



Supreme Courts Recent Verdict and its repercussions

Relevancy

- ✓ G.S. Paper 2
- ✓ SC's recent verdict and issue related to it
- ✓ Situations of Dalits in India
- ✓ Rationale behind exclusion of anticipatory bail
- ✓ Issues related to the judgement

Recently:

- ❖ The Supreme Court has diluted the stringent provision of denial of anticipatory bail in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- ❖ The judgement stated that public servants and private employees can only be arrested after a preliminary inquiry.
- ❖ In case of a public servant the appointing authority must give permission in writing (in the case of the public in general, the SSP's permission is needed) — and that a magistrate can extend arrest only after written permission is secured and anticipatory bail must be given unless a prima facie case of crime is made out.

What is the Issue?

- The appointing authority is hardly expected to give in writing permission to arrest his junior.
- If the appointing authority happens to be of the same caste or if the employee concerned enjoys a good rapport with him, he may not give permission at all.
- Political pressure may also be brought on the appointing authority or the SSP not to give permission to arrest the accused.

What is the situation of Dalits in India?

- India has over 180 million Dalits.
- A crime is committed against a Dalit every 15 minutes. Six Dalit women are raped every day.
- Over the last 10 years (2007-2017), there has been a 66% growth in crime against Dalits.
- The NCRB data shows that the rape of Dalit women has doubled in the last 10 years.
- The figures represent only a tip of the iceberg since most Dalits do not register cases for fear of retaliation by higher castes.
- Even if a case reaches court, the most likely outcome is acquittal due to caste biases at every stage.

What was the rationale behind exclusion of anticipatory bail?

- In the Statement of Objects and Reasons of the Prevention of Atrocities Act, Parliament had clearly noted that when Dalits assert their rights, vested interests try to terrorize them.
- Accordingly, keeping in view the special nature of crimes against Dalits, anticipatory bail was excluded.
- Moreover, constitutionality of this exclusion had been upheld by a five-judge bench of the apex court in Kartar Singh.

What are the issues with the judgment?

- The court has deviated from the established judicial opinion on the subject.
- The Supreme Court had clearly said that anticipatory bail provision for the first time was introduced in 1973 and it is merely a limited statutory right and not part of right to life and personal liberty under Article 21.
- Also, Section 22 of the SC/ST Act already protects public servants from prosecution if they acted in 'good faith'.
- If there is concern about the 'presumption of innocence' of the accused, the protection of anticipatory bail should be extended to the accused in all cases and under all statutes.



- The judgment will have a chilling effect on the already underreported crimes against Dalits. And thus, must be reviewed.



Write answer on brainyias.com
Write in real time conditions
Get your answer evaluated by experts.
Artificial intelligence embedded software.
Evaluation of 6 parameters.

Supreme Court's verdict on Khap Panchayats and its guidelines

Relevancy

- ✓ G.S. Paper 2
- ✓ Verdict related to the choice of consenting adults to love and marry as a fundamental right
- ✓ Why Khap Panchayats are a concern
- ✓ Court's observations and guidelines

Recently:

- ❖ Supreme Court in its recent verdict has upheld the choice of consenting adults to love and marry as a part of their fundamental rights.

What is the verdict?

- The judgment came on a petition filed by NGO Shakti Vahini to curb honour crimes.
- The court held that the consent of the family, community or clan is not necessary for marriage.
- This is to safeguard young couples under threat for marrying outside their caste or religion.
- The Court also issued a set of guidelines for the authorities, to stop interference by khap panchayats.
- The guidelines issued by the Court will be in place till the government comes up with a law.

Why are Khap Panchayats a concern?

- Khap panchayats are the self-appointed village courts.
- They wield enormous influence in villages of several states of India.
- They are often seen responsible for the growing number of honour killings in the country.
- They group against young couples to force their presence and dictate punishments.
- These "feudalistic" entities have no reluctance in committing crimes.
- The "sense of honour" perpetuates the idea of not to marry outside one's caste, clan or religion.
- Masculine dominance becomes the sole governing factor of perceptive honour.
- The police turn a blind eye and the administration hardly questions them.
- Women are treated by the khaps as servile persons who have no desire for autonomy.
- Their families are either silent spectators or active participants in their torture.
- To highlight the terror inflicted on women, the Supreme Court gave a list of actions which trigger honour-based crimes.

They include:-

- loss of virginity outside marriage
- unapproved relationships
- refusing an arranged marriage
- asking for divorce



BRAINY IAS

- demanding custody of children after divorce
- causing scandal or gossip in the community
- even “falling victim to rape”

What are the Court's observations on this?

- The apex court ridiculed the “elevated sense of honour” of elders, the collective and khap panchayats.
- It observed honour killing that guillotines individual liberty, freedom of choice and one’s own perception of choice.
- The human rights of a person are not mortgaged to the so-called honour of the family or clan or the collective.
- Khap panchayats were condemned for their belief that their duty is sanctified and their action of punishing the hapless victims is inviolable.
- It termed the elders, presiding over murder in broad daylight, as “patriarchal monarchs”.
- The verdict thus comes down heavily on crimes committed in the name of honour.

What are the guidelines?

- The state governments should identify districts, sub-divisions and/or villages concerned.
- These are areas where instances of honour killing or assembly of Khap Panchayats have been reported in the last 5 years.
- Officer In-charge of the police stations of the identified areas needs to be cautious.
- Any instance of inter-caste or inter-religious marriage within their jurisdiction coming to their notice should be taken care of.
- They should inform to the immediate superior officer.
- Also the jurisdictional Deputy Superintendent of Police (DSP) and Superintendent of Police should be intimated.
- Once done, the DSP or a senior police officer should immediately interact with the members of the Khap Panchayat.
- It should be made clear that convening of such meeting/gathering is not permissible in law, and should ultimately be prevented.
- Despite these, if the meeting is conducted, the DSP should personally remain present during the meeting.
- She/he should ensure that no decision is taken to cause any harm to the couple or the family members of the couple.
- If this fails, each one participating in the meeting besides the organisers would be personally liable for criminal prosecution.
- Discussion and participation of the members of the assembly meet should be video recorded.
- The DSP should ensure this, as this is the basis on which the law -enforcing machinery can resort to suitable action, later, if needed.
- The DSP shall submit a proposal to the District Magistrate/Sub-Divisional Magistrate of the District/Competent Authority of the concerned area.
- This is when the gathering cannot be prevented and/or is likely to cause harm to the couple or members of their family.
- The authority can issue orders to take preventive steps under the CrPC.
- Prohibitory orders under Section 144 CrPC can also be invoked.
- Arrest of the participants in the assembly under Section 151 CrPC can also be approved.
- The jurisdictional police official can file an FIR under the appropriate provisions of the Indian Penal Code.
- This is when, despite all preventive measures, if Khap Panchayat has taken place and passed any diktat against a couple/family.



BRAINY IAS

- Upon registration of FIR, the Superintendent/Deputy Superintendent of Police should be intimated.
- She/he, in turn, should ensure that effective investigation of the crime is done.
- Immediate steps should be taken to provide security to the couple/family.
- If necessary, steps to move them to a safe house within the same district or elsewhere should be taken.
- The District Magistrate/Superintendent of Police must deal with utmost sensitivity, the complaint regarding threat administered.
- After the marriage, if the couple so desire, they can be provided accommodation on payment of nominal charges in the safe house.
- This would be for a period of 1 month to be extended on monthly basis but not exceeding one year in aggregate.
- The decision would be taken depending on their threat assessment on case-to-case basis.
- The initial inquiry regarding the complaint should be entrusted by the District Magistrate/Superintendent of Police to an officer of the rank of Additional Superintendent of Police.
- She/he shall conduct a preliminary inquiry and ascertain the authenticity, nature and gravity of threat perception.
- On being satisfied as to the authenticity of such threats, a report should be submitted to the Superintendent of Police in one week.
- The District Superintendent of Police, on such report, should direct the Deputy Superintendent of Police in-charge of the concerned sub-division.
- This is to cause to register an FIR against the persons threatening the couples and, if necessary, invoke Section 151 of CrPC.
- Additionally, the DSP should personally supervise the progress of investigation and ensure that the same is completed.
- The designated Court/Fast Track Court earmarked for the purpose will try criminal cases pertaining to honour killing or violence to the couple(s).
- The trial must proceed on day-to-day basis.
- It must preferably be concluded within 6 months from the date of taking cognizance of the offence.
- Police or district officer/officials failing to comply with the directions will be considered as an act of deliberate negligence and/or misconduct.
- This is if such official(s) do not prevent the incident or take appropriate actions thereafter, despite prior knowledge of it.
- Departmental action would be taken under the service rules.
- The action shall be initiated and taken to its logical end, preferably not exceeding 6 months.
- The states are directed to take disciplinary action against the concerned officials.
- The State Governments should create special cells in every District.
- This is to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage.

The special cell will comprise of the

1. Superintendent of Police
 2. District Social Welfare Officer
 3. District Adi-Draavidar Welfare Officer
- These special cells should create a 24-hour helpline to receive and register such complaints.
 - They are also to provide necessary assistance/advice and protection to the couple.
 - The different state governments and the centre should work on sensitisation of the law enforcement agencies.
 - There should be an institutional machinery with the necessary coordination of all the stakeholders.



BRAINY IAS

- The Home department must take this initiative and work in coordination with the state governments.
- This is to mandate social initiatives and awareness, to curb such violence, and meet the goal of social justice and rule of law.



Write answer on brainyias.com
Write in real time conditions
Get your answer evaluated by experts.
Artificial intelligence embedded software.
Evaluation of 6 parameters.