

## The Theory Of “Volkgeist” By Savigny – An Intervention With Khap Panchayats In India

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The concept of a spiritual or psychic personality that functions in a variety of states and reveals itself in a wide variety of ways, such as through language, folklore, and the established legal system is denoted by the term "Volkgeist." According to Savigny, the fundamental characteristic of every given legal system is the "manifestation of the spirit of the people who formed it."<sup>1</sup>

"Savigny was also responsible for incorporating the idea of the Volkgeist into the legal analysis of his historical period. According to Savigny, the law, like language, is a manifestation of the "common consciousness of the people" and is driven by "internal, silently functioning energies."<sup>2</sup>

Khap panchayats are entirely distinct from the gram panchayats that are outlined in our constitution and are characterized by a high degree of self-proclamation. The most typical way to think of them is as a collection of communities that have banded together due to similarities in both their geography and their social structure. These caste-based panchayats are responsible for carrying out the duties of administration, organisation, and the resolution of disputes in their respective territories. Even though these panchayats do not have a constitutional basis, they yet continue to violate the personal liberties of individuals to a criminal degree and impose their arbitrary decrees.

In this project, we hope to achieve an inference on the plausibility of any relevance or of any consonance of Khap panchayats and their so-called "Laws" with Savigny's concept of Volkgeist. This inference will focus on the plausibility of any relevance or of any consonance of Khap panchayats and their so-called "laws."

### *Hypothesis*

The project is predicated on the idea that Savigny's Theory of Volkgeist does not adequately account for the Khap Panchayats in its scope of coverage.

### *Objectives*

- In order to investigate the Volkgeist idea.

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<sup>1</sup> Dias RWB, *Jurisprudence* (5th edn, Lexis Nexis 2013)

<sup>2</sup> Mathias Reimann, "The Historical School Against Codification: Savigny, Carter, and the Defeat of the New York Civil Code."

- Gaining an understanding of the concept of Khap Panchayats in India
- In order to investigate whether or not Khap Panchayats come under the purview of Volksgeist

### ***The Question of Research***

How Relevant Is the Theory of Volksgeist to Khap Panchayats in India in the Context of the Present Day?

### ***Methodology***

The research methodology that was selected for this project is doctrinal in nature, and the sources that were used are secondary sources such as certain research articles, books, and other such materials.

## **Savigny's Volksgeist**

As a part of the curriculum for historical school, Savigny presented the idea of the Volksgeist. He desires for it to comprehend the connection that exists between the constitution and the people.

Friedrich Carl Von Savigny is referred to as:

Savigny was born on the 21st of February in 1779, and he passed away on the 25th of October in 1861.<sup>3</sup> He is credited with being one of the founders of the historical school. He championed the idea that the meaning and content of existing systems of law could be studied via investigation into their historical roots and the ways in which they have been changed over time.

Savigny, who lived before Darwin, referred to the legal system as the end product of an evolutionary process. As a result, his theory is sometimes referred to as "Darwinian before Darwin."

## **An Overview of the Historical School**

The core tenet of the historical school of thought was that a nation's customary law is the nation's "really living law," and that the responsibility of jurisprudence is to discover this law and characterize, via historical research, the social provenience of it. Acceptance of this approach did not necessarily imply consensus on its theoretical or practical repercussions, similar to how this was the case in other schools of thought.<sup>4</sup>

## **Development Of The Historical Approach:**

It was a reaction to natural law, which relied on reason as the foundation of law and ran counter to the prevalent belief at the time.

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<sup>3</sup> Britannica, T. Editors of Encyclopedia (2022, February 17). Friedrich Karl von Savigny. Britannica, Encyclopedia. <https://www.britannica.com/biography/Friedrich-Karl-von-Savigny> accessed on 16<sup>th</sup> March 2023.

<sup>4</sup> Beiser, Frederick C., 'Savigny and the Historical School of Law', *The German Historicist Tradition* (Oxford, 2011; online edn, Oxford Academic, 19 Jan. 2012), <https://doi.org/10.1093/acprof:oso/9780199691555.003.0006>, accessed 22 Aug. 2022.

It was a reaction against analytical positivism, which had created a soulless and sterile sovereign and rendered coercive law devoid of moral and cultural values; this phenomenon is referred to as a "gun-men scenario."<sup>5</sup>

## **The Fundamental Postulates of Historical Method**

When making a decision about a legal dispute, judges that employ historical jurisprudence do so by taking into account factors such as tradition and custom in addition to history.

It views law as something that has been passed down from previous generations and is the product of the diverse societies' prevalent customs, traditions, and beliefs.

It views the development of law as being on par with the development of biological systems and as an evolutionary event rather than a fabrication that is arbitrary, whimsical, or artificial.

The law is not merely a nonfigurative set of regulations that are imposed on society; rather, the attitude of law's lies in members of society both from the past and from the present. Law has deep roots in social and economic aspects.<sup>6</sup>

The recognition, the establishment of regulations, and the observance of those regulations by each and every member of the community are the fundamental components of law.

The only way for a legal system to be considered authoritative is for it to be developed from principles that have been around long enough to be proven reliable. The concept of the *Volksgeist*, which is a sort of public awareness, serves as the basis for the law. Many people believe that custom is the single most important source of law.

The law evolves alongside society but also eventually succumbs to its changes.

## **Volksgeist**

The concept of a spiritual or psychic personality that functions in a variety of states and reveals itself in a wide variety of ways, such as through language, folklore, and the established legal system is denoted by the term "*Volksgeist*."

According to Savigny, the fundamental characteristic of every given legal system is the "manifestation of the spirit of the people who formed it."<sup>7</sup>

"Savigny was also responsible for incorporating the idea of the *Volksgeist* into the legal analysis of his historical period. According to Savigny, the law, like language, is a

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<sup>5</sup> CK Allen, *Law in the Making* (7th edn, Clarendon Press 1975).

<sup>6</sup> Michael Harbsmeier, "Volksgeist as Method and Ethic: Essays on Boasianethnography and the German Anthropological Tradition."

<sup>7</sup> Abraham Hayward, "Frederick Charles Von Savigny's Of the Vocation of Our Age for Legislation and Jurisprudence."

manifestation of the "common consciousness of the people" and is driven by "internal, silently functioning energies."<sup>8</sup>

According to Savigny, German law reflected the collective consciousness or "Spirit" of the German people. [H. Kohn, "Romanticism and the Development of German Nationalism," 12 *The Review of Politics* 443 (1950)] As a result, the law is always changing and evolving, just as the German people have done throughout history, and it can only be understood accurately in the perspective of history, both from the past and from the present. Savigny believed that each nation's population had a comparable effect on each nation's law, and that this method was required for a proper knowledge of law that may result in more effective laws. This strategy, according to Savigny, was important for a proper knowledge of law, which may result in more effective legislation.

Therefore, the "common consciousness or the popular spirit of the people" is what is meant when we talk about the *Volksgeist*. Savigny had come to the realization that the law is both the materialization of the spirit of the people as well as the product of the collective consciousness of the populace. The concept of *Volksgeist*, which may be translated as either the consciousness of the people or the will of the people and which includes the traditions, habits, practices, and beliefs of the people, serves as the basis for the foundation of law.

This hypothesis is meant to serve as a cautionary tale against hastily enacted legislation and the implementation of conceptually revolutionary ideas on the judicial system if the popular will cannot be mustered to back them.

The idea that the law is a reflection of the will of the people was Savigny's central thesis. It is not the result of deliberate law but rather the gradual evolution of the collective awareness of the state.

The idea behind Savigny's *Volksgeist* is that the legal system of a state is profoundly determined by the history, culture, and traditions of the citizens living in that nation. The expansion of legal norms is directly proportional to the degree to which people accept them. As a result of the fact that the law must constantly be in line with the general consensus, According to *Volksgeist*, custom not only comes before legislation but also ranks higher than the law itself. According to him, a people's legal system is an element of their culture.<sup>9</sup> As a result, the development of law was not the result of any arbitrary act or of any legislation; rather, it was a response to the distant powers that may be found in the national spirit of the people.

The validity and applicability of laws do not extend to every situation. Because every culture has its own distinct language, etiquette, and constitution, it is inevitable that it will also establish its own legal customs. He is adamant that there is a link between the law and language. Neither of these can be applied to the situations of other people or other nations in any way. Since the *Volksgeist* is reflected in the legislation of the people, it is imperative that research into the legal system be conducted in order to track the development of the *Volksgeist* over time.

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<sup>8</sup> Editors of Britannica, "Friedrich Karl von Savigny" (Friedrich Karl von Savigny German jurist and historian) <<https://www.britannica.com/biography/Friedrich-Karl-von-Savigny>> accessed August 22, 2022.

<sup>9</sup> Fromm, H., Finkelkraut, A. and Friedlander, J. (1996) "Reason 'or' 'Volksgeist?'" *The Hudson Review*, 49(1), p. 152. Doi: 10.2307/3851955.

Savigny was of the opinion that "a proper code of law could only be an organic system based on the true fundamental principles of the law as they had developed over time." According to Savigny's method, law is the result of the *Volksgeist*, which embodies a nation's entire cultural history and expresses deep convictions anchored in the society's common experience. According to Savigny's method, law is the result of the *Volksgeist*...

The *Volksgeist* is the impetus behind the gradual evolution of the legal system throughout the course of history. Therefore, according to Savigny, it is vital to have a comprehensive understanding of the history of people in order to study the law accurately.

### **According to Savigny's own words**

In Savigny's view, German law was a manifestation of the *Volksgeist*, or collective mentality, of the German people. Law can only be adequately understood in the context of both the past and the present, and it reflects both the deeply held beliefs of Volk psychology as well as their commonly held moral standards. The sluggish development of law throughout the course of history was driven by the *Volksgeist*, which was continually shifting and developing alongside the changing and developing population of Germany. Savigny was of the opinion that the people of each nation had a similar influence on their respective legal systems.<sup>10</sup>

In the earliest eras to which real history goes, it will be seen that the law had already reached a permanent character, one that was particular to the people, just like their language, general behavior, and constitution. To the contrary, these circumstances have their own independent existence; rather, they represent the specific faculties and propensities of an individual, which are inextricably linked in nature and only appear to have separate characteristics to us because of the way in which we perceive them. The common conviction of the people, the shared sense of an inner necessity, barring any notion of an accidental and arbitrary genesis, is what unites them into a single entity, and it is this that acts as their unifying force.<sup>11</sup>

Therefore, in Savigny's perspective, law, much like language, is the product not of an arbitrarily chosen and purposeful will, but rather of the slow, gradual, and organic formation of institutions over time.

In the same vein, he also asserts that "The common consciousness of the people is where the basis of the law finds its existence and its reality. As it shows itself in exterior deeds, as it appears in practice, manners, and conventions, we grow familiar with it as it unfolds before our eyes. According to Savigny, "custom is the symbol of positive law."<sup>12</sup>

Therefore, it is evident that Savigny believes that custom is the origin of law and that *Volksgeist*, also known as common awareness, is the ultimate foundation of every legal system.

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<sup>10</sup> Luis Kutner, "Legal Philosophers: Savigny: German Lawgiver."

<sup>11</sup> Beiser, Frederick C., 'Savigny and the Historical School of Law', *The German Historicist Tradition* (Oxford, 2011; online edn, Oxford Academic, 19 Jan. 2012), <https://doi.org/10.1093/acprof:oso/9780199691555.003.0006>, accessed 22 Aug. 2022.

<sup>12</sup> Tony Bennett, "Cultural Studies and the Culture Concept" (T&F Online, January 26, 2016) <<https://doi.org/10.1080/09502386.2014.1000605>> accessed August 22, 2022.

The study of ancient Indian jurisprudence properly belongs to a school of jurisprudence known as historical jurisprudence. The German jurist Savigny (1799-1861) is considered to be the school's founder, while the British jurist Sir Henry Maine was Savigny's student (see Maine's 'Ancient Law'). According to Savigny, the law is not a phenomenon that was intentionally produced but rather was the result of the progressive distillation of the *Volksgeist*, the spirit of the people. The law did not originate from human hands. As a result, Savigny was a staunch supporter of the common law and was opposed to the establishment of statutes. Custom needs to be supplemented with the writings of legal scholars as the law evolves from a few simple principles in primitive societies to complexity in later societies. However, the writer should only bring into detailed shape what he finds as raw materials, which are the customary rules in society.

## Indian Context

Initial practices in India included inequality between men and women, the practice of sati, and child marriage; but, as the society developed, such constraints were eliminated from the community. Modern India does not engage in any of these activities. Custom has always played a significant role in the development of Hindu legal doctrine.

The "Code of Manu" was the law that had to be followed throughout India. *Sruti*, which literally translates to "what was heard," was the authoritative source of law and was also sometimes referred to as "the formal source of law."<sup>13</sup> *Smriti*, which literally translates to "next in order," refers to the remembrance. Tradition is followed by the next. After them come the *Parishads*, *Puranas*, and *Mimansa*, among other texts. As a result, custom served as an essential foundation for the legal system in ancient India. "When a country is subdued by conquest, whatever customs, traditions, and familial usages predominate in that area shall be preserved intact."

To quote Manu, the custom that "has come down by immemorial tradition and obtains among the castes pure and mixed, is called approved usage." The Sage, *Devala*, who is cited in "*Parasar-Madhava*", believed that any customary law that is prevalent in a district, city, town, or village among the learned, the said law must not be disturbed even though it is contrary to *smritis*. For example, if there is a law that states that As a result, in some instances it was determined that the weight of customary law carried more significance than the written text of *smritis*, which is the formal law. As a result of this, the idea known as "*Factum valet*,"<sup>14</sup> which translates to "For a fact cannot be changed by a hundred texts," was developed.

Articles 244, 244A, 371A, and the Fifth and Sixth Schedules of the Constitution all make it very plain that the framers of the Constitution were deeply concerned with the preservation and upkeep of the traditional legal systems of the various tribes. Documentary evidence in this regard can be found in the debates held inside the Constituent Assembly. Article 371 A stipulates in a clear manner that no Act of Parliament pertaining to Naga customary law shall apply to the State of Nagaland unless the Legislative Assembly of

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<sup>13</sup> Patrick Olivelle, *Manu's Code of Law: A Critical Edition and Translation of the Manava-Dharmashastras*, (Oxford University Press 2005).

<sup>14</sup> Derett JDM, "Factum Valet: The Adventures of a Maxim" (1958) 7 *International and Comparative Law Quarterly* 280

Nagaland agrees to do so by means of a resolution. This provision is included in the Constitution of India.

Some of the practices of the indigenous people have made their way into Hinduism, and some of the more beneficial practices of Hinduism have found their way into the lives of indigenous people. Sri Sahu collaborated with the indigenous people of Orissa. He had profound understanding, and he argued for the preservation of the traditional legal systems of the tribes. Sri Gopinath Bardoloi joined him in his vehement advocacy for the preservation of certain Ao Naga and other Hill Tribe traditional institutions.

What he said is essentially, "There are certain institutions among these hill tribals that, in my opinion, are so good that, if we tried to eliminate them, I think it to be quite wrong."

A valid custom has a few pre requisites. The following elements are necessary for a tradition to be considered legitimate<sup>15</sup>:

#### ***Antiquity-***

According to the Hindu Marriage Act of 1955, Section 3(a), it is required that the custom be followed for a significant amount of time. It should have an old feel to it. In India, a custom does not necessarily have to be "immemorial" in the sense that the term is used in English law. It has been established time and again by the legal system that a tradition is sufficiently ancient if it can demonstrate that it is at least one hundred years old. Derett is of the opinion that it has served its purpose if it has been around for forty years.<sup>16</sup>

#### ***Continuity-***

Antiquity is not nearly as important as continuity. A breach in continuity will put an end to a custom. A law that is no longer relevant can be repealed, but the only way to remove a custom is to simply stop following it. Assume that it has been determined that a tradition has been practiced for the past 400 years, but that it has not been continued in modern times. It's possible that this is sufficient evidence that it was abandoned.

#### ***Certainty-***

A custom must be definitive and unambiguous; it cannot be hazy. One is obligated to demonstrate with a satisfactory level of assurance precisely what the convention entails and to what extent it can be applied. Let me provide an example. A general statement to the effect that divorce by both parties agreeing to end the marriage is permissible under customary law is insufficient. It is necessary to provide evidence that the purported tradition is in practice.

#### ***Reasonability-***

It shouldn't be too out of the ordinary. It should come as no surprise that a society's ideals shape its conceptions of what is and what is not acceptable. It changes depending on the time of day and the location. It is not a valid custom to follow an irrational tradition, even when traditions are not always based on sound reasoning.<sup>17</sup>

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<sup>15</sup> Michele Doherty., *Jurisprudence: The Philosophy of Law* (Old Bairy Press).

<sup>16</sup> Davis, D.R. *Recovering the Indigenous Legal Traditions of India: Classical Hindu Law in Practice in Late Medieval Kerala*. *Journal of Indian Philosophy* **27**, 159–213 (1999). <https://doi.org/10.1023/A:1026483519342>

<sup>17</sup> Ryngaert, C.M.J., Hora Siccama, D.W. *Ascertaining Customary International Law: An Inquiry into the Methods Used by Domestic Courts*. *Neth Int Law Rev* **65**, 1–25 (2018). <https://doi.org/10.1007/s40802-018-0104-y>

### *Morality-*

A tradition that lacks morality is invalid. In the same way that the standard of reasonability can change through time, the standard of morality can also change depending on the society in which one lives. Therefore, a tradition in which adoptive parents give the natural parents of the child they are adopting a sum of money at the time of the adoption or a tradition in which the trustees of religious institutions are permitted to sell their trust is invalid since it goes against morals.<sup>18</sup>

It should not be in contradiction with public policy or the law.

A tradition that goes against the grain of public policy is invalid. A practice among dancing girls that allowed them to adopt one or more daughters has been declared invalid because it goes against both public policy and accepted standards of behavior. It is unacceptable for a custom to contradict statutory law. It is possible to give effect to a tradition that runs counter to a sacred law, but it is impossible to do so with a statutory law.

The term "Khap Panchayat" refers to a system of social administration and organisation that is prevalent in the states located in India's northwestern region. This system is comprised of villages that are bound together by caste and geography. Gram Panchayats are self-proclaimed tribunals with full legality and authority among their caste's divisions as the custodians of honor. These Gram Panchayats operate in a manner that is completely distinct from our constitutional Gram Panchayats. The United States Constitution does not provide a basis for these; hence they cannot be considered real courts. However, they do carry out dispute resolution in rural areas with the goal of controlling the behavior of people or groups.<sup>19</sup> They are not democratic and are dominated by men; they have unwritten laws, and their judgments are clearly illegal and unconstitutional; they act on whims and fancies; and they enforce self-created norms that are sanctioned in the name of defending society's morals and values. They ensure that the centuries-old customs are kept alive by enforcing them. Senior citizens who have a grand hold both at the local and provincial level and who assert to be considered as upholders of village norms, custodians of rural cultures, and guardians of public morality make up the majority of the powerful members of the dominant caste that make up the Khap Panchayats. These members are generally considered to be the guardians of public morality.<sup>20</sup>

The Khaps have proved their social resilience and the political adaptability of their structure for the masses they govern by moving from several forms of government, such as tribal to village to monarchical to modern republican mode. One has to ask if market-oriented propagandists or popular political strategists have the power to eradicate an institution with such a long and illustrious history.

"Justice has arisen from the natural world. As a result, certain practices have become ingrained in our culture as a result of the value they bring. Finally, the fear of the law, and

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<sup>18</sup> Arthur Scheller Jr., *Law and Morality*, 36 *Marq. L. Rev.* 319 (1953). Available at: <http://scholars.hip.law.marquette.edu/mulr/vol36/iss3/12>

<sup>19</sup> Devi N, Parihar A. *Khaps in Haryana, Gender and Honor: A Field Study*. *Social Change*. 2021; 51(3):379-395. doi:10.1177/00490857211013593

<sup>20</sup> Ratika Thakur, AK Sinha and RK Pathak, "Khap Panchayats in Transition with Contemporary Times: An Anthropological Evaluation."

even religion, lends legitimacy to those regulations that have both arisen from the natural world and been endorsed by custom."<sup>21</sup>

A custom is a practice that has been practiced in a particular location for a long period. A custom can become a rule of law if it has been in continuous usage for a long time, it does not violate public policy, and it is acceptable. Such customary laws are more accepted in society than major legal changes. Finally, for a custom to become codified law, it must be proven that it is ancient, reasonable, continuous, and conforming.

It is said that Khaps have a mythological connection with Lord Shiva and his Ganas; however, to this day, we do not have any historical record of Khaps, and we do not get any reference of the word Khap anywhere in the historical literature except for the records that are available with some of the Khaps themselves. Khaps were highly active during the mediaeval times.

It is one of the oldest institutions, and it has evolved through a number of distinct times since it was first established in 701 B.C. Khap Panchayats have a long and illustrious history.

There are documented references to the old concept of Khap' that date all the way back to the period of the Rig Vedic.

Historically, society was organized into clans or under a structure known as the Panchayat. A clan was founded around one enormous gotra or a group of gotras that were intimately related to one another at the time. Decisions concerning the activity of these social groups were made under the auspices of and with the agreement of a Council of five elected members...

There was a "Sarva Khap" for each of the Indian states of Haryana, West Uttar Pradesh, and Malwa, for example. The term "Khap" comes from the word "faank," which means an off-shoot or fraction. Historically, the term "Khap" was used for the first time in Rajasthan in the 13th century. It was then used in other parts of India in the 14th century.

The gotra, also known as a sub-caste, is an exogamous patrilineal clan. Its members claim descends from a common ancestor, and they marry outside of the clan. There is a social hierarchy that occurs within the caste and particularly among the several gotras that live inside a village. This hierarchy includes the concepts of a dominant gotra and a submissive gotra. Members of the same gotra are not allowed to marry one another, regardless of whether they have ever met, talked to, or heard of one another and regardless of whether they are related by blood or not. This gives gotra its social significance. But what we discover today is that.

The traditional caste Panchayat upholds the four corners of rural life that are aikya (unity), izzat (honor), biradari (community), and bhaichara (brotherhood). It eloquently exhibits its traits by being male-dominated, and it is also being acknowledged and promoted by influential male parts of the community.

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<sup>21</sup> AAR paper titled "Hinduism as a Legal Tradition," Hermeneutics and Hindu Thought: Toward a Fusion of Horizons, edited by R. Sherma and A. Sharma, Dordrecht: Springer, 2007: 43-76

Writs were enforced by panchayats, which were often upheld by the villagers. These Writs included social boycotts, fines, forced suicides or like. Today, the caste panchayats have become highly politicized. These Courts operate in an inhumane, illegal, and arbitrary manner. Many people assert that these Khap panchayats were performing in a very positive manner in the past and judgments given by them were for the better.

When people from the same community live in more than one Patwari-level village and are led by the Panchas, this is called a "Kheda." It is at the bottom of the chain of command. Patti is the name of the second level. and it has two types: Chep Patti and Borah Pati. The most common way to classify a Khap Panchayat is by the area it covers.

- i. On the Basis of a Single Gotra and a Single Caste
- ii. Based on a single caste with multiple gotras
- iii. Based on a Multi-caste and Multiple Gotra

The Dahiya Khap, Huda Khap, Malik Khap, Sangwan Khap, and so on are all located in Sonapat, Rohtak, and Bhiwani, which are the districts of Haryana. In addition, there is the Balyan Khap in Distt. Sonapat. Together, the districts of Mujaffarnagar and Uttar Pradesh contain over 40084 villages. The members of a single Gotra within a specific caste are predominately found in a particular geographic location. This Gotra is divided up into a significant number of portions.

When all of the villages and the surrounding area are dominated by a single caste, but some of the villages are dominated by different gotras, this type of social structure is referred to as a Single Caste and Multiple Gotra system. [Caste] and [Gotra] are both terms that refer to social stratification. One such Khap is the Chaubitii organisation, which consists of 24 villages in the Meham region of the Rohtak District in the Indian state of Haryana.

The Bawal Khap of Chaurasi, which is located in the Riwari District, is possibly an example of this type of Khap. This system is well-known for having villages located in a specific geographical area, of which some villages are dominated by a specific caste and other villages are dominated by other castes but different Gotras.

Each Khap is responsible for holding its own elections to choose its leaders, who then go on to advocate the dispute on behalf of their own villages at the Sarv Khap level. The gravity of the issue determines the level of authority necessary to convene a conference, which in turn is determined by a Sarv Khap. In general, a single Khap Panchayat is comprised of 84 villages or 12 thambas. Therefore, a thamba is understood to be a collection of seven different communities.

#### The Different Types of Khap Panchayats

A Khap Panchayat can be broken down into the following four subgroups: the Sarv Khap Panchayat, the Khap Panchayat, the Tappa Panchayat, and the omnipresent village Panchayat, which is the one that can be found the most frequently. The Sarv Khap is the largest Panchayat, and it is responsible for resolving disputes between Khaps that fall under its jurisdiction.

Women are not allowed to be legislators, even when atrocities against women are perpetrated. In traditional Khap panchayats, they are regarded inferior to males, second only to untouchables and scheduled castes.. One of the most significant problems with the Sarv Khap Panchayat is that there is almost no representation of women in administrative

positions. This is a common complaint about the organisation. It is an amalgamation of many Khaps within neighboring areas in a district that have been living collectively since the ages.

The key strengths of the Khap Panchayat institution include a sense of community, cooperation, a traditional value system, and a sense of bhaichara. By arbitrating disputes or adopting decisions on issues of shared interest, the Khap panchayat's main job is to maintain harmony and peace among the many Khaps.

The Khap Panchayats have been using coercive methods to fulfill their unlawful directives.

Same gotra marriages are punishable with death by the Khap panchayats, which have widespread social approval. Despite the fact that the Hindu Marriage Act legalized marriage outside of one's caste and matrimony within one's gotra as early as 1955, marriage outside of one's caste is still a novelty and nuptials within one's gotra continue to raise eyebrows.

The Khap Panchayats enforce its summons by social bans and punishments, levy high fines, and even kill the victims or make them commit suicide; as a result, a great number of young couples are being slain because they break the laws that the Khap have established.

In 2004, the Tevatia clan in Haryana, India, issued a decree stating that households with less than two boys were not permitted to seek a village council for the settlement of property issues. This decree was made in accordance with the provisions of the Indian Constitution. The message was that households that included daughters did not merit the same level of consideration. Instances in which women have been paraded naked, raped, or even killed in the name of honor have become prevalent as a direct result of the Khap Panchayats, which have had a wholly destructive effect on the standing of women in society.

The caste panchayats' approach to resolving conflicts and making decisions reeks of revenge, is rife with sexism, and completely disregards concerns about social justice.

The Supreme Court has harshly denounced the practice of Khap Panchayats taking the law into their own hands and engaging in offensive acts that harm the personal lives of people who marry according to their preferences in relation to the case that is known as *Arumugam Servai vs. the State of Tamil Nadu*. This case concerns the fact that the Supreme Court has strongly condemned the practice. The judge ruled that these actions constitute a form of kangaroo court since they circumvent the law and take matters into their own hands, which are both completely against the law. In a report that they submitted to the Supreme Court, Justice Markandey Katju and Gyan Sudha Mishra, along with Senior Advocate Raju Ramachandran,

In 2010, the government requested an investigation into the issue of honor killings from the law commission. The commission's findings were published in a report titled "Prevention of Interference with the Freedom of Matrimonial Alliances (In the name of honor and tradition): A suggested legal framework."<sup>22</sup> In this report, the commission suggested that such honor crimes could be prevented by prohibiting the gathering of Panchayat members for the purpose of condemning the marriage and taking further action for harming and harassing.

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<sup>22</sup> 'HARMONIOUS COEXISTENCE OF KHAP PANCHAYAT AND a GRAM PANCHAYAT - a CASE STUDY OF VILLAGE DANODA KALAN' was published in 2014 by Meenu Singh in the Indian Streams Research Journal.

The idea of Khap Panchayat is closely connected to the concept of cultural relativism. In societies where Khap Panchayat is practiced, people have the mindset that their culture is superior to the cultures of other societies. This mindset motivates them to protect and preserve their culture through their own means and decisions. As a result, these societies follow the decisions of Khap without protesting them.

Today, the Khap panchayats have proven to be an essential body among the community of Jats. The institution is of paramount importance among the community, and as a result, it is the most powerful body for Jats, dealing with their day-to-day issues, maintaining the status quo of their customs, beliefs, rights, and other things, and delivering justice.

The following factors contribute to the continued vitality of Khap panchayats:

To begin, despite modernization, urbanization, and industrialization, the majority of Jats continue to be highly traditional because of their predominantly conservative culture. As a result, the kinship ties that are based on the belief that the clan descended from a common ancestor keeps them tied to this traditional institution.

Second, they have been able to thrive because the statutory panchayats have been unable to take over the role that they currently play as reservoirs of social capital. This has allowed them to avoid extinction. They have been successful in accomplishing this goal by carrying out the functions of conflict resolution and system maintenance, as well as by persistently picking up the cudgels against state oppression on the one hand and social evils on the other. Because of this, they have been able to maintain their existence.

Thirdly, the power of Khap panchayats and the unreasonable decisions that they make can be traced back to the identity crises that a large section of Jats experienced as a result of the fragmentation of landholdings and the breakdown of the joint family system as a result of the process of modernization. Both of these factors contributed to the breakdown of the traditional joint family system. As a direct result of this, the vast majorities of the Jat people who own land have become subsistence farmers and consider agriculture to be an unprofitable endeavor. Despite this, many continue to work in agriculture since they lack the resources necessary to participate in any other pursuits.

Their frustration with political party leaders and traditional politics has caused these poor peasants to look back and support the ancient concept of Khap panchayats. Fourth, Khap panchayats remain powerful because mainstream political parties do not champion the cause of marginal farmers because of their class identity, and communists are unable to do so since they are not politically powerful in Haryana.

Savigny was a great propounder and the founder of the Historical School. The Historical School basically believed in customs and traditions being the core source of law. They didn't believe in legislations or precedents but only history and traditions of a nation dictating the legal structure. On the other hand, the Khap Panchayats are a system of social administration and organisation in the northwestern states of India. This system consists of clusters of villages that are united by caste and territory.

The fundamental principle of Volkgeist, which Savigny advocated, was the "Popular opinion of the common masses," which he made it very clear he believed was susceptible to and unavoidable from change. This principle, which Savigny very clearly propounded was prone to and unavoidable from change, is blatantly negated by the Khap Panchayats, as their

practises are still archaic and mediaeval and do not in any way cater to the evolving needs of society.

Let's find out if the Concept of Khap Panchyat falls under the same category as custom because that is the driving force behind the theory of Volksgeist.

According to Savigny's definition, custom is required to adhere to the following tenants:

1. Antiquity: The Khap Panchayats unequivocally support this principle, as their history can be traced all the way back to the distant past.
2. Continuity: Since the ancient times, the Khap Panchayats have followed a method and set of procedures that are very similar to one another.
3. Certainty: The Khap Panchayats promote themselves as bodies that settle disputes, but their mechanism is not at all certain because it is based on the whims and fancies of the people who govern it rather than having its basis on certain principles. In addition, they do not have any written laws to support the decisions that they make based on their whims.
4. Reasonability: Khap Panchayats are light-years away from any rationality and reasonability in their actions, as evidenced by the fact that incidences of honor killings and rapes ordered by them lack a legitimate basis.
5. Morality: Although morality is a subjective concept, it does have some general principles that work for the welfare of people while respecting the individual rights of those people. However, Khaps have their own set of warped morals that completely disregard any individual rights.
6. It should not be in conflict with public policy and the law. The practises of the Khaps are in every way in conflict with public policy and the law, and they are a violation of the fundamental rights that are guaranteed by our Constitution.

In conclusion, following an in-depth analysis of Savigny's notion of the Volksgeist as well as the concept of Khaps, we have come to the realization that our hypothesis has been successfully proven.

Khap panchayats are not even customs as they claim to be because they do not conform with morality, the test of reasonability or follow public order. The Volksgeist, which is the manifestation of the common or popular will, is not what the Khaps base their rulings and conducts on at all.

Therefore, it can be demonstrated beyond a reasonable doubt that Savigny's theory of Volksgeist does not apply to Khap Panchayats.