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Khap Panchayat in India: Legitimacy, Reality and Reforms

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ABSTRACT - *Khap Panchayats* are the self-proclaimed courts which enjoy full legitimacy and authority among the segments of their caste as the custodian of honour. These *Panchayats* have no constitutional basis and they are not legitimate courts. Under this unconstitutional system, all members crouches around a Chabutara in a village in order to take quick, unilateral and incontestable decision on multiple issues like social transgression, marriage, offences, property rights or regarding situation threatening tranquility in a village. It is worrying to note that in the time when people make conversation via 3G technology, the Indian society has regressed to the Dark Age. Today where the society is governed by legal norms and constitutional authorities, the bodies like *Khap Panchayat* pose impediment to development and good governance. The dictates of *Khap Panchayat* are praised by the people of particular territory or community in which '*Khap*' exists; this is the most crucial impediment for abolition of *Khap Panchayat*. This paper is an attempt to find out: why do *Khaps* still exist in India? What is the source of strength of *Khap*? It presents a detail discussion on the issue and tries to put forward some possible solution.

KEYWORDS: *Khap Panchayats, Honour Killing, Kangaroo Court, Sagotra Marriages, Multiple Gotra, Caste Panchayat, Undemocratic, Unwritten Laws, Indiscrimination, Dictates, Patriarchal, itinerant*

I. INTRODUCTION

Khap Panchayat like the caste system is a traditional institution which is basically engaged in a process of dispute resolution in village communities. Traditionally every village has its own *Panchayat* or Council. *Panchayat* literally means assembly of five (Panch) prudent and respected elders chosen and accepted by village community. Usually, some mighty and powerful persons, with the coerced public consensus and without any election, group together and declare themselves the 'king of the caste', thereby constituting the so called 'Caste Panchayats'. Traditionally these assemblies settle disputes between individuals and villages. However these bodies lack any constitutional or legal basis. They should not be confused with 'Panchayati Raj Institutions'. *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.¹

II. ORIGIN AND JURISDICTION OF KHAP PANCHAYAT

Khap Panchayats, working against the Constitution, are being autocratic and less transparent in process. Till the establishment of the judicial system, *Khaps* were socially famous and relevant to harmonious settlements of disputes. With the passing of time they lost their influence. But from last few years, the issues like demands of ban on same-gotra marriages strengthened them again. Exact origin of *Khap Panchayat* can not be found out but we may broadly consider the period of its development in 600 AD. In the ancient times, when the man was living itinerant life, villages were being formed at a rapid rate and the society was heading towards civilization and better standards of living. *Khap Panchayats* are understood to have come into existence as a social system for maintenance mechanism in those agrarian societies. 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.² The *Khap Panchayats* generally consist of powerful elements of the dominant caste. They are generally senior citizens who claim to be considered as upholders of village norms, custodians of rural cultures and guardians of public morality. They have a great hold both at the local and provincial level.³

III. FRAMEWORK AND WORKING OF KHAP PANCHAYAT

Khap Panchayats are units of number of villages organised into a political council for the purpose of societal control and decision-making on social issues. The *Khap* area was inhabited by a dominant caste that had a control over most of its agricultural land, and by a single clan or by more than one clan each with a number of villages and being predominant in those villages. When a single clan had only few villages, other clans could also join into a common *Khap* for the purpose of their defense and control over their people. When a *Khap* is dominated by single clan, its headship lay within that clan. When the number of clans exceeds one, the headship goes to that clan that had more number of villages under that aegis.

Khap Panchayat is generally classified on the basis of its territorial jurisdiction. If there is one community and people of that particular community residing in more than one village of *Patwari* level headed by the *Panchas*, it forms *Kheda*. It occupies the lowest position in the hierarchy. The second, level is called *Patti* where people of a community from villages of revenue inspector level are brought under one head. *Patti* further has two kinds: *Chep Patti* and *Borah Patti*. Simply more is the number of villages under the judicature of a *Khap Panchayat*, the greater is the strictness observed in imposing its orders. Thus higher is the punishment in case of disobedience. There is also a provision of appeal. In case of appeal, the decision of *Maha Panchayat* is final, unobjectionable and unquestionable. *Sarv Khap Panchayat* may also be called for adjudication, if there is conflict between the dictate of two *Khaps* or dispute in jurisdiction or for any other serious issue. *Sarv Khap Panchayats* consist of all *Khaps* prevailing in an area. It is the *Pradhan* of the *Khap* who calls the meeting of the *Sarv Khap* when an issue between two *Khaps* need to be resolved or when the issue is of the serious nature. The nominated *Khap Pradhan* controls the proceeding of the *Sarv Khap Panchayat* till a decision is arrived at. After the detailed history of the case is presented, the other *Khap Pradhans* are invited to put their views before the meeting. After hearing out all the speakers, a smaller committee of 10-15 *Khap Pradhans* is constituted to reach a consensus. Before a decision is announced, a hand count shows whether the decision of *Sarv Khap* would be acceptable to everyone. If the issue is related to all the *Khaps*, it becomes the duty of each *Khap* to implement the decision in its respective jurisdiction. If the issue is related to a particular *Khap*, then the concerned *Khap* is supposed to abide by the decision of *Sarv Khap*. The main role of *Sarv Khap* is to maintain the peace and harmony between the various *Khaps* by settling disputes between them or by passing resolution related to the social welfare of the people such as education of girls, ban on female

foeticide and dowry, limited expenditure of the marriage and so on. If somebody is found violating the decision of the *Khap*, sanction is imposed to maintain the *Khap's* decision. *Khaps* could be classified into following categories:

- i. Based on Single Caste and Single Gotra
- ii. Based on Single Caste and Multiple Gotra
- iii. Based on a Multi-caste and Multiple Gotra

(i) 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, e.g. *Dahiya Khap, Huda Khap, Malik Khap, Sangwan Khap* and so on all of which are located in Sonapat, Rohtak, Bhiwani, the districts of Haryana and the *Balyan Khap* in Distt. Mujaffarnagar, Uttar Pradesh. These *Khaps* have about 40084 villages.

(ii) Based on Single Caste and Multiple Gotra:

When the entire villages and area dominated by a single caste, with some of the villages dominated by various Gotras, it is considered as Single Caste and Multiple Gotra system. *Chaubitii* organization of 24 villages of Meham in the Rohtak District of Haryana is an example of such *Khap*.

(iii) 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. *Bawal Khap* of *Chaurasi* in the Riwari District may be considered as this type of *Khap*.⁴

A single *Khap Panchayat* generally consists of 84 villages or 12 *thambas*. Thus, *thamba* is considered as a group of seven villages. In its hierarchy *Sarv Khap* (All Caste Council) is the highest level *Khap* which embraces a full province or a state. Every *Khap* individually elects its leaders who represent the dispute on behalf of that particular village at *Sarv Khap* level. It depends upon the magnitude of the problem that at what level a *Sarv Khap* would be required to call upon.

IV. MODUS OPERANDI OF KHAP PANCHAYAT

Khap Panchayats have been forcefully implementing their illegal dictates. The following incidents are sufficient which compel us to think that we are still living in barbaric era.

- In the Boiling oil in a pot a coin is placed and the accused has to get it out of the pot of the boiling oil. If the accused would perform the task he/she will be declared innocent. (“Kanuni daanvencho ke dar se kayam aadivasi adaalaten”, 1999, January 15, Dainik Bhaskar, Jodhpur Edition)
- Heated hot red an iron stick is placed on the palms of the accused. The palms are covered with seven *pipal* leaves and turmeric. The accused is has to walk seven steps with the stick in his palms. The accused is considered innocent if the palms are not burnt. This exercise is usually followed if there is any doubt on the character of the accused. (“Kalyug mei di sita ne agni pariksha, 2002, July 8, Dainik Bhaskar, Jodhpur Edition).

- To judge the guilt of a woman she is forced to fry 'Puris' with her bare hands in the boiling oil in a cauldron. She will be declared innocent if her hands are not burnt. ("Ve har saal deti hai agni pariksha, 2002, October 17, Dainik Bhaskar, Jodhpur Edition)
- Usually, on the basis of looks of a poor widow she is declared demon.⁵
- To impose huge fines or penalties, Seizure of lands of the accused and forcibly get possession on the same are other verdicts of Self-proclaimed Judges.⁶
- These verdicts include forced divorce and remarriage of the couples against their wishes, without any strong reasons.
- Sometimes the decision of ex-communication with the families, of the accused are taken which results in enormous mental torture and humiliation.
- A 50-year-old woman in Rajasamand, Rajasthan was allegedly paraded naked on a donkey on the orders of a self-styled village court that decided that she was guilty of killing her husband's cousin.⁷
- Gang-rape was held of a tribal girl allegedly on the orders of a Khap Panchayat in Birbhum district of West Bengal.⁸
- A Khap Panchayat or caste council in Madhi village in Uttar Pradesh allegedly stripped a woman, blackened her face and beat her for helping young couple to elope. The woman's son who tried to intervene and protect his mother was also beaten up.⁹

V. SOURCE OF PERSISTENT SURVIVAL OF KHAP

As described above being very old, *Khap Panchayats* were in the existence during the British period too. In the British period the nation was divided among many provinces and each province was governed by its own special laws. There was no uniform law for the entire nation. *Khap* might have been justified relatively at that time but their existence even after independence is questionable because presently we are living under the environment of education, individuals' rights and fundamental rights, directive principles of states, *Panchayati Raj* institutions etc. So, it is required to make an analysis of the philosophical foundation of *Khap Panchayat*. The concept of *Khap Panchayat* is closely associated with the cultural relativism. The thought of societies where *Khap Panchayat* exists is that their culture is superior than of the others. This thought leads them to protect and preserve their culture by their own means and decisions. This is why the societies in which the *Khap* exists follow the decisions of *Khap* without protesting.

Khap System cannot be abolished by statutes or any punitive action because the common conscience of people is with them. If we want to make this dispute resolution system more rational and effective, the members of *Khap* must seek to incorporate some basic-moral requirements, in coherence with national laws. The main source of strength of *Khap Panchayat* is massive community support of that particular society in which *Khap* exists. These are a great vote bank to the politicians therefore lack of

political will to abolish them propagate this social ill. Therefore to abolish the *Khap Panchayat* it is needed that peoples' support to this unconstitutional authority should be dejected by bringing awareness in the *Khap* societies. It is essential to make them start thinking that they are lacking some basic-moral principles, sentiments and values in their culture.

VI. CONTEMPORARY SOCIO-LEGAL CHALLENGES

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 dishonour is normally the result of the following behaviours, or the suspicion of such behavior¹⁰:

- (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 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, threaten, mental and are even forced to commit suicide.

Female Foeticide

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 foeticides rate is growing at an increasing rate in the entire nation, especially in North India, where it is highest. The case of female foeticide 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 foeticides. 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 foeticide. 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.

Prohibition on Sagotra Marriage

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

- (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.¹¹

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.¹² In *Arumugam Servai vs. State of Tamil Nadu*¹³, 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.

VII. RECENT DEVELOPMENTS

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 vs. State of Rajasthan (1999)*¹⁴, 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 vs. Krishna Master & Ors. (2010)*¹⁵ the Apex Court made an extraordinary move by awarding life sentence to the three accused of honour killing who murdered six persons 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 vs. State (Nct) of Delhi (2011)*¹⁶, 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 as 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 vs. State of U.P.*¹⁷, 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 inter-religious 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."

Similarly, in *Arumugam Servai vs. State of Tamil Nadu(2011)*¹⁸, 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, this Court directs 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 is continue. Unless these bodies not 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.

Allahabad High Court, in *Sujit Kumar vs. State of U.P. & Ors. (2002)*¹⁹, 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 directs the police in the State 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, the Administration must ensure that nobody harasses or ill-treats or kills such people for marrying outside his or her caste, community or class.

Legislative Reformative Practices

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

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

Law Commission has drafted a Bill to prevent interference 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 an, 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.

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 "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 also be people who are unquestionably follow the verdicts of *Khap*.
- Instead of criticizing the *Khap*, efforts should be made to 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.

VIII. CONCLUSION

It's been a high time to put a full stop on these prevailing malpractices and time demands, altogether, annihilate harsh and brutal practice of *Khap* and make the people aware about their rights because working of *Khap* in the name of honour and tradition is nothing but harm to basic human rights of individual. It is now essential for legislature to legislate on such a burning issue of *Khap* and also it requires from law enforcement bodies to prevent these derogatory practices. India being a member of the UDHR, the ICCPR and other international conventions, is also having a responsibility to initiate the mechanism which can curve up this problem. But only stringent legal measures will not be sufficient. This problem is the result of a centuries old society, having the feudal and patriarchal set-up, which can do anything for its culture and tradition. Here the need is not only to change the mindset of people today but also to step out of the old and outdated traditions so that these unauthorized actions can be prevented. With lacking of flexibility in approach the leaders of *Khap* may be found as uneducated senior persons of the *Khap* society. Through providing education to them and bringing awareness about present and prevailing law among them can make them working accordingly. Women participation is needed to encourage at the central level and a fair hearing of everyone before the final decision of the *Khap* Panchayat should be essential. This can immensely helpful in bringing social reforms in rural area.

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