sarvjatiya Sarvkhap Maha-Panchayat Meeting in Bhiwani

Chart 5: Organisation of Sarv Khap Panchayat



B. Common Community Panchayats:

These are the panchayats which irrespective of common genetics, caste or creed used to hear matter of common social utility in villages. Matters arising between different castes and creeds usually are referred to Common Community Panchayats. A brief study of various common community panchayats is as under:

1. Bhinn Jatiya Bagad Panchayats:

This panchayats come into play whenever a dispute arrives between two families of different clans/castes/creeds residing in neighborhood or at far sites within village. Another purpose of these panchayats is to maintain the dialogue in good spirit between different clans/castes/creeds.

2. Sarvjatiya Gram Bhaichara Panchayats:

These panchayats come into play when the matter becomes one clan/bagad versus the other or one caste versus the other. They also take care of each other's interests, harmony and sentiments. This is the level at which any level of Panchayat above it from hierarchy model can intervene keeping in view the seriousness of issue.

3. Inter Village Issues (Antar Gram Mudde) Panchayat:

The main cause of these panchayats is to ensure better dialogue, relations and harmony with adjacent neighbor villages often called as Guhaand locally. They take care of smooth mobilization of each others communities in border sharing fields, security of woman, animal and agricultural resources like water, flood and sanitation.

4. Bhinn Gotriya/Jatiya Bhaichara Tapa Panchayat:

Explained with the "Tapa Panchayats and Bhinn Gotriya/Jatiya Bhaichara Tapa Panchayats" in above section.

5. Bhinn Gotriya/Jatiya Doorasth Bhaichara Panchayat:

These kinds of meetings are mainly seen in marriage related matters. For matters of dowry, interests of divorcees or widowed women, their property and land right issues.

6. Sarvjatiya Khap Bhaichara Panchayat:

These kinds of Khaps are seen in action when issues becomes matter of pride for two communities/castes or creeds a minimum at state level. This Panchayat and SarvKhap Panchayats under Inheritance lane are of equal status, with only difference is that former is a common community panchayat whereas the latter is Inheritance based Panchayat.

7. Sarvjaatiya Sarvkhap MahaPanchayat:

It is the supreme most power of the hierarchy model above. They come into action for common to all social matters related to dignity, prestige and pride. It concludes with merger of both "SarvKhap Panchayats" and "Sarvjatiya Khap Bhaichara Panchayat".

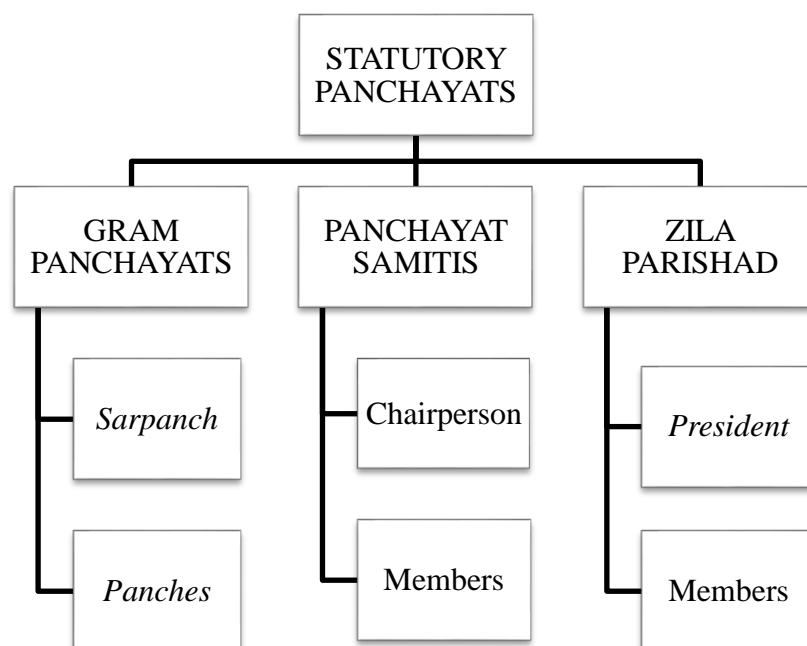
2. STATUTORY PANCHAYATI RAJ INSTITUTIONS

In Haryana, local government operates both in urban and rural areas and is, therefore, designated as; Urban Local Government and Rural Local Government, respectively. In regard of Rural Local Self Government, statutory as well as traditional Panchayati Raj Institutions are in existence. Chart-4 shows the hierarchy of Statutory Panchayati Raj Institutions present in Rural areas of Haryana. They are governed by Haryana Panchayati Raj Act, 1994 (Haryana Act no 11 of 1994) and Haryana Panchayati Raj Elections Rules, 1994. The Act provides for a three tier

mechanism of administration in villages. It establishes Gram Panchayats, Panchayat Samitis and Zila Parishads for the administration of rural areas and matters connected with. Panchayats are endowed with the responsibility to organize Gram Panchayats and Gram Sabha meetings and ensure peoples' participation in this process.

Chart 6: Hierarchy of Panchayati Raj Institutions Constituted by Haryana Panchayati Raj Act,

1994



A brief discussion on the various statutory panchayati raj organisations is as follows.

A. GRAM PANCHAYATS

Section 8 of Haryana Panchayati Raj Act, 1994 (here in after called ‘the Act’) provides for the Establishment and constitution of Gram Panchayat. It says,

1. The Government may, by notification, establish a Gram Panchayat by name in every sabha area.
2. Every Gram Panchayat shall consist of—
 - a. Sarpanch who shall be elected by the Gram Sabha from amongst its voters, by secret ballot ;
 - b. six to twenty Panches from wards in a Panchayat area in the manner prescribed;

3. All the above seats referred to in clause (b) of sub-section (2) shall be filled in by persons chosen by direct election from the wards in the Panchayat area and for this purpose each Panchayat area shall be divided into wards in such manner that the ratio between the population of each ward and the number of the seats of Panches allotted to it shall, so far as possible, be the same throughout the Panchayat area.

Section 9 of the Act provides for reservation of seats in Gram Panchayat, thereby doing social justice. It says,

1. Seats shall be reserved for the Scheduled Castes in every Gram Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by election in that Panchayat as the population of the Scheduled Castes in the Panchayat area bears to the total population of that area and such seats may be allotted to such wards having maximum population of persons belonging to Scheduled Castes.
2. Not less than one-third of the total number of seats reserved under sub-section (1) shall be reserved for women belonging to the Scheduled Castes and such seats may be allotted by rotation and by lots to different wards reserved under sub-section (1).
3. Not less than one-third (including the numbers of seats reserved for women belonging to the Scheduled Castes) of the total number of seats to be filled by direct election in every Panchayat, shall be reserved for women and such seats may be allotted by rotation and by lots to different wards in a Panchayat except those falling under sub-section (1) and (2).
4. The offices of the Sarpanches in the Gram Panchayat in a block shall be reserved for the Scheduled Castes and Women :

Provided that the number of offices of Sarpanches reserved for the Scheduled Castes in the Block shall bear, as may be, the same proportion to the total number of such offices in the Block as the population of the Scheduled Castes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Sarpanches in the block shall be reserved for women including one-third offices of women Sarpanches from Scheduled Castes :

Provided further that the number of offices of Sarpanches reserved under this sub-section shall be rotated to different Gram Panchayats first having the largest maximum

population of Scheduled Castes and secondly having the second largest maximum population of such classes and so on.

5. The reservation of the seats under sub-section (1) and (2) and the reservation of office of Sarpanches (other than the reservation of women) under sub-section (4) shall cease to have effect on the expiration of the period specified in article 334 of the Constitution of India.
6. Every Panchayat shall have one Panch belonging to Backward Classes if their population is two percentum or more of the total population of the sabha area and such seat shall be allotted to such ward having maximum population of persons belonging to Backward Classes.
7. Reservation of seats as mentioned in aforesaid sub-sections shall be reviewed after every decennial census.

Section 10 the Act provides for the term of office of Sarpanch. It says that the term of office of sarpanch shall be five years unless removed earlier.

Section 13 of the Act lays duty on the gram panchayat to hold the meetings in public and atleast twice a month at a public place within the sabha area for which it is established. Sarpanch or during the vacancy of his office Gram Sachiv is entitled to call such meetings. Provided that the Sarpanch, when required in writing by majority of the Panches to call a meeting, shall do so within three days, failing which Panches shall, with the previous approval of the prescribed authority, be entitled to call a meeting after giving a week's notice to the Sarpanch and other Panches.

Powers, functions and duties of Sarpanch are given in section 19 of the Act. It says,
The Sarpanch shall—

- (i) convene meetings of Gram Sabha and Gram Panchayat ;
- (ii) preside over the meetings of Gram Sabha and Gram Panchayat ;
- (iii) have the general responsibility for the executive and financial administration of the Gram Panchayat ;
- (iv) exercise administrative supervision and control over the work of the staff of the Gram Panchayat and the officers and employees whose services may be placed at the disposal of the Gram Panchayat by any other authority ; and

- (v) for the transaction of business connected with this Act or for the purpose of making any order authorised thereby, exercise such powers, perform such functions and discharge such duties as may be exercised, performed or discharged by the Gram Panchayat under this Act or the rules made there under ;
- (vi) exercise such other powers, perform such other functions and discharge such other duties as the Gram Panchayat may, by general or special resolution, direct or as the Government may, by rules made in this behalf, prescribe.

Section 21 of the Act provides for the **Functions and duties of Gram Panchayat**. It says, It shall be the duty of the Gram Panchayat within the limits of the funds at its disposal to make arrangements for carrying out the requirements of sabha area in respect of the following matters including all subsidiary works and buildings connected therewith:-

I. General Functions :—

- (1) Every resolution adopted in a meeting of the Gram Sabha shall be duly considered by the Gram Panchayat and the decision and action taken by the Gram Panchayat shall form part of the report of Panchayat of the following year.
- (2) Preparation of annual plans for the development of the Panchayat area.
- (3) Preparation of annual budget and submission thereof to Gram Sabha in its Sawani meeting for consideration.
- (4) Power for mobilising reliefs in natural calamities.
- (5) Removal of encroachments on public place .
- (6) Organising voluntary labour and contribution for community works.
- (7) Maintenance of essential statistics of village (s)

II. Agriculture, including Agriculture Extension—

- (1) Promotion and Development of agriculture and horticulture.
- (2) Development of waste lands.
- (3) Development and maintenance of grazing lands and preventing their unauthorised alienation and use.

III. Animal Husbandry, Dairying and Poultry—

- (1) Improvement of breed of cattle, poultry and other livestock .

- (2) Promotion of dairy farming, poultry and piggery.
- (3) Grassland development.
- IV. Fisheries— Development of Fishes in the Village (s).
- V. Social and Farm Forestry, Minor—Forest Produce, Fuel Fodder—
 - (1) Planting and preservation of trees on the sides of roads and other public lands under its control.
 - (2) Fuel plantation and fodder development.
 - (3) Promotion of farm forestry.
 - (4) Development of social forestry.
- VI. Khadi, Village and Cottage Industries —
 - (1) Promotion of rural and cottage industries.
 - (2) Organisation of awareness camps, seminars and training programmes, agricultural and industrial exhibitions for the benefit of the rural areas.
- VII. Rural Housing—
 - (1) Distribution of house sites within its jurisdiction.
 - (2) Maintenance of records relating to the houses, site and other private and public properties.
- VIII. Drinking Water—
 - (1) Construction, repairs and maintenance of drinking water wells, tanks and ponds.
 - (2) Prevention and control of water pollution.
 - (3) Maintenance of rural water supply schemes.
- IX. Buildings, Water ways—
 - (1) Maintenance of buildings under its control or transferred to it by the Government or any public authority.
 - (2) Maintenance of boats, ferries and waterways.
- X. Rural Electrification including distribution of Electricity providing for and maintenance of lighting of public streets and other public places.
- XI. Non-conventional Energy Sources —

- (1) Promotion and Development of non- conventional energy schemes.
 - (2) Maintenance of community non- conventional energy devices, including bio-gas plants and windmills.
 - (3) Propagation of improved chulhas and other efficient devices.
- XII. Poverty Alleviation Programme—
- (1) Promotion of public awareness and participation in poverty alleviation programmes for full employment and creation of productive assets including employment assurance scheme.
 - (2) Selection of beneficiaries under various programmes throughout Gram Sabhas.
 - (3) Participation in effective implementation and monitoring.
- XIII. Education including Primary and Secondary Schools—
- (1) Promotion of public awareness and participation in primary and secondary education.
 - (2) Ensuring full enrolment and attendance in Primary and Middle Schools and its management.
- XIV. Adult and non-formal Education— Promotion of Adult Literacy.
- XV. Libraries— Village Library and reading rooms.
- XVI. Cultural Activities— Promotion of social and cultural activities.
- XVII. Markets and fairs— Regulation of fairs excluding cattle fairs and festivals other than religious.
- XVIII. Rural Sanitation—
- (1) Maintenance of general sanitation.
 - (2) Cleaning of Public roads, drains, tanks, wells and other public places.
 - (3) Maintenance and regulation of cremation and burial grounds.
 - (4) Construction and maintenance of public latrines.
 - (5) Disposal and unclaimed and carcasses.
 - (6) Management and control of washing and bathing ghats.
- XIX. Public Health and Family Welfare—

- (1) Implementation of family welfare programme.
 - (2) Prevention and remedial measures against epidemics.
 - (3) Regulation of sale of meat, fish and other perishable food articles.
 - (4) Participation in programmed of human and animal vaccination.
 - (5) Licensing of eating and entertainment establishment.
 - (6) Destruction of stray dogs.
 - (7) Regulation of curing, tanning and dyeing of skins and hides.
 - (8) Regulation of offensive and dangerous trades.
- XX. Women and child development—
- (1) Participation in the implementation of women and child welfare programme.
 - (2) Promotion of child health and nutrition programmes.
- XXI. Social Welfare including Welfare of the Handicapped and Mentally Retarded—
- (1) Participation in the implementation of the social welfare programmes including welfare of the handicapped, mentally retarded and destitute.
 - (2) Monitoring of the old age and widows pension scheme.
- XXII. Welfare of the Weaker Sections and in particular the Schedule Castes--Promotion of Public awareness with regard to Welfare of Scheduled Castes and other Weaker Sections.
- XXIII. Public Distribution System—
- (1) Promotion of public awareness with regard to the distribution of essential commodities.
 - (2) Monitoring the public distribution system.
- XXIV. Maintenance of Community Assets.
- XXV. Construction and Maintenance of Dharmshalas and similar Institutions.
- XXVI. Construction and Maintenance of Cattle Sheds, Ponds and Cart Stands.
- XXVII. Construction and Maintenance of Slaughter-house.
- XXVIII. Maintenance of Public Parks, Play Grounds etc.
- XXIX. Regulation of Manure Pits in Public Places.

XXX. Other Functions— Such other functions as may be entrusted by the Government or any Local Authority.

B. PANCHAYAT SAMITI:

Section 56 of the Act provides for **Constitution of Panchayat Samiti**. It says, Government shall constitute panchayat samiti having jurisdiction in a block excluding such portion of the block as are included in a municipality or in a cantonment or under the authority or a Municipal Corporation. Section 57 provides its **Composition**. It says that,

1. Every Panchayat Samiti shall consist of –
 - a. directly elected members from territorial constituencies as determined under section 58 of this Act in the manner as may be prescribed ;
 - b. the members of Haryana Legislative Assembly representing constituencies which comprise wholly or partly in the Panchayat Samiti, who shall have right to vote in the meeting of the Panchayat Samiti except for election and removal of Chairman and Vice-Chairman and shall be exofficio members.
2. There shall be a Chairman and a Vice-Chairman in every Panchayat Samiti, who shall be elected by and from amongst the elected Members, in the manner as may be prescribed.
3. Notwithstanding anything contained in this section but subject to any general or specified order of the Government, where two-third of the total number of members of any Panchayat Samiti required to be elected, have been elected, the Panchayat Samiti shall be deemed to have been duly constituted under this Act .

Provision as to Reservation of seats in panchayat samite is given in Section 59 of the Act. Section 9, as apply in case of Gram Panchayats, apply *mutatis mutandis* to Panchayat Samiti in matters of reservation to women and weaker sections. **Functions and Duties of Panchayat Samitis** are given in section 75 of the Act. Functions of it are as follows:

- I. General Functions—
 - a. Preparation of the annual plans in respect of the schemes entrusted to it by virtue of this Act and those assigned to it by Government or the Zila Parishad and submission thereof to the Chief Executive Officer within a period of two months of its receipt for the consideration of the District Planning Committee constituted under this Act;

- b. Consideration and consolidation of the annual plans of all Gram Panchayat in the block and submission of the consolidated plan to the Zila Parishad;
 - c. Preparation of annual budget of the block and its submission within such time, as may be prescribed, to the Zila Parishad;
 - d. Performing such functions and executing such works as may be entrusted to it by the Government or the Zila Parishad;
 - e. Providing relief in natural calamities.
- II. Agriculture, including Agriculture Extension—
- a. Promotion and development of agriculture and horticulture ;
 - b. Maintenance of agricultural seed farms and horticultural nurseries ;
 - c. Storing and distribution of fertilizers, insecticides and pesticides:
 - d. Propagation of improved methods of cultivation;
 - e. Promotion of cultivation and marketing of grains, vegetables, fruits and flowers .
- III. Land Improvement and Soil Conservation.—Assisting the Government and Zila Parishad in the implementation of land improvement and soil conservation programmes of the Government .
- IV. Minor Irrigation, Water Management and Watershed Development—
- a. Assisting the Government and Zila Parishad in the construction and maintenance of minor irrigation works ;
 - b. Implementation of community and individual irrigation works.
- V. Animan Husbandry, Dairying and Poultry—
- a. Maintenance of veterinary and Animal Husbandry services ;
 - b. Improvement of breed of cattle, poultry and other live- stock ;
 - c. Promotion of dairy farming, poultry and piggery ;
 - d. Prevention of epidemics and contagious diseases.
- VI. Fisheries — Promotion of fisheries development.
- VII. Khadi, Village and Cottage Industries—
- a. Promotion of rural and cottage industries ;
 - b. Organisation of conferences, seminars and training programmes, agricultural and industrial exhibitions ;

- VIII. Rural Hosing-- Implementation of housing schemes and distribution of house sites in villages.
- IX. Drinking Water—
- a. Establishment, repairs and maintenance of rural water supply schemes ;
 - b. Prevention and control of water pollution ;
 - c. Implementation of rural sanitation schemes.
- X. Social and Farm Forestry, Minor Forest produce, Fuel and Fodder—
- a. Planting and preservation of trees on the sides of roads and other public lands under its control ;
 - b. Fuel plantation and fodder development ;
 - c. Promotion of farm forestry.
- XI. Maintenance of buildings and property— Maintenance of building or other property vested in the Panchayat Samiti.
- XII. Non-conventional Energy Sources— Promotion and development of non-conventional energy sources.
- XIII. Poverty Alleviation Programme— Implementation of poverty alleviation programme.
- XIV. Education—
- a. Promotion of Primary and Secondary Education ;
 - b. Construction, repair and maintenance of Primary schools buildings ;
 - c. Promotion of social education through youth clubs and Mahila Mandals.
- XV. Technical Training and Vocational Education— Promotion of rural artisan and vocational training.
- XVI. Adult and non-formal Education— Implementation of Adult Literacy.
- XVII. Cultural Activities including Social Education—
- Promotion of social and cultural activities—
- a. Establishment of information, community and recreation centres ;
 - b. Organisation of ward and watch ;
 - c. Promotion and encouragement of physical, cultural activities, games and sports ;
 - d. Training and utilisation of the services of Anganwari Workers and Sanitary Squads.
- XVIII. Markets and Fairs— Regulation of fairs and festivals.

- XIX. Health and Family Welfare and Rural Sanitation—
- a. Promotion of health and family welfare programmes ;
 - b. Promotion of immunization and vaccination programmes ;
 - c. Maintenance of health services and control of epidemics ;
 - d. Establishment and inspection of Oshdhyalya, dispensaries, Unani or Homoeopathic dispensaries, Veterinary Centres and Primary Health Centres ;
 - e. Carrying out environmental sanitation, health campaigns and educating the public—
 - i. Nutrition ;
 - ii. Maternity and Child Health ;
 - iii. Communicable diseases .
 - f. Antimalarial measures and destruction of locusts, rats and other pests
 - g. Promoting family welfare activities ;
 - h. Health and Sanitation at fairs and festivals.
- XX. Women and Child Development—
- a. Promotion of programmes relating to development of women and children ;
 - b. Promotion of child health and nutrition programmes ;
 - c. Promotion of participation of voluntary organizations in women and child development programmes.
- XXI. Social Welfare including welfare of the handicapped and mentally retarded—
- a. Social Welfare programmes including welfare of physically handicapped, mentally retarded and destitute ;
 - b. Monitoring the old aged and widow's pension and pensions for the handicapped.
- XXII. Welfare of weaker sections and in particular of the Schedule Castes—
- a. Promotion of Welfare of Scheduled Castes and Weaker Sections ;
 - b. Protecting such castes and classes from social injustice and exploitation.
- XXIII. Maintenance of Community Assets—
- a. Maintaining all Community assets vested in it or transferred by the Government or any Local Authority or Organisation ;
 - b. Preservation and maintenance of other community assets.
- XXIV. Public Distribution System— Distribution of essential commodities .

XXV. Promotion of Rural Electrification.

XXVI. Co-operation—

- a. Promotion of co-operation by helping in the establishment and strengthening of service co-operative, industrial, irrigation, farming and other societies ;
- b. Participation in and assistance to service co-operation ;
- c. Providing credit for agriculture purposes.

XVII. Libraries— Promotion of libraries and reading rooms.

XVIII. Any other functions entrusted to them.

XIX. Miscellaneous—

- a. Securing of removing dangerous building or places ;
- b. Construction, repair and maintenance of relive works, relief houses and other measures of relief on account of famines, floods , earthquakes and natural calamities ;
- c. Management of such public ferries as may be entrusted to the charge of Panchayat Samiti under section 7- A of the Northern India Ferries Act, 1878 :

Provided that where performance of additional functions or specific duties entrusted to a Panchayat Samiti by the Government or the Zila Parishad, has financial implications, the Government or Zila Parishad, as the case may be, shall provide for such financial assistance, if any, as may be considered appropriate. The order of the Government or the Zila Parishad in this behalf shall be final.

C. ZILA PARISHAD

Section 117 of the Act provides for **Constitution of the Zila Parishad**. It says, that the Government may, by notification, constitute a Zila Parishad bearing the name of the district having jurisdiction, save as otherwise provided in this Act, over the entire district excluding such portion of the district as are included in a Municipality or Cantonment. Section 118 provides for its **Composition**. It says

1. Every Zila Parishad shall consist of-
 - a. the members directly elected from the wards in a district under Section 119;
 - b. the Chairman of all Panchayat Samitis within the district, *ex-officio* members;

- c. the members of the House of People, Haryana Legislative Assembly whose constituency lie within the district or part thereof, *ex-officio* member ; and
 - d. a President and Vice-President who shall be elected by and amongst the elected members of the Zila Parishad.
2. All *ex-officio* members of the Zila Parishad shall have right to vote in the meetings of the Zila Parishad except for election and removal of the President or the Vice-President.
 3. Notwithstanding anything contained in this section, but subject to any general or special order of the Government where two-third or more of the total number of members of any Zila Parishad require to be elected have been elected, the Zila Parishad shall be deemed to have been duly constituted under this Act.

Under section 121, on the Constitution of a Zila Parishad under section 117, there shall be called the first meeting for the election of President and the Vice-President by and from amongst its elected members in the manner prescribed, by the prescribed authority. The meeting shall be held on such day within four weeks from the date on which the names of elected members are published by the State Election Commissioner, or any other officer authorised by him in this behalf. **Duties and functions of Zila Parishad** are given in Section 137 of the Act. It says,

1. A Zila Parishad shall advice, supervise and co-ordinate the functions of the Panchayat Samitis in the district.
2. Without prejudice to the generality of the provisions of sub-section(1), a Zila Parishad shall have power to-
 - a. give advice to Panchayat Samitis on its own motion or on the requirement of the Government or at the request of a Panchayat Samitis;
 - b. co-ordinate and consolidate development plans prepared in respect of Panchayat Samitis ;
 - c. secure the execution of plans, project, schemes or other works common to two or more Panchayat Samitis in the district ;
 - d. exercise and perform such other powers and functions in relation to any development programme as the Government may, by notification, confer on or entrust to it ;

- e. advise Government on all matters relating to development activities and maintenance of services in the district, whether undertaken by Local Authorities or Government ;
 - f. advice Government on the allocation work among Gram Panchayats and Panchayat Samitis and co-ordinate their work ;
 - g. advice Government on matters concerning the implementation of any statutory or executive order specially referred to by the Government to the Zila Parishad ; and
 - h. examine and approve the budget of Panchayat Samitis in the manner laid down in section 102 of this Act.
3. The Zila Parishad may, with the prior approval of the Government, levy contribution from the funds of the Panchayat Samitis in the district.
 4. Notwithstanding anything contained to the contrary in this Act, a Zila Parishad shall, when required by the Government to do so, by an order in writing, exercise such supervision and control over the performance of all or any of the administrative functions of the Gram Panchayat and Panchayat Samiti within the district or any part thereof, as may be specified in the said order.

V

LAW GOVERNING TO KHAP PANCHAYATS:

1. LEGISLATIVE TRENDS:

Various legislative efforts have been taken by the government to prohibit the unlawful activities of *Khap Panchayat*.

a. The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliance) Bill, 2011:

Law Commission has drafted a Bill to prevent interference on the part of any person in the matrimonial alliance in the name of honour and tradition. The draft bill also intends to declare such panchayats unlawful. The draft legislation proposes that "no person or any group of persons shall gather, assemble or congregate at any time with the view or intention to deliberate on, or condemn any marriage, not prohibited by law, on the basis that such marriage has

dishonored the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned. Such gathering or assembly or congregation shall be treated as an unlawful assembly and every person convening or organizing such assembly and every member thereof participating therein shall be punishable with imprisonment for a term of not less than six months but which may be extended to one year and shall also be liable to fine up to ten thousand rupees." The Bill further says that any member of an unlawful assembly who alone or in association with other such member counsels, exhorts or bring pressure upon a, person or persons so as to prevent, or disapprove of the marriage which is objected to by the said member of the unlawful assembly or creates an environment of hostility toward such couple or either of them or their relatives or supporters, shall be deemed to have acted in endangerment of their liberty.

b. The Endangerment of life and Liberty(Protection, Prosecution and other measures) Act, 2011:

Shocked by the growing cult of honour killings and swiftly dispersing roots of *Khap Panchayats* across the country, the Law Commission of India has also proposed legislation namely 'The Endangerment of Life and Liberty (Protection, Prosecution and other measures) Act, 2011, to prosecute persons or a group involved in such endangering conduct and activities. Under the proposed law, the act of endangerment of life and liberty shall mean and include "any manner of acts of threat, encouragement, commending, exhorting and creating an environment whereby loss of life and liberty is imminent or threatened and shall include: (a) enforcement of measures such as social boycott, deprivation of the means of livelihood, denial of facilities and services which are otherwise generally available to the people within the locality concerned and, (b) directly or indirectly compelling the persons concerned to leave or abandon their homestead in the locality" . Further, it also provides that "it shall be unlawful for any group of persons to gather, assemble or congregate with the intention to deliberate, declare on or condemn any marriage or relationship such as marriage between two person of majority age in the locality concerned on the basis that such conduct or relationship has dishonored the caste or community or religion of all or some of the persons forming part of the assembly or the family or the people of the locality concerned".

The draft legislation also speaks that "any person or persons instrumental in gathering of such an assembly or who takes an active part in the execution of the assembly shall also be

subjected to civil sanctions." viz, they will not be eligible to contest any election to any local authority and will be treated as a disqualified candidate.

The following legislative steps will contribute in reformation:

- Fast track courts should be constituted empowering to deal with matters of honour killings and such other malpractices.
- The Special Marriage Act should also be amended in such a way so as to reduce the duration of registration of marriage.
- Apart from that the awareness programs should be initiated to sensitise the people who unquestionably follow the verdicts of *Khap*.
- Instead of criticizing the *Khap*, efforts should be made to improve functioning of *Khap* so that *Khap* can perform its function in accordance with national law. It would also be helpful to minimize the burden of courts.
- The main problem is not the *Khap* rather the problem is towards *Khap* verdicts. So, awareness among people is necessary who follow its orders.
- Village Court should be constituted empowering to deal with *Khap* malpractices.

2. JUDICIAL TRENDS:

The judiciary has after the protest of human rights activists, drawn its attention towards the unlawful activities of *Khap Panchayats*:

In *Smt. Laxmi Kachhwaha v. State of Rajasthan* (1999)⁴⁷, a public interest litigation was filed in the Rajasthan High Court to draw the attention of the Court to illegal functioning of Caste *Panchayat* on the weaker-sections of the concerned communities, especially on women. The Court observed that these *Panchayats* had no jurisdiction whatsoever to pass social boycott order, or to impose fine on anyone and to violate the basic rights of an individual. It ordered the state authorities to take steps for preventing the abuse of social influence by restraining such *Panchayats* from functioning and ensuring arrest and punishment to its members.

In *State of UP v. Krishna Master & Ors.* (2010)⁴⁸ the Apex Court made an extraordinary move by awarding life sentence to the three accused of honour killing who murdered six persons

⁴⁷ *supra n.39* at 301.

⁴⁸ AIR 2010 SC 3071.

of a family. The Bench further observed that “wiping out almost the whole family on the flimsy ground of saving the honour of the family would fall within the rarest of rare cases.”

The principle evolved in this case was reiterated in *Bhagwan Das v. State (NCT) of Delhi* (2011)⁴⁹, where the Apex Court opined that "there is nothing honourable in honour killings, and they are nothing but barbaric and brutal murders by bigoted, persons with feudal mind. In our opinion honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary a deterrent for such outrageous, uncivilized behavior. All persons who are planning to perpetrate honour killings should know that the gallows await them."

In *Lata Singh v. State of U.P.* (2006)⁵⁰, the Supreme Court opined that "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 unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news is coming from several parts of the country that young men and women, who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or interreligious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law."

⁴⁹ (2011) 6 SCC 396.

⁵⁰ AIR 2006 SC 2522.

Similarly, in *Arumugam Servai v. State of Tamil Nadu* (2011)⁵¹, the Apex Court interpreted law on this matter that in case of age of majority, the young couple has statutory right to marry. What the parents do is that they can cut off their social relations with them, but cannot give threat them or kill them. The Court further observed that "*Khap panchayats* (known as *kata panchayat* in Tamil Nadu) often decree or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. It is wholly illegal and has to be ruthlessly stamped out. There is nothing honorable in honour killings or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.

Hence, the Court directed the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government has been directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge sheet them and proceed against them departmentally if they do not:

1. prevent the incident if it has not already occurred but they have knowledge of it in advance, or
2. if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.

Khap Panchayats are playing a powerful role today though they are not legally elected bodies. Their decisions are not enforceable but still their terror continues to haunt. Unless these bodies realize the lack of basic moral values in their functioning, they cannot be permitted to exist today. It is also necessary that the illegal activities of *Khaps* should be strictly and promptly checked by police and other authorities responsible for maintenance of law and order.

⁵¹ (2011) 6 SCC 405.

Allahabad High Court, in *Sujit Kumar v. State of U.P. & Ors* (2002)⁵² noted that "In our secular and liberal country, honour killings have been taken place from time to time, and what is deeply disturbing is that police and other authorities do not 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 murder and must be treated accordingly". The court further directed the police to prevent any such "honour killings" or harassment of people who love each other and want to get married as such practice is a blot on our society. The police must also see that the persons entering into inter-caste or intercommunity marriages are not harassed by their relatives or any others and are free to live at any place and with whomever they like. There is no prohibition of inter-caste or inter-community marriage in the law. If a person who is a major wants to get married to a person of another caste or community, the parents cannot legally stop him/her. That being so, to administration must ensure that nobody harasses or ill-treats or kills such people for marrying outside his or her caste, community or class.

Similarly, in *Trimukh Maroti Kirkan v. State of Maharashtra*(2006)⁵³ the apex Court observed:

"These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished."

Recently Delhi high court in case of *Vishal Yadav v. State Govt. of UP*,⁵⁴ (6 Feb, 2015) has held that,

⁵² 2002 2AWC 1758, Available at:

<https://www.indiankanoon.org/docfragment/1406726/?formInput=honour%20killing> (Visited on Jan 2, 2017).

⁵³ (2006)1 SCC 681

“Honour killings arise out of deep sense of caste affiliations and indubitably reinforce such divisions in social structures. Such crimes not only violate the constitutional mandate but also impinge on Article 21 rights of two individuals to choose their life partners. It is in this background, that the Supreme Court has considered the caste basis of the honour killing as motivating the crime to be an important circumstance for imposing the harsh punishment of death sentence. Such an offence has been labelled as an —act of barbarism and feudal mentality.”

Recently, Justice P.V. Reddy, former Supreme Court Justice submitted a report of Law Commission of India: “*Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework*”⁵⁵, which stated various issues relating to honour killings.

VI

STATEMENT OF PROBLEM

Villages accommodate 65% of the total population in State of Haryana. They are administered by Village Panchayats. These village panchayats ought to have been the subject of prime focus of development planning, research and welfare in India but it is not been so. Despite the Constitutional Vision of organizing Village Panchayats by endowing them with powers necessary for self-governance, panchayats specially in State of Uttar Pradesh, Punjab and Haryana are found crippling in this regard. State of Haryana had enacted Haryana Panchayati Raj Act 1994 (Act 11 of 1994) and Haryana Panchayati Raj Election Rules, 1994 after the 73rd Constitutional amendment for better administration of rural areas. In spite of these efforts prevailing Panchayati Raj Institutions including traditional khap panchayats suffers from following loopholes.

⁵⁴ *Vishal Yadav v. State Govt. Of UP* (Delhi HC) Available at: <https://indiankanoon.org/doc/154440315/> (Visited on Jan 10, 2017).

⁵⁵ Government of India, Law Commission Of India, 242nd Report on Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework (August 2012).

1. LACUNE IN HARYANA PANCHAYATI RAJ ACT 1994 (ACT 11 OF 1994)

State of Haryana has enacted Haryana Panchayati Raj Act 1994 (Act 11 of 1994) and Haryana Panchayati Raj Election Rules, 1994 for fulfillment of the mandate of the 73rd Constitutional amendment, thereby constituting Gram Panchayat, Panchayat Samiti and Zila Parishad. But this enactment proved to be an enactment without teeth. Instead of constituting ‘self-governing village bodies’, government has chosen ‘controlled Local bodies’ which is against the notion of local self-government due to which following difficulties have arisen in implementation of these laws:

A. LACK OF ADJUDICATING POWERS

Constitution has envisaged the goal of self-governing villages but it has not been achieved yet. Village panchayats, Panchayat Samitis, Zila Parishads have been endowed by the Act with various legislative and executive powers, but no adjudicatory powers are given to them, except in cases of certain petty matters which are given in Section 24 and 25.

B. DEFEASIBLE EXECUTIVE POWERS:

In matters of executive work also gram panchayats are not fully autonomous. Under Section 47 of Act, District Development and Panchayat Officer or Sub division Officer (Civil) holds power to suspend the execution of resolutions or orders passed by gram Panchayats. It is against the Notion of “Gram Swaraj” depicted by Mahatma Gandhi. He had said,

*“Independence must begin at the bottom. Thus, every village will be a republic or panchayat having full powers. It follows, therefore, that every village has to be self-sustained and capable of managing its affairs even to the extent of defending itself against the whole world. It will be trained and prepared to perish in the attempt to defend itself against any onslaught from without.”*⁵⁶

Similarly the Panchayat Samiti and Zila Parishad are also controlled by other agencies. Hence, there are half-hearted attempts by the state in parting away their own powers. The reason behind this is lack of general will to decentralize. The Act envisages

⁵⁶ Mahatma Gandhi, “A Socialist Pattern Of Society” 85 *Harijan- A Weekly Journal* (28-7-1946) Available at: <http://www.mkgandhi.org/momgandhi/chap51.htm> (Visited on Oct 16, 2017).

a three tier system of local administration with highly centralizing tendency of power. Instead of complete devolution of powers to these institutions (i.e. Decentralisation of Power) a general shifting of responsibilities over local government (i.e. Deconcentration of Power) under the supervision of Central Government ministries has been done.

C. ABSENCE OF MUTUAL TRUST AND UNDERSTANDING BETWEEN PANCHAYAT MEMBERS AND BUREAUCRACY

The bureaucracy has yet to mould its attitude and learn to apportion its powers to the common man. Mutual trust and understanding is lacking between the panchayats members and the bureaucracy. Every stakeholder wants more powers. There is lack of support and timely action from the bureaucracy to the PRIs due to which they are unable to help people in addressing their problems. Thus, for establishing and maintaining the faith of the people in the powers of constitutionally mandated rural governing structure harmony with the bureaucracy has become a serious concern.

D. LACK OF MONETARY FUNDS

Gram Fund is constituted under Section 39 of Haryana Panchayati Raj Act 1994. State is duty bound to send money in this fund and sarpanch is empowered to levy taxes and fees on villagers in order to enrich gram fund account with money. But because of lack of state support and unwillingness of newly elected leaders to tax their voters a financial crunch is being faced by most of the village Panchayats. Hence there is a need to relook on the provisions of Act providing for Funds from government.

E. UNCONSTITUTIONALITY AS THE RIGHT TO RECALL SARPANCH IS NOT VESTED IN APPOINTING AUTHORITY.

The no-confidence motion against the Sarpanch is carried out by a majority of the total members of the panchayat. Since the gram Sabha elects the sarpanch, it is suggested that the gram sabha should be vested with the right to recall the sarpanch. Otherwise the no-confidence motion can be misused by influential members of the panchayats, particularly against the marginalized sections, driven mainly by deeply entrenched values of patriarchy, casteism and feudalism.

F. NON ACCOUNTABILITY OF COMMITTEES TO GRAM SABHA

The committees constituted by PRIs are not accountable to the Gram Sabha. They are only accountable to the Gram Panchayats. If they are required to submit their findings

and suggestions before the Gram Sabha also, transparency and deficiency in working of such committees will automatically increase.

G. INSTITUTE OF GRAM SABHA HAS LOST ITS SIGNIFICANCE

Gram Sabhas are the bedrock of grassroots democracy. The legal provisions indicate that Gram Sabhas should act as institutions of local self-governance providing valuable inputs to Panchayati Raj Institutions and a watchdog in the interest of village communities. However, in actual practice the gram sabha has not risen to the expectations of the lawmakers. The gram sabha being a new institution has not received adequate attention in most states, which have emphasized more on the functions and powers of gram panchayat.

It has been made mandatory in Haryana to have Gram Sabha meetings during a fixed period as decided by the State Government. As such Gram Sabha meetings have been fixed during the period 15th May to 15th June (Hari baithak), and 15th November to 15th December (Shravani Baithak). This has been done to ensure that the people are at least aware of such meetings taking place in their panchayat. However, the reality is that the people do not attend these meetings. They do so without really understanding its purpose. Moreover it is treated as a mere formality by the block level government officials who are more concerned about filling up the proceeding book rather than actually discussing anything.

Article 243A of the Constitution of India provides that gram sabha **may** exercise certain powers and perform functions at the village level. But neither the powers of gram sabha nor the procedure required for the functioning of these bodies have been spelt out in actual words. Law in Haryana prescribes that at least two meetings of gram sabha should be held in a year. *Unfortunately the minimum has been interpreted as maximum.* The provision of doing away with the quorum for meetings of gram sabha has reinforced the tendency to view Gram Sabha meetings as mere formality.

2. NEED TO ERADICATE KHAP PANCHAYAT

Khap Panchayat has been in existence from time immemorial in State of Haryana. As the iron rusts with time, the organisation of Khap Panchayat has also lost its vitality. Nobility of this institution has gone away. Following defects are noticed by the researcher in this institution:

A. IT IS NON-REPUBLIC & NON DEMOCRATIC:

Khaps in Haryana are non-republic as their heads are elected from the same family of the predeceased head of Khap. It is not elected by casting of votes among candidates of all castes. Generally the dominant caste rules for years as all the coming heads are scheduled to be from the same caste and same family. Due to this irregularity it has lost its touch within the subservient class.

Hence, values of equality and democracy are not build into the structure of Khap Panchayats. There is a need to irrigate such democratic and republic notion in it, otherwise reforms will be limited and self-defeating.

B. INHUMAN TRAITS:

Rights of an individual are not respected in these institutions. Right to life and Personal liberty, Right to freedom of choosing one's own life partner, etc are not available in Khap ridden areas. There are various instances available in history which proves that Khaps are inhuman. For Khaps, modern culture is not acceptable. On the name of preservation of culture, generally they juxtapose inhuman ordeals on the people living in villages.

C. BARBARIC AND FEARSOME:

Most of Khap diktats are against the law. 'Rule of man' rather than 'Rule of Law' prevails. They are based on primitive rule of laws, which are not suitable in present times. Decisions made and punishments imposed by Khap are generally barbaric and fearsome.

D. NO CONCERN ON SOCIAL EVILS LIKE GENDER AND CASTE INEQUALITY

Khap Panchayat has no concern on gender inequality and caste inequality as it differentiates poor with rich. Instead of resolving them, social evils like female foeticide and caste discrimination are found more prevailing in khap governing areas. When we have sophisticated institutional and constitutional bodies, why do we need Khaps for?

E. DEGRADING STATUS OF WOMEN

Women are neither adequately represented nor they are consulted while taking drastic decisions in Khap meetings. Khap never did anything about the declining sex ratio of Haryana.

F. LACK OF VALID AND SCIENTIFICALLY INDEXED LITERATURE

Authentic and scientifically indexed data is not available on Khap Panchayat. Hence a fresh academic enquiry with a wider scope of study is needed to be conducted.

G. AMBIGUOUS 'BHAICHARA' NOTION.

Endogamous marriages are prohibited in such areas. Further various surnames in Guhand (vicinity of village) are considered as Bhaichara Gotras i.e. brotherly surnames. Marriage with Bhaichara gotras are not acceptable in such regions. Instances of declaring spouses of such marriages as brother and sister are available in present.

Similarly it also bans intra-gotra marriages. It is highly debatable, as such marriages are not prohibited in Hindu Marriage Act, unless they fall in degrees of prohibited relationship or sapinda relationship.

VII

OBJECTIVE OF STUDY:

Panchayati Raj Institutions, being the lifeline of local self-administration, is an important subject of study which has not been treated with such importance since many years. Law relating to Panchayati Raj system in State of Haryana was the Punjab Gram Panchayat Act, 1952 from 1st November, 1966 till 1994. But pursuant to the 73rd Constitutional amendment in 1992, the Haryana Panchayati Raj Act, 1994 was framed which came into force w.e.f. April 22, 1994. Thereafter Haryana Panchayati Raj Election Rules, 1994 were formulated on 24th August, 1994 followed by Haryana Panchayati Rules, 1995, notified on 16th February 1995. Subsequently the Haryana Panchayati Raj Finance Budget/ Accounts/ Audit/ Taxation and works rules 1996 were also notified on 14th August, 1996. Having regard to these laws the objectives of the study are,

1. To examine the constitutional and legislative framework regarding the Panchayati Raj Institutions in State of Haryana,
2. To examine the reports of various committees and commissions and judicial trends towards Panchayati Raj Institutions,

3. To assess the origin, growth and development of institutions in particular the Khap Panchayats.
4. To find out the frontiers where constitutionally evolved Panchayats and society backed Khap Panchayats meet.
5. To study the composition, function, nature and announcements made by Khap Panchayats and to study if a pattern emerges out of their procedure.
6. To understand legislative and judicial responses towards the Khap Panchayat.
7. To determine whether there is a need for providing a comprehensive Nyaya Panchayat Legislation or Village Courts Act in State of Haryana,
8. To identify the gaps and challenges in implementing a self-governing Panchayati Raj System from view point of various committees and suggest possible solutions.

VIII

RESEARCH HYPOTHESES:

To achieve the above mentioned objectives the research hypothesis rests upon following assumptions:

1. Concept of Panchayati Raj Institutions, as a grass-root level democracy, is still in the stage of development.
2. The role of Khap Panchayats is regressive in nature.

IX

RESEARCH METHODOLOGY:

For a systematic study application of appropriate research methods, tools and adoption of scientific bent of mind are sine-qua-non. It has an important bearing on the collection of reliable and accurate information as well as results of the study. The present study is a doctrinal cum empirical study aimed at reviewing the law relating to Panchayati Raj Institutions in State of Haryana and to find out the frontiers where constitutionally evolved Panchayats and society

backed Khap Panchayats meets. Case study methods as well as interview and questionnaire methods shall be applied to achieve these objectives.

X

THE UNIVERSE OF THE STUDY:

Law relating to Panchayati Raj Organisation is a very complicated as well as a vast subject and hence it requires serious thought, a thorough discussion, meticulous planning and committed implementation. Scope of the study is wide because there are issues within the issues intermingled with each other and they need to be settled down. The Universe of the study shall be confined to the district of Rohtak, Jhajjar and Kurukshetra. The sample size will be of approximately of 300 respondents.

XI

REVIEW OF LITERATURE:

‘Laws Relating to Panchayati Raj Institutions in State of Haryana with a special reference to Role of Khap Panchayats’ is a novel subject. Much research work has not been done on this topic. So, the researcher will be more confined to the Primary sources of data. But still, heed has been paid to secondary data too. The review of previous literature concerning the topic can broadly be classified into three divisions. They are:

- A. Panchayati Raj in India
- B. Panchayati Raj in State of Haryana, and
- C. Panchayati Raj and Khap Panchayats.

A. Panchayati Raj in India:

There is a diffuse body of literature on Panchayati Raj in India covering a wide variety of topics. There have been historical studies, general studies, micro studies, regional studies done at the micro level and macro level studies which are the outgrowth of the reports of seminars, conferences and group discussions, reports of research projects etc.

Among the historical studies, **Panchayati Raj in India: Theory and Practice**⁵⁷ (2009), authored by **S.L Goel** and **Shalini Rajneesh** mainly gives the historical background. It contains 18 Chapters, having traces of Panchayati Raj Culture in Haryana. *Chapter-I* of the book describes about the genesis, growth and diversification of Panchayati Raj⁵⁸. It says that Panchayati raj was in existence during Vedic period in ancient India and was working well as the people were carrying out their personal and official duties based on 'dharma'. *Chapter-II* describes about the Good governance in rural local areas and impact of 73rd Constitutional Amendment of various states of India⁵⁹. Researcher takes the help of these chapters in tracing the development of PRIs in India. Book also lays emphasis on importance of strengthening the institute of Gram Sabha. *Chapter-IV* of the book lays down the role of Executive officers in the Gram Sabhas, Social Audit and its imperatives, Attitude of Bureaucrats towards Gram Sabha, Inadequacy of People's Association and Organisation, etc.⁶⁰ Further the other chapters of book lays emphasis on Composition, Nature, powers and functioning of Gram Panchayats, Taluka/Block panchayat, Zilla panchayats. Hence it deals with all the administrative organization of Gram Panchayats, Panchayat Smiti and Zila Parishads. *Chapter-XII* focuses on the need of Women empowerment and Strategies to be adopted for this concern⁶¹. It highlights the Commitments of Tenth Plan to Empower Women, its approach, strategies and programs, etc. In this chapter various problems associated with women are also discussed like female foeticide, forced marriages, non-participation of women in Gram Sabha meetings, Dormant Woman Sarpanch etc. Researcher derives the condition of women in Panchayats from this section.

But it does not show the conditions of SCs and STs of villages in toto. It is also silent about various limitations associated with the PRIs. It does not describe the problems like nominal executive powers, no adjudication powers etc. It is also silent upon the role of PRIs in rural development. Similarly on the existence of parallel traditional Panchayats and their interference in matters of village panchayats, it is a mute spectator.

The ideology of Mahatma Gandhi coupled with the historical development of these institutions is also described by **Dr. Jitender Narayan** in **Panchayati Raj: The Indian Model**

⁵⁷ S.L. Goel and Shalini Rajneesh, *Panchayati Raj in India: Theory and Practice* (Deep & Deep Publications, New Delhi, 2nd Ed., 2009).

⁵⁸ *ibid* at 9.

⁵⁹ *ibid* at 41.

⁶⁰ *ibid* at 107.

⁶¹ *ibid* at 305.

of Participatory Democracy⁶² (2003). He started with describing Gandhi on political decentralization. Later on he explained the historical developments of PRIS in India. According to him, local governments had been in existence in India in the form of village communities and governments much before the British came to India. Then he traced the history in detail upto 1992. His study was mainly concerned with the state of Madhya Pradesh. He found that Madhya Pradesh was the first state to conduct elections to usher in Panchayati Raj in 1994 in accordance with the 73rd Amendment to the Constitution. Madhya Pradesh was also the first to introduce Right to Recall. His study shows that in this new phase after 1992, some states like Madhya Pradesh and Kerala have really done a wonderful job in less than a decade of working with these institutions, while the experiences of some states like Bihar and Tamil Nadu is found to be not encouraging. State Level leaders do not seem to be interested in sharing powers with the representatives of PRIs even after it had been made mandatory by the Constitution.

Thus, researcher finds that in many States PRIs have a bright picture to offer whereas the picture of some of the States is not so bright but at the same time it cannot be termed as disappointing. Moreover, participation of weaker sections of society viz. SC, ST, BC and women in decision making and decision implementation processes at the grass root level, has given a new and fresh lease of life to these institutions and made them more representative. But the author lacked in presenting the organizational structure of PRIs and their functions and powers. Hence, need of general study of PRIs in India is anticipated for further research.

Functioning of Panchayats in India⁶³ (2008) written by **Dr. S.K. Sharma** is a complete text on the formation and working of the Panchayati Raj Institutions. It discusses in detail the powers and responsibilities assigned to Panchayati raj institutions by Constitution (Seventh Amendment) Act of 1956 and later by 73rd Constitution Amendment Act of 1992. It contains eleven Chapters and an Annexure describing the relevant portion of 73rd Constitution Amendment i.e. Part IX. *Chapter-I* of the book gives details of functioning of Panchayats. It calls the 'Gram Sabha' with an alternative name viz., "*The People's Council*"⁶⁴. *Chapter-III* is about Participation of Marginalized Sections: Women and Dalits. It says that in Haryana, Women sometimes do not attend meetings due to socio-cultural factors like that of not being

⁶² Dr. Jitender Narayan, "Panchayati Raj: The Indian Model of Participatory Democracy" *Journal of Constitutional and Parliamentary Studies*, 71-88 (Jan- Dec 2013).

⁶³ S.K. Sharma, *Functioning of Panchayats in India*, (Sublime Publications, Jaipur, 2008).

⁶⁴ *ibid* at 9-12;

allowed to sit with their male counterparts. When women attend meetings, men start gossiping against them, pass comments and laugh at them. Due to this, they got discouraged and start avoiding meetings. Hence the down looking approach of society towards women has been described by the author. *Chapter-IV* lays emphasis on Participatory Local Planning.

This book gives researcher a broader understanding of the whole machinery of PRIs. But during the appraisal of whole record a question crept into the mind of researcher, as to, why these institutions are required in India as separate bodies? Are the Central Government and state Government not sufficient for the upliftment of rural masses? On these questions the book is found insufficient.

Researcher found the answer of these questions in a latest book entitled **Democratic Decentralisation in India: Experiences, Issues and Challenges**⁶⁵ (2016), which is written by **E. Venkatesu**. This book focuses on the emerging practices and issues in the functioning of democratic decentralization in India after 73rd and 74th Constitutional Amendment Acts. Based on extensive field work all over India, it is an effort to reflect the ground reality of the functioning of local governance at the grassroots level in recent times. Chapter 12 of this Book, written by Ramesh Kumar, contains “*Emerging Conflicts between Panchayati Raj Institutions and Khap Panchayats in Haryana*” at page number 188-202. *Chapter-I “Local self-government thought in India: Some Reflections on Gandhi and Ambedkar”* by G. Viswanadham points interesting distinctions between their ideologies⁶⁶.

Similarly, there have been general studies on Panchayati Raj which has given a textual treatment to the subject. These studies cover almost all aspects of PRIs. **Rural Development Administration in the 21st Century**⁶⁷ (2006), authored by **Surat Singh** and **Mohinder Singh** is one of such book which attempts to examine some of the Consequence of Panchayati Raj system in social, political and administrative spheres of rural India. It gives suitable answers to vital questions through fruitful discussions on various facets of rural development administration. Contents of this book include: Part I: The Thematic Dimension; Part II: The Concepts and Approaches; Part III: Structural and Functional Dimensions; Part IV: The Decentralised Governance Dimension, engulfing 39 Articles in form of Chapters by learned scholars. *Chapter-*

⁶⁵ E. Venkatesu, *Democratic Decentralisation in India: Experiences, Issues and Challenges* (Routledge, 2016).

⁶⁶ *ibid* at 9-20.

⁶⁷ Surat Singh and Mohinder Singh (eds.), *Rural Development Administration in the 21st Century* (Deep and Deep Publication, New Delhi, 2006).

XIV⁶⁸ has an article by R.K. Sharma, on topic entitled “*Role of Administration in Sustainable Rural Development through Rural Diversification: Emerging Issues*”⁶⁹. It highlighted the role of local administration in sustainable development of nation. The main focus of the article is that development begins at root, not from shoot.

There have been some analytical studies done at micro-level restricted to one or other tier of the Panchayati Raj set up. **Omvedth** in his article on **Women, Zila Parishad and Panchayati Raj: Chandwad to Vitner**⁷⁰ (1990) has made an empirical research on Vitner, a remote village in Maharashtra’s Jalgaon district, which has voted a women’s panel in the gram panchayat elections and choose a woman as sarpanch. He found that only in Village Methikheda an urban born activist stimulated the process while in all other villages it has been local women who have taken the initiative and very often they have confronted not only ‘male’ political power but also the forces of communalism. He gave an example of Salod village where peasants and agricultural labourers not only elected an all-women panel, but this Hindu-majority village has chosen a muslim woman as Sarpanch. After the perusal of this article researcher found that today as the reality of reserved seats looms in the municipalities, male leaders are trying to spread the theme that this will hamper development since “women have no experience, understanding nothing”. But neither in the villages nor in the cities are women ready to remain ‘dung’ any longer.

There are some in depth studies which looked into certain isolated functional aspects of Panchayati Raj and there are others which have confined their investigation to certain geographical regions, a block, district or State. In **Panchayati Raj in India: Emerging Trends across the States**⁷¹ (2005) author **R.P. Joshi**, described the organisations of PRIs in various States of India and their relative differences. It describes that participation and control of governance by the people of the country is the essence of democracy. Such participation is possible only when the powers of the State are decentralized to the district, block and village levels, where all the sections of the people can sit together, discuss their problems and suggest

⁶⁸ *ibid* at 128;

⁶⁹ R.K. Sharma, “Role of Administration in Sustainable Rural Development through Rural Diversification: Emerging Issues” in Surat Singh and Mohinder Singh (ed.s), *Rural Development Administration in the 21st Century: A Multi-Dimensional Study*, 128 (Deep and Deep Publications, New Delhi, 2006).

⁷⁰ Gail Omvedth, “Women, Zila Parishad and Panchayati Raj: Chandwad to Vitner” *Economic and Political Weekly* 1687-1690 (Aug 1990).

⁷¹ R.P. Joshi, *Panchayati Raj in India: Emerging Trends across the States*, (Rawat Publications, Jaipur, 2005).

suitable solutions and plan execute as well as monitor the implementation of the developmental programs.

B. Panchayati Raj in Haryana:

After perusal of the Panchayati Raj system in Country, it is found by the researcher that Panchayati Raj System is not uniform in whole country. It varies from State to State. Even the 73rd Amendment Act, 1992 itself gives discretion to States in some matters to legislate their own laws. Hence the researcher felt the need of examining the Panchayati Raj system of different States and in particular of Haryana and Punjab. Most of the literature on Panchayati Raj in Haryana appears in form of articles written in various journals and periodicals or as articles contributed in seminars and symposium. There are few books also written on this aspect.

In this regard the complete profile of PRIs in State of Haryana is given by **Ranbir Singh** in **Status of Panchayati Raj in the States of India, 1994 (1995)**⁷². He started by explaining the socio economic profile of Haryana. According to him, traditionally the rural areas of Haryana had the institutions of Bhaichara Panchayats. He proceeded further by explaining the growth of PRIs in Haryana. He explained the three tier structure of PRIs in Haryana. He has also discussed certain enabling amendments in Punjab Village Common Land (Regulation Act), 1961 and their impact on Haryana. He has also discussed certain central schemes implemented by Panchayats.

But the major loophole in this paper is that it does not considered Gram Sabha as an essential institution of Panchayati Raj. It only gave a passive reference to Gram Sabha, which has lost its vitality due to sub-alterm political culture of rural masses in Haryana.

Nirmala Buch was the first writer which the researcher found to describe all the important aspects of Gram Sabha. She has added Gram Sabha as an important PRI along with the three PRIs which others have highlighted in their papers. In her article **Gram Sabha and Panchayati Raj (2012)**⁷³, she has expressed two divergent views on place of village panchayats in independent India, expressed by Mahatma Gandhi and Dr. Bhim Rao Ambedkar. She states that, Mahatma Gandhi had favored Village Swaraj, strengthening of Village Panchayats and giving them centrality in local governance but Dr. Ambedkar believed that the villages represented regressive India, a source of oppression. Hence Panchayats and their organization were therefore placed as Article 40. She expressed the role of Gram Sabha in 73rd Amendment is

⁷² Ranbir Singh, *Status of Panchayati Raj in the States of India, 1994 73* (Institute of Social Sciences, New Delhi, ed.1., 1995).

⁷³ Nirmala Buch, "Gram Sabha and Panchayati Raj" *Social Action*, 1-15 (Jan- Mar 2012).

to enable each and every voter of the village to participate in decision making at local level. The provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 are also dealt by the author to elucidate the role of Gram Sabha. She felt the need of activation of Gram Sabha would make Panchayati Raj in Country ore transparent and accountable. To affirm it, the Sarpanchs were asked in the study about the tools of transparency adopted by them. Almost all affirmed that they submit details of accounts in Gram Sabha meetings. But this book does not give details relating to other PRIs formed under the Haryana Panchayati Raj Act, 1994.

In this regard **Land Laws in Punjab and Haryana**⁷⁴ (2009) authored by **Neety Kaul** is a complete book. It is a commentary on The Haryana Panchayati Raj Act, 1994. It includes general provisions relating to PRIs, Conduct of Business, Duties, Functions and Powers of PRIs etc. But it still does not fulfill the present research as it does not provides for latest Panchayati raj Amendments as done in 2016 relating to Elections of PRIs in Haryana. In matters of Haryana Panchayati Raj Act, 2014 too, it lacks cohesiveness. Further it does not give a complete appraisal of other laws applicable on PRIs of Haryana.

In this regard, **The Punjab Panchayati Raj Act, 1994**⁷⁵ (2002) authored by **G.S Jaswal, B.S Chawla** contains a commentary on various Acts applicable to State of Haryana before the enactment of Haryana Panchayati Raj Act, 1994. The book proved to be a great help to the researcher as it describes the object and reasons of every such enactment and their various provisions. These Acts are still in use in State of Haryana, as an external aid to interpretation of Haryana Panchayati Raj act and allied rules. Some of these rules are Punjab Gram Panchayat Grant of loans (For Nightsoil Compositing) rules, 1960, Panjab Village Panchayat Works Rules, 1952, etc. It is one of the major books which is included in the syllabus of law students of various national and State Universities. This helped the researcher in understanding the various sections of Haryana Panchayati Raj Act, 1994 and jurisprudence behind enacting those sections in the Act.

C. Panchayati Raj and Khap Panchayats:

There is a very small body of literature on Panchayati raj and Khap Panchayats. It is either in part of some book or written as article in some journal.

⁷⁴ Neety Kaul, *Land Laws in Punjab and Haryana* 384 (Chawla Publications, Chandigarh, 2009).

⁷⁵ G.S. Jaswal and B.S. Chawla, *The Punjab Panchayati Raj Act, 1994* (Chawla Publications, Chandigarh, 4th Edition).

In an article entitled **Khap Panchayat in Haryana: Sites of Legal Pluralism**⁷⁶ written by **K.S. Sangwan**, the origin, working and relevancy of Khap panchayats along with the other PRIs are explained in detail. It cleared that mostly Khap Panchayats in State of Haryana are ridden by Jat community.

But it failed to explain the history of Jat or Khap Panchayats. In this regard another article, entitled **Jats the ancient Rulers (A Clan Study) (1980)**⁷⁷ written by **Bhim Singh Dahiya** depicted that Aryans are the ancestors of Jats. It also told the common taboos and rituals of Aryans and Jats. This book contained 21 Chapters. Relationship with Poms and the Mauryas on page 138, and with the Mandas at page no 127 has been described. Author at page no 47 told that according to **Aidda**, the religious book of the Scandinavian people, the ancient inhabitants of Scandinavia, were "Jattas" who were called Aryans. Even at the present time, these people call themselves Jats, whether they are found in India or Pakistan or Afghanistan or Central Asia or Denmark, or Germany, etc. It also said that Khaps are the legacies of the tribal councils, formed by various tribes with a purpose of facilitating resolution of intra-tribal disputes and inter-tribal inter-course. the word Khap is perhaps derived from the Saka word **Satrapy** or **Khatrapy**, and means an area inhabited by a particular clan.

But he failed to bring coherence between these traditional Panchayats and modern Village panchayats. He further did not explain as how these panchayats can survive in present scenario along with constitutionally backed panchayats.

Meenu Singh in her article entitled **Harmonious Coexistence of Khap Panchayat and A Gram Panchayat- A Case Study of Village Danoda Kalan (2014)**⁷⁸, has brought into limelight the relation between a constitutional Gram Panchayat and the traditional Khap Panchayats. She has chosen the village Danoda Kalan (Danoda collectively used for Danoda Kalan and Danoda Khurd) the head quarter of the Sarv Jatiye Binain Khap. The 52 villages of Haryana which have a majority of Nain Gotra Jats, come under the domain of Binain Khap. Danoda Kalan is a village in Narwana tehsil of Jind district of Haryana State. It puts light on the special connection of the Binain Khap with Danoda Kalan Gram Panchayat. She points that the

⁷⁶ K.S. Sangwan, "Khap Panchayat in Haryana: Sites of Legal Pluralism" in Kalpana Kannabiran and Ranbir Singh, *Challenging the Rues of Law: Colonialism, Criminology and Human Right in India* (Sage Publication India Pvt. Ltd., New Delhi, 2008).

⁷⁷ Bhim Singh Dahiya, *Jats the ancient Rulers (A Clan Study)* (Sterling Publishers, New Delhi, First Edition 1980).

⁷⁸ Meenu Singh, "Harmonious Coexistence of Khap Panchayats and a Gram Panchayat- A Case Study of Village Danoda Kalan" 4 *Indian Streams Research Journal* 1-8 (2016);

Pardhan of Binain Khap is invariably chosen from this very village Danoda Kalan. This paper explored the mutual coexistence and bilateral relations between Khap and a Gram Panchayat and; study the influence of Binain Khap as an organisation and its activities. It pointed out the effect of Binain Khap on the structure, development and functioning of Danoda Kalan.

This author has explained only the positive aspect of Khap panchayats. She did not present the dark side, the ills associated with Khaps, as to how various sections of society like SCs, STs and women are deprived of their right to life and private liberty. The status of women in Khap ridden areas is well explained by **Deepe Awasthi** in her pioneer book, **Khap Panchayat, Women and Honor Killing (2016)**⁷⁹. It is collection of twenty chapters categorised in to four sections, viz.,

- A. Understanding the Khap Panchayats
- B. Khap Panchayats and Discrimination against Women,
- C. Khap Panchayats, Honour Crime and Laws,
- D. Khap and other Non-State Agencies.

From this book researcher got to know regarding the Khaps and their origin, expansion, constitution, ideology, legality and challenges created by them and about their dispute resolving machinery known as Khap panchayats. These Khap panchayats attracts the attention of media due to their verdicts promoting various types of honor crimes including honor killing. This book also focuses on the issue of brutal killing of couples residing in khap affected areas and opt for inter caste, inter religious and sagotra marriages.

This study reveals that Honor Killing is the major ill associated with Khaps. The researcher intends to suggest the measures as to how such activities of Khap Panchayats can be restrained. A famous incident of ‘Manoj & Babli honor killing’ knocked the mind of the researcher. It has not been given in detail by the author in her book.

The novel **Manoj and Babli: A Hate Story (2013)**⁸⁰ written by **Chander Suta Dogra** published by **Penguin India** gives a complete insight on this matter. It is a true story of the honour killing of Manoj and Babli. In this painstakingly researched book, writer elucidates how the couple eloped, breaking the taboo of same-caste marriage, and was seized and brutalized by the girls people, with their bodies being eventually dumped into a canal. Manoj and Babli,

⁷⁹ Deepe Awasthi, *Khap Panchayat, Women and Honor Killing* (Kalpaz Publication, New Delhi, 2016).

⁸⁰ Chander Suta Dogra, *Manoj and Babli: A Hate Story* (Penguin India, Gurgaon, 2013).

newlyweds, from Karora village in Kaithal district, Haryana, were brutally murdered by Babli's relatives, on the diktats of the Banawala khap panchayat for marrying in the same Jat gotra. Babli was forced to consume pesticide by her brother, while Manoj was strangled with a cord in front of Babli. Their bodies were wrapped in gunny sacks and dumped in Barwala Link Canal in Hisar district. Tacitly approving the deed, the village people did not attend the funeral; the tardiness of the local police and other agencies bordered on acquiescence. It was left to Manoj's mother, Chandrapati, and sister Seema to fight for justice. The book powerfully describes how, with the support of the media and women activists, they stood up to intimidation, social ostracism and the fury of the khaps or Jat councils across North India, not just Haryana, when the five accused were sentenced to death in a landmark judgement. It brilliantly exposes the face-off between those who abide by the law and the upholders of archaic traditions that clash with it.

But this novel neither gives any reasons of occurrence of it nor tries to suggest measures to curb this problem. It only describes the story of Manoj and Babli till their death and post death circumstances. Another novel, **There is no 'Honour' in 'Killing' (2015)**⁸¹ by **Yuvraj Khetan** attempts to understand how the heinous act of murder can be considered "honourable" in India, where hundreds of young lovers are killed each year for the sake of family "honour." This book explored the various aspects of "honour killings" and tries to understand its continued existence in Indian society. It also tried to assess the impact "honour" killings have had on society and the extent to which they affect people. It looks at efforts to improve the current situation through legislation as well as education.

This novel is a comment of Honor killings committed on behalf of Khaps. It does not throw lights on other evil diktats of Khaps. An another example of such diktat is given by **Prateek Goyal** is his recent article **The Kangaroo Courts that put Khap Panchayats to Shame (2015)**⁸². It represented the story of Mangal Singh Kamble, a resident of Maharashtra, who was harassed by the Khap Panchayat after he married a girl of some other village by performing havan and fere. In his tribe these ceremonies were not acceptable so the Khap fined him. His wife was also harassed by the elder women of Panchayats as she was forced to undergo purity test. After appraisal of this article researcher came to know that the Jat Panchayat is a parallel judicial system that plays a dominant role in the lives of the nomadic and denotified

⁸¹Yuvraj Khetan, *There is no 'Honour' in 'Killing'* (KW Publishers Pvt Ltd, First ed., 2015).

⁸² Prateek Goyal, "The Kangaroo Courts that put Khap Panchayats to Shame" 12 *Tehelka* (2015).

tribes of not only North Indian States but of Maharashtra also. Women are the worst sufferers at the hands of these panchayats. They are not allowed to become members of these tribal councils; they are mortgaged as commodity and have to pass a chastity test to warrant their marriage as legal. They cannot even seek justice against the atrocities because they are not allowed to represent in person to the council. Only a male member of their family can represent them. Punishments such as branding their tongue or other parts of the body with hot metal, stripping them naked, raping them and imposing fines are quite common. In order to prove their innocence, women have to go through torture tests laid down by the panchayat such as picking out a coin from boiling oil, placing a hot iron metal in hands, running without spilling water from the pot on their head and other superstition-based rituals.

This rightly shows the condition of Indian women in Khap areas. But it does not comment on the situation of Dalits i.e. SCs and STs in these areas. It also does not suggest the measures to be taken to uplift the status of women in these areas. An another author, **Juhi Gupta** in her article **Caste Culture and Khap: No Honour, Only Killings (2014)**⁸³ found that Khap wield much more power than the statutory panchayats in states of Haryana, Rajasthan and Uttar Pradesh. Survival of the institution of 'Khap' during such a long passage of time demonstrates not only its resilience but also its suitability for the people inhabiting the long tract extending from Madhya Pradesh and Malwa to Sindh, Punjab and Multan. Hence she concluded that instead of scrapping this traditional institution it is required to bring concentrated efforts by polity, civil society and media to put in order the anachronistic institutions of Khap.

Hence there are two lines of debate on position of Khaps. One line support these institutions while other feels for their eradication. In none of these studies the Khap Panchayats of Haryana are directly addressed, while in proposed study the Khap Panchayats in Haryana constitute the major category of research.

⁸³ Juhi Gupta, "Caste Culture and Khap: No Honour, Only Killings" 2 *International Journal of Research in Humanities, Arts and Literature* 39-48 (Jul 2014).

XII**CHAPTER PLAN**

Chapter-I: Introduction

Chapter-II: Genesis, Growth and Development of Panchayati Raj Institutions in State of Haryana

Chapter-III: Constitutional and Legislative Framework relating to Panchayati Raj Institutions in State of Haryana

Chapter-IV: Institution of Khap Panchayat in State of Haryana

Chapter-V: Judicial Attitude towards Khap Panchayats

Chapter-VI: Empirical Study in Relation to Role of Khap Panchayats in State of Haryana

Chapter-VII: Conclusions and Suggestions

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