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M.A, LL.M, Ph.D,

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Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

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More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

OBSTACLES OF SCHEDULED TRIBE PRISONERS DUE TO UNSOPHISTICATION

AUTHORED BY - FATHIMA SHAHANA

BBA.LLB (hon) student

Markaz law college kathapoyil, Kozhikode

Markaz knowledge city, Kannothe post, Thamarassery, Kozhikode,

ABSTRACT:

Obstacles of scheduled tribe prisoners due to unsophistication is a noticeable issue. The general characteristics of tribals like, life in forests, low literacy rates, poverty, lack of knowledge regarding technology are contributing to delay in legal proceedings for the scheduled tribe prisoners.

Kerala has 1.45% of scheduled tribe in total population. Even though Kerala is the highest literacy rate having state in India the scheduled tribes are still having a literacy rate of 64.4% (according to 2001 census). lack of economic resources, law political as well as community support, low literacy rates cause to delay in acquiring bail through appeal and increasing rate of serious offences like POCSO without intention.

This thesis mainly deals with difficulties faced by scheduled tribe prisoners in accessing bail, and arrest with mistake of law or lack of knowledge about law.

Information about scheduled tribe prisoners in Kerala correctional homes can be considered as an added value to this work. The purpose of this data thesis is to compare obstacles of scheduled tribe prisoners to other prisoners in Kerala correctional homes.

KEY WORDS: scheduled tribe prisoners, accessing bail, POCSO,

INTRODUCTION

Tribals in Kerala are the endemic population in the state. According to 2001 census Scheduled tribe population in Kerala is about 1.45 percentage of total population, among this Wayanad has the highest number of tribes (37.36%) and the list is followed by Idukki (14%) and Palakkad (10.8%)

respectively. The tribes in Kerala are geographically concentrated on the rural areas. Some of the tribal groups are food gathered .there are almost 35 major tribes ,among these paniya is the largest tribes. The empowerment in social, economic and political eras are still in diminishing growth rate for the tribal communities in India when compared to others. The scheduled tribe unworlidliness is still draw breath. As a vulnerable group the prisoners of scheduled tribes are facing the effects of naive nature of the community . Due to these unsophistication the scheduled tribe prisoners are also experiencing some obstacles when compared to others. The major issues faced by them are insufficiency of surety for bail on appeal, absence of legal knowledge lead the way to serious offences without intention.

The panoramic hill of Malabar in the northern Kerala about, Wayanad situated above 700 to 2100 meter above sea level, is a home land of various tribal communities in Kerala. In general, most of the tribals in Kerala are situated in the forests and mountains of western ghats, bordering Karnataka and Tamil Nadu.

INSUFFICIENCY OF SURETY FOR BAIL ON APPEAL AND NON PAYMENT OF BAIL

The object of taking surety is for the purpose of ensuring the availability of an accused before the court by the surety, whenever the dates of trial are fixed. A surety of the bail on appeal should provide property documents or R.C book or any other document to show proof of either movable or immovable property in their ownership . So, it is necessary to have property in ownership for a surety, otherwise the capacity of being surety is having an estate or an immovable property. While in the case of prisoners belongs to scheduled tribes also, it is necessary to have property in ownership, here comes the question of ownership of property in scheduled tribes' community. In Kerala the number of landless tribals increased in the last decades. This phenomenon will lead to the difficulty of not having enough surety for appeal on bail for scheduled tribe prisoners. According to the national crime bureau records the total number of scheduled tribe prisoners in Kerala in the year 2020 up to December 31, is 4.88% of total prisoners, but the population of scheduled tribes in Kerala is 1.45% .so here is a huge variation can be noticed in the population of scheduled tribe prisoners and their population.

The exact number of scheduled tribe prisoners are 138 as under trial prisoners and the total number of under trial prisoners are 3569, which is 3.86% of the total. In the case of convicted prisoners, the number of scheduled tribe prisoners are 155 and the total number of scheduled tribe prisoners are 2426, which is 6.38% of convicted prisoners in Kerala.

In Moti ram v state of Madhya Pradesh, AIR 1978 SC 1594, the supreme court disapproved, the process of imposing harsh conditions for sureties, for releasing the petitioner on bail, in this case the magistrate demanded sureties from his own district, rejecting the suretyship of petitioner's brother because he and his assets are in a different district. Here the supreme court held that it was not in the power of a court to reject a security on the ground because their estate in a different district. But here also the supreme court mentioned the element of property, it is considered as a ground for surety here. This will lead to a difficulty for the landless, mainly on landless tribals. In *sagayam v state*, 2017 SCC online Mad 1653, the Madras high court held that a court cannot demand production of property documents from the surety.

And the condition applicable in the case surety is only the person offering surety must have acceptable residential proof. He may be a tenant, licensee. Apart from that a beggar can also stand as surety provided, he should have some acceptable residential proof. It is stated by Madras high court. Even though supreme court does not have such an intervention, this suggestion of Madras high court is appreciable. It will definitely help the scheduled tribe prisoners to get a surety much easily. Because there is no restriction for landless or persons who were not having any kinds of property.

In Maneka Gandhi v Union of India, AIR 1978 SC 597, the court laid down that a magistrate or a sessions judge or any court demanding the production of property documents to show proof of either movable or immovable property with respect to the bail bond or surety bond is against the law, it is against article 21 of the constitution of India.

Article 21 of the constitution is the protection of life and personal liberty. That is no person shall be deprived of his life and personal liberty except according to the procedure established by law. Here the court laid down that imposing a condition of submission of property documents are against the fundamental right of a citizen.

According to the prison statistics in India 2020 report, undertrials make over 76% of all prisoners in the country. Majority of the undertrials are poor, illiterate, and are from lower castes. Nearly 68% of them are illiterate or school dropouts. Illiteracy and dropping out of school are clearcut indication of poverty. Which leads to the undertrials in jails as they often fail to arrange bail bonds.

The 268th report of law commission stated that "powerful, rich and influential obtain bail promptly and with ease, whereas the masses / the common / the poor languish in jails". In Kerala 116 prisoners imprisoned only due to non-payment of bail. The global multi-dimensional poverty index 2021, published by the Oxford Poverty and Human Development Initiative and United Nations Development Programme, the poverty level is the highest in India among the scheduled tribes, that is 50.6%. Apart from that this report also states that, five out of six multi-dimensional poor people

in India are from lower tribes or castes. According to this survey more than half of the poor people in India are scheduled tribes.

Poverty of tribals is mainly due to the land alienation. Alienation means in the form of sale, mortgage, encroachment and other type of transfer like benami transfer. For the tribals of Kerala. Alienation of land is a serious problem. Because the tribals are mainly depends upon agriculture. Alienation of lands leads to the stoppage of income through that source.

According to 1991 census figures of national commission for scheduled tribes work forces. 54.5% of tribals are cultivators and 32.69% are agricultural labourers. In total 87.19% of the scheduled tribe population are belongs to agriculture sector only. It is clearly noticeable that the majority of scheduled tribes are belongs to agriculture. So, the alienation of land will hugely affect 54.5% cultivators among scheduled tribe main workers. As well as the remaining agricultural labourers as well.

LAND STRUGGLES OF TRIBALS IN KERALA

The system of bail typically requires sureties to furnish a bond for some property valued at the amount determined by the concerned judge. The bail amount in subordinate courts, even for petty offences punishable by less than three years, is a minimum of 10000 rupees . this amount can be increased more than 30000 rupees in the case of bail before supreme court and high courts. This is a form of injustice when the majority of citizen are landless or with a very limited income. A report by Azim Premji university highlighted that 57% among the regular workers in India are earning less than 10000 rupees per month. Official data from the socio-economic caste census in rural landlessness is 57%, and this is the highest in tribal communities.

The socio-economic survey of tribals shows that, the lands are mainly alienated by themselves for meeting their expenses as well as debts. And lack of proper records of land also a floating issue for landlessness. Apart from that the Kerala land reforms act 1963 was badly affected on the tribals, under the effect of this act the settled farmers become land owners and tribals become landless. Many land struggles have been conducted by the tribal communities in Kerala. Muthanga land struggle, chengara struggle and aralam farm strike are struggles of tribals in Kerala.

In muthanga land struggle, it was followed by a series of deaths by starvation, it is arising due to the forceful eviction of tribals after declaring muthanga as a sanctuary, the tribals had launched a protest in august 2001 by a refugee camp In front of the chief minister's residence for 48 days for the disbursement of land and other rehabilitation measure for the tribals people's resident in the state. Seeing no implementation of the promise, the tribal alliance renewed their protest. The

endemic people of decided to enter themuthanga forest under the banner of “Adivasi Godhra Maha Sabha”. The Adivasi gothra maha sabha put up huts, and are recognized as the homeland of different tribal communitieslike paniyas, vetta kurumas, kattunaikkas, adiyas and malankuruma. The Adivasi families entered in the forest sought to assert the traditional right over the muthanga forest. The atrocities and firing took place at muthanga drew attention across the nation to the land struggle waged by the landless in Kerala. After 19th February 2003 actions by police forces ofthe Kerala state enters, the tribals were arrested in connection with the eviction -operation in muthanga wild life sanctuary in Wayanad. As a result of this protest 33 men and 99 women volunteers are arrested and kept in judicial custody for 15 days. Finally, these tribals are compelled to live in reduced circumstances of other tribal colonies. This was taking place in Wayanad district, which is having the highest population of scheduled tribes in India, as well as this region the birth place of different tribal communities in India. Muthanga struggle caused a huge increase in landless tribals in Kerala.

The chengara struggle was in 2007. Thousands of landless farmers including tribals seek the ownership of cultivable land as a part of long-standing promise of the state government for land distribution. This land was operated by the Harrison Malayalam plantation limited, in chengara, pathanamthitta district. In Kerala. the poor farmers are inclusive of landless Adivasis, Dalits and families from other marginalised communities, from all parts of Kerala. since then, Adivasi and Dalit land struggle in Kerala attained a new order of practice. This is the first time ever , a large-scale mass occupation of land happened in muthanga . it was dealt with violence like other states in India. The poor farmers of chengara estate pledged to fight for their right to land without using violence. But this problem is not solved yet.

After the muthanga land struggle, the Kerala government had an agreement with tribals in 2004 and bought 3060 ha of land from central government and decided to use half of the land for the rehabilitation of landless tribals. Another half for an ecotourism project. But as the response to the stay order of high court of Kerala against an earlier movement by government to convert the farmland to a private limited company, in 2009 the Kerala government decided that the company would be formed under the control of the government of aralam farm. This was takes place in Kannur. Even though the population admitted here are from landless tribals from Wayanad district, the district of Kannur is placed among the top five scheduled tribe populated districts.

NON-PAYMENT OF BAIL

The 268th report of law commission in 2017 reveals that Kerala has 116 prisoners because of non-payment of bail. And Kerala is the one among the 5 states having the highest number of prisoners

due to non- payment of bail.

The purpose of bail is to give liberty to a person for non-custodial trial. The power to grant bail is the discretionary power that is vested in the judges. The supreme court has consistently reiterated that “bail is the rule, jail is an exception”. The refusal to grant bail deprives liberty of individual by confining them in jail without trial and conviction. Two-third of India’s prison population comprise under trials from Adivasis, Dalits and other backward class communities.

In general sense under trials are aware of their right to bail, they may suffer from inability to pay the adequate amount. A recent survey shows that the 73% of total wealth in India is belongs to 1% of population. This is a huge disparity between Indian population. In the case of *Nanu Gordhan v state of Gujarat*, (1995) 2 GLR 1698, the judge held that asking a poor man to furnish an excessive bail amount is as good as refusing bail to him.

In the case of *Hussainara Khatoon and Ors v home secretary ,state of Bihar*. AIR 1979 SCR (3) 532 SCC (1)98 The petition discussed that people charged for minor offences were confined in jail for extended period of time due to inability to pay for bail. And that the judiciary, by not recognizing the differences between the ability of prisoners to pay for bail. A rich man would be able to escape the prison while the poor man would languish within jail, despite having done the same crime. The judgement highlighted that there were several under trial prisoners who are either unaware of their right to use bail or are poor to actually take advantage of it and pay the amount.

In *Maneka Gandhi v union of India*, AIR 1978 SC 597 justice Bhagwati mentioned that any system where the poorest prisoners are unable to avail of legal service due to their economic status cannot be said to be fair reasonable and just. He also says that the prisoners who have been trapped in jail for far longer than necessary should be provided legal aid for the purpose of attempting to attain bail, as there was no reason as to why they should be unjustly detained. He cautioned that it would lead to a domino effect where the people would have no faith in the administrative system and they would carry a sense of bitterness and frustration against the larger society for imprisoning them without any legitimate recourse making the system exploitative and in violation to the liberties of people.

The Bombay high court held that the application of a convict for bail during the pendency of his appeal against conviction cannot be rejected only on the basis on the ground of non-payment of the

fine amount. Justice vibha kankanwadi said once an appeal is admitted, it is required to be taken to its logical end. It cannot be even dismissed in default. It cannot be dismissed for want of the fine amount. According to justice Bharadwaj, what is sorely needed is court appointed volunteers and social workers to represent Adivasi undertrials and help them to understand and mediate court processes and ensure that they can communicate with their families.

The Indian president Draupadi murmu in the address at the constitution day celebration in 2022 November, said that “the tribal people are don’t even know about fundamental rights, the preamble and fundamental duties”. She referred to the excessive litigation costs as a major impediment in the delivery of justice and urged the executive, judiciary, and legislature to jointly evolve an effective dispute resolution mechanism that would eliminate the needs for additional jails. Days after the speech of president, the supreme court directed prison authorities to provide details of such prisoners within 15 days to the NALSA for formulating a national scheme for their release. In the ground of report provided by national legal service authority (NALSA) about 5000 undertrial prisoners were in jail despite of being granted bail. So the issue of non-payment of bail is seriously recognised by the supreme court as well.

The increasing rate of undertrial prisoners can’t be resolved by police and jail reforms itself. Because it is a longstanding issue. There is an urgent need to redress issue of the judiciary, the judiciary is itself under staffed and overworked. But this long-term issue can be resolved through two major processes that are: -

- Strengthening district legal service authorities, through providing adequate legal help from the grass root levels for the needy people can make a huge progress especially in tribes concentrated areas.
- Introducing substitute for money or property based bail system in Indian courts, availing substitutes may help in increasing the number of undertrial prisoners were in jail despite of being granted bail.

ABSENCE OF LEGAL KNOWLEDGE LED THE WAY TO SERIOUS OFFENCES WITHOUT INTENTION

The socio-economic conditions, backwardness in education and lack of awareness about the acts may leads to serious offences in tribal communities. according to the maxim “ignorantia juris non excusat” which means the ignorance of the law is not an excuse. Even though there is no intention to commit an offence, the lack of knowledge about the law leads to serious offences in tribals. When

considering this fact in showcase, the increasing rate of POCSO cases place an inevitable role in this era. Apart from lack of awareness the custom in tribals also places a major role in this phenomenon. Tribal practices are sometimes mechanically criminalised, it will lead to arrest, and will not undergo an empathetic handling by the law. For instance, the youths of tribal communities are routinely arrested under the “POCSO” act for consensually living with under 18 women of their tribe. But this is a common practice among the tribes.

POCSO Act was enacted to protect children from offences such as sexual assault, sexual harassment and child pornography ‘and to provide a child friendly system for the trial of these offences. The ministry of women and child development introduced the protection of children from sexual offences act (POCSO 2012).

The chief justice of India D Y Chandrachud urged the parliament to address the growing concerns about punishing adolescents for romantic relationships. He said that “the POCSO Act criminalises all sexual activity for those under the age of 18, regardless of whether consent is factually present between the minors in a particular case”. The tradition of tribals is developing a romantic relationship and marry early. While considering the fact the consent is present in the victims of POCSO in tribals communities. But the law didn't give any attention to that.

In Kerala 435 POCSO cases are registered in January 2023. Among these 6.6% (29) are from Wayanad, 5% (22) are from Idukki and 8% (35) are from Palakkad district. These are the areas which have a highest population of tribal communities. Around 250 men of tribal communities are estimated to have been charged under the POCSO act in the last nine years in Wayanad for impregnating their minor wives.

The age profile of child victims of POCSO act in Kerala in the year 2020 is belongs to three age groups. That are below 6 years , 6 to 12 years below groups, and 12 to 16 age group. Among this total of 559 victims, 536 are girls. And the percentage of girl victims is about 95.88%. and the boys is only about 23 that is 4.12% only. While considering the age groups of girls majority of them are belongs to 12 to 16 age group, that is 363 victims and the percentage is about 64.93%. this majority of percentage of teenager girl POCSO victims are the category where the wives of the accused of POCSO cases due to early marriage of scheduled tribe custom are belongs to. There are six categories of POCSO offenders. 16.3% that is 622 offenders are belongs to the category of friends, online friends, live in partners on pretext of marriage category. This is the category where the scheduled tribe offenders, who were married a minor girl according to their custom is belongs to.

In the year of 2016 Wayanad district in Kerala has shown the highest number of POCSO cases.

Wayanad is the district having highest population of tribal communities in Kerala. Among this paniya and kattunaykar communities are the highest number of POCSO victims. The POCSO provisions are in conflict with the decades old tribal custom, which permits a girl to live with the man they select after gritting puberty and irrespective of their ages. In march 20, 2017 many activists and tribals are conducted a hunger strike Infront of Wayanad collectorate, to demand the exclusion of tribal marriages from POCSO and to dispose of the cases .

The factual situations in the tribal communities by following their tradition has become a massive stress to their peaceful livelihood. According to the reports by histustan times a 21 year old paniya tribal youth from north Kerala's pachilakkad Vinod was simply following community custom dating back centuries, of early marriage, where the age of the bride is immaterial and marriage allowed post puberty. But two days later he was picked up by police and charged under the POCSO act. He wasn't aware of the act. So, the awareness has to be created in the tribals.

In the case of *babu v state of Kerala*, babu a 21-year-old from the paniya community from meenangadi in Wayanad district, was jailed under POCSO Act. Because he married to a tribal girl aged below 15 years, and raping his underage wife in spite of his wife pleading in court to let him go. who was sentenced under POCSO act to 10 years in prison, but later got bail due to the appeal as result of interventions activist groups, after spending three months in jail. The child welfare committee (CWC) report, 12 child marriage cases among tribals were registered in 2015 at Kerala.

A special public prosecutor in the POCSO court manjeri, Aisha p Jamal said that "the husband will have to face the consequences even if his community is unaware of the POCSO act and its implications. though girl's parents had no complaint, the court rejected bail plea citing criminal law (amendment) act 2018. So he will be punished once scientific evidence like the DNA test result is presented before the court. Marriages of minors and pregnancies also put the girl's health at risk. Hence the awareness campaign should be launched to reduce such incidents.

There are many campaigns in Kerala related to POCSO awareness. But the mainstream who needs awareness about POCSO Act are scheduled tribes. Many of the tribal youths in Wayanad were put in prison for the charge of POCSO act. And they were only following their customary child marriage tradition. Even though the act was a progressive one, its implementation was not proper. The mechanical implementation of the act without creating proper awareness leads to the law, act as against tribal communities.

The noticeable POCSO awareness campaigns in Kerala are “kunje ninakkai” by Kerala police in 2019. It was a cycle rally awareness campaign. It was a great initiative by the Kerala police, but their targeted audience were not inclusive of tribal communities. or other ways this has nothing to do with the tribals. because the language used by the tribals are different, the tribals belongs to the remote areas, like reasons.

In 2021 district legal service authority in Wayanad conceptualised a film named “inja”.it tells the story of vellan and inja who fall in love and get married under the tribal system. And inja got pregnant at her teenage. And get admitted to government hospital. since the doctor is duty bound to report such cases or risks imprisonment of six months.

Vellan is picked up by the police and charged under section 3 of the POCSO act. How Inja and Vellan’s parents make the rounds of lawyers ,courts and the police to get him freed ,makeup the rest of the film. And this film was in the language of paniya community and the actors where belongs to tribals. The propagation of the film was planned through possible screenings Even the method is effective. Apart from Wayanad the Idukki and Palakkad like other scheduled tribe’s major localities did take such an effective measure for awareness.

CONCLUSIONS AND SUGGESTIONS

The tribal communities are still unsophisticated. The modernisation has done not much change in their lifestyle. More than 87% of the tribes are belongs to agriculture sector is also a challenge for them. Because the economic welfare from agriculture sector is not guaranteed. Apart from that the increasing alienation of land also act as a challenge to fit as a progressive community. The low literacy rate also (64% in Kerala , Kerala is having above 90% in general) led to the backwardness. While a person came from an unsophisticated community, their social lifestyle challenges will effect their life in prisons as well. Their backwardness in education, poverty, low co-operation with modernisation will lead the way to comprises as accused in crimes like POCSO and languish in jails for non-capacity of non-payment of bail amount as well as arranging surety with property document.

The problem of languish in jail for non-payment of bail amount can be solved by providing financial aids by the government, securing proper income to tribal communities by proper income creation facilities that is providing job opportunities which are comparatively income secured. Issue of landlessness for security bond in bails can be solved by withdrawing the compulsion of providing property document for the purpose of being security. As well as the government should propose new farm areas like aralam farm to constitute more and more landless tribes. In the case of increasing

POCSO offences, the awareness has to be taken place in the grass root levels. Great contributions of district legal service authorities like the 'Inja' film campaign to tribal communities are will be more effective. but its proper propagation to the tribal communities at large, should be ensured. because there is no use if the message did not approach to the targeted audience. Apart from that the imposing of POCSO act to tribal communities and its effects as well as consequences should be communicate to tribal communities , for this strict notices have to be given by the apex courts in the state. The law act as same for every person until and unless in exceptional cases. So, the awareness is the only method to avoid increasing POCSO offences in tribal communities. The basis lifestyle enhancement ids also can make a betterment in the standards of life in tribal communities. But this process will take a lot more time than creating an appropriate awareness.

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