



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of 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

JUSTICE SERVED-REAL JUSTICE?

A DETAILED STUDY ON THE PANIYA TRIBE

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INTRODUCTION

India is home to a variety of indigenous ethnic groups, with an estimated 705^[1] scheduled tribes. Despite the country's freedom, these groups have been subject to various forms of discrimination. Even though it claims that marginalised groups are being treated fairly, there is still no definitive answer as to whether they are receiving the justice they deserve. While the urban and rural population are receiving the basic educational and healthcare services, as well as information about what is happening in and outside the country, these groups are still not receiving many of the same amenities. All citizens of the nation should be aware of the laws and regulations of the country, and ignorance of them is no excuse for not following them. However, in a situation where knowledge of the law is not created or given to them, why can't there be an exception for these marginalised groups, who are the original warriors of the nation.

BACKGROUND

Out of all the 48 tribal tribes in Kerala, the Paniya community is the most significant. The Paniyas are an ethnic group in India, often referred to as Paniyar and Paniyan. They are mostly located in the Wayanad District and the surrounding regions of Karnataka, making them the biggest Scheduled Tribe in all of Kerala. The Paniya people speak the Paniya language, which is closely related to Malayalam. The Paniyas give much importance to the traditions^[2], customs and cultural practices. Paniyas believe that a girl's first menstruation is a sign that she has attained the puberty age. At this time, she is regarded as ritually unclean and is forbidden to perform home chores. The day the individual reaches puberty the girl is being held in one of the hut's corners. On the seventh day, there is a ritual of purification performed. Among the

Paniyas, marriage by agreement is the most typical type of union. Other methods for a young guy to find a partner are marriage via servitude and elopement. The bride groom is obligated to pay the bride price in conjunction with a negotiated Marriage. The youngster takes the first step towards forming a marriage partnership. In the Paniya community, it is customary for the husband to give his wife's parents a yearly subscription, known as Thalapattam, on the day of the annual celebration, known as Uchal. If a spouse doesn't follow through, her parents will give her another call. Thirty kolagarn paddy (one kolagarn is equivalent to 750 grams) is the set amount during the first year and ten kolgarn in the following years.

According to the Paniyas' a girl is considered to be eligible for marriage once she attains puberty (menarche) and a ritual called "vayassariyikkal kalyanam (ceremony to celebrate menarche)" is being practiced, this is meant to intimate the community that the girl is matured enough to get married and an alliance would be fixed. After this ceremony a time period of one year is provided to arrange the monetary needs for the conduction of the marriage. A boy is considered to be qualified for marriage when he attains physical fitness.

Paniya's are unaware about the contemporary world issue and various legislative and legal provisions provided under the Indian Constitution. For instance they were unaware that the goal of POCSO act^[3] is to combat crimes of child sexual exploitation and abuse, which have not been specifically defined or have not been adequately punished. The law defines a child as anyone under 18 years of age. The law stipulates penalties depending on the level of violation. This lack of awareness disparately affected them. According to the report since 2013, 202 tribal men (including all tribal communities) were charged under the POCSO act until July 2021.

LEGAL PROVISIONS

1. THE PROHIBITION OF CHILD MARRIAGE ACT^[4], 2006

"An Act to provide for the prohibition of solemnisation of child marriages and for matters connected therewith or incidental thereto". According to the legislation, a "child" is any male under the age of 21 or any girl under the age of 18. It stipulates a punishment for anybody who approves, encourages, or officiates such weddings. Any adult male who marries a minor is subjected to the penalty. The Child Marriage Restraint Act 1929, was superseded by this Act. Although this act had an effect on society as a whole, tribes like the Paniya were remote to its provisions or implications.

2. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT

“The Protection of Children from Sexual Offences (POCSO) Act, 2012 was enacted by Govt. of India to safeguard children from sexual abuse and sexual offences. The Act clearly defines a child as any person below the age of 18 years. The POCSO Act provides punishment as per the gravity of offence.”

This statute acted as a cornerstone element that shielded minors from various forms of sexual abuse and brought justice to several victims. The efficient dissemination of this act's provisions and the raising of public knowledge of them serve as its backdrop. It is completely ludicrous to think that the marginalised populace would be aware of such legal acts, as even the educated classes of society are unaware of the laws and the penalties for such acts. According to the cultural practices of Paniya they are sanctified to be in a physical relationship once they are married which happens with the consent of both the engaging parties.

Since 2013, 422 tribal men from Wayanad have been charged under the POCSO act. Most of the men who were arrested were unaware about the existence of the POCSO act of 2012. Many ethnic groups in India are still not aware about many of the legal provisions and rights that have been enshrined in the Constitution of India. The various socio-economic disparities along with isolation from the mainstream have been a reason for the Paniyas to be unaware about the various legal provisions.

CASE STUDY

1. ‘X’, tribal youth from Paniya community –

‘X’, an ethical youth from the Paniya community was 21 when he got married in 2015 with the love of his life, a 16- time-old girl from the same lineage. They started living together after the marriage. The preceptors of the academy where the girl was a pupil came to know about the marriage after she became pregnant and informed the police who arrested him." I didn't know that this law was. Our only intention was to live together and I in no way wanted to sexually abuse her," says ‘X’. When the trial was passing, X's wife went to court and wept, soliciting that her husband be set free. It didn’t help. ‘X’ got four 10- year- sentences under various sections of the Protection of Children from Sexual Offences (POCSO) Act.. ‘X’’s wife still can’t comprehend how she could have been ravished without her knowing about it. Indeed her mother pleaded for ‘X’ before the court. But all that happened was that the Additional Sessions Court in Kalpetta, reduced the amount of judgment — and it still meant ten years in jail. On 15

September 2015, 'X' was transferred to the central prison at Kannur. Bizarrely, the Judiciary did stay true to the letter of the law in condemning him.

2. 'Y', a Paniya tribal from Pozhutana panchayath –

'Y', a 22- year-old from EMS Colony in Kalpetta . Like 'X', he'd lost his parents when young, and after studying till the 4th standard, he dropped out to become a laborer. 'Y' had no idea about indigenous provisions ensuring ethnical rights, free legal aid or laws that penalize child marriage. He was arrested from his house on 24 December 2015. A few days before that, his 16- year-old wife was picked up by the police saying they wanted to conduct a medical examination. No one knows who had complained, but the law encourages people to squeal on one another by defining punishment for those who conceal information on child marriage. Hence all state actors, from Anganwadi teachers to Tribal promoters to the police are spooked of failing to report similar cases when they arise. 'Y''s wife was taken to a shelter home and her statement recorded. Her family members were informed and later the police arrested 'Y'. "His family didn't get their land title for 15 years. He was a victim of child labour. Throughout his life when his rights were denied the law did not turn up, but it strictly took its course when he married a girl under 18, " says Dr Hari PG, a homeopath in Kalpetta who has stressed cases of tribal youth booked under POCSO. 'Y' has not entered any legal backing so far.

3. The story of 21- year-old 'Z' from Muthanga in Wayanad –

'Z', a 21- year-old Paniya working as a daily wage laborer, had an analogous experience. "I was arrested 15 days after my marriage," he said. "I suspect that ethnical promoters (who act as a link between the Adivasis and the government) who visit our colony regularly, informed the police that my woman was under- aged. I spent three- and-a-half months in jail before coming out on bail." His father, Vella, cannot walk without support and said he was frightened when he saw the police. "I felt immensely sad when police took down my innocent son and his woman from our house," he said. "We've our own marriage custom and I don't understand why the police don't like it."

ANALYSIS AND CONCLUSION

From the case analysis these observations were drawn out;

In all three cases, the socio-economic condition of the tribal men is similar. All of them belong to the same age category, they are from a poor economic background and all three did not get primary education. They were engaged in daily wage labor. When they were booked under the

POCSO ACT, they were unaware of the legal backing and assistance that they would have received. Under the Paniya community the women have absolute rights in choosing their partners. The wives were not against any kind of sexual relationship with their husbands even though they were under the age of 18.

In an electrifying speech given by Mr. Jaipal Singh Munde, who represented the tribal community in the constituent assembly and he himself was a member of the Jungli community one of the most prominent ethnical communities in Jharkhand said that as a tribal or an Adivasi he was not expected to understand all the legal intricacies of the resolution, according to him we cannot teach democracy to the tribes and we are expected to learn the actual democracy from them. The Paniyas are still lacking proper educational facilities, most of the families are not able to send the children to schools which are far off from their settlements. Most of the children, especially men, had to drop out of their educational institutions due to lack of monetary support and as we can see here men like 'x', 'y' and 'z' had to take up daily wage labor in order to feed themselves and their families from a very young age.

The victims and their spouses did not complete their elementary schooling. It is obvious that they are unaware of the law, even though several of them attended educational institutions. Despite the fact that it might be argued that the Paniya children attend school, they actually lack the legal education that is necessary to prevent them from being ignorant of the law. In a nutshell the Paniya people practice their own form of democracy and do not look to outsiders to impose their will on them or alter the long-standing traditions and practices they have followed. Every indigenous tribe, not just the Paniya's, has the same expectations.

[1] Census 2011

[2] *Paniya People of Wayanad: A Brief Ethnography*, Sahapedia <https://www.sahapedia.org/paniya-people-wayanad-brief-ethnography>.

[3] (May 23, 2019), https://nhrc.nic.in/sites/default/files/10_PROTECTION%20OF%20CHILDREN%20-%20SEXUAL%20OFFENCES.pdf.

[4] Md Shoaib, (Mar. 6, 2020), https://www.indiacode.nic.in/bitstream/123456789/15943/1/the_prohibition_of_child_marriage_act%2C_2006.pdf.