



Understanding human rights of the unidentified tribes through landmark habeas corpus case

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Abstract

The Author when was reading about the Rights of citizenry within the civil law country at that point it came to the notice of that there are certain tribes which are not identified by the Constitution of India. Once I researched I need to know that the tribes which aren't recognised by the Constitution of India. Due to certain reasons like it had been difficult for the Committee to reach them as they use to reside in remote areas and some in the dense Forest which were secluded from the society. as there was a major throw that was the language which was a barrier for communication. As there have been certain organisations which tried covering and identifying them but the efforts made weren't that effective. so this research paper talks about a few public spirited one that wore his Gown and fought for the unidentified tribe "The Former Judge of Karnataka High Court Justice K Chandru" the paper majorly revolves around the case which is landmark case in History of Karnataka High Court where tribe like Kurva which isn't identified and facing injustice from the police machinery for false charges and has got to hand over on his life. The discrimination and therefore the Dignity which is a fundamental right of every citizen who is born on the land which is inalienable in nature and granted by the constitution of India.

Keywords: human rights, unidentified tribes, criminal justice, fundamental rights

Introduction

The concept of rights is not very known to the masses as their right are such which are conferred by them when they are born on this land it is something which inherit from it and which cannot be taken away from them. when we see the title of the research paper it is quite interesting to see the coined word by the researcher that the "unidentified tribe" while thinking for a topic for the research the author felt that the Constitution of India, Universal Declaration of Rights and other various Conventions and Text which are the major Protectors and the texts which confers the rights of people were mere spectator which it comes to the rights of tribe's. When we see our Constitution of India where there is no such article that talks about the rights of unidentified tribes as it talks about schedule tribe nomadic tribe and others, But they have not considered the unidentified. This research paper is given a unique name because the people who don't have any name of the tribe have no status quo in society and no personal identity. as we should not forget that they are humans first so while dealing with this research the researcher has tried to give justice to the unidentified tribes which need identification by the Text which governs us and provided them rights which are conferred by other citizens too. As we know there are certain persons in the society who seek justice for such people like there was a s of Madras and protected the rights of people who found the landmark Habeas corpus case with the help of such cases the researcher will trying to understand the rights of the unidentified tribes.

"Human rights aren't a privilege conferred by the Govt. every person entitlement by virtue of his humanity."

-By Mother Teresa

What are Human Rights?

The rights are inherited by all citizenry no matter race, sex, nationality, ethnicity, language, religion, or the other status. Human rights are such rights that are inseparable from the person they rights include the right to liberty, freedom from slavery and torture, freedom of speech and expression, right to education, healthy environment and many more. as we everyone is entitled to these rights which out any discrimination as these are the rights which do not see through the lens of disparity and distinguish people they treat they equally which doesn't rich and poor discrimination but gives them same status and dignity and respect in the society. Even there are certain conventions and covenants and the majorly the Constitution of the Country which protects and guarantees the right to the citizen in the Human rights. Even In India if we see there is the National Human Right Commission which sees towards affairs of Human Rights where there is a Chairman who is a retired Supreme Court judge

who adjudicates the matters and looks after the administration of the Commission which plays a vital role in the protection of the Human Rights.

What is an Unidentified Tribe?

They are certain indigenous groups that are living and secluded from the world where there is no contact with these groups of people or communities. Which have isolated them to certain parts of the Jungle where there are more than 100 tribes which are unidentified and uncontacted. The empirical study state's that the government also has limited knowledge about these tribes and few encounters have been taken from the air². It is very difficult for the people to reach them and even more difficult. To converse but with all these hurdles the main question which arises in my mind is the rights of that person and their legal status in the society to which they are very much entitled.

Issue

While Human rights are a very integral part of Human life which guarantees certain rights for which he is entitled by birth and such rights which are either guaranteed or granted by the Constitution of the country such as in common law country where the written constitution is there in existence and when we talk on International Human Rights where it is world phenomena where Human rights may differ from country to country due to certain geographical and political situations but somewhere the Human rights are standardised all over the world as this can also be termed as the basic rights. The issue here which is dealt with in the research paper is that there is a pluralistic society in India where their people belongs to different caste, creed, sex, religion, community, language etc as India is full of rich history and culture when we refer to our holy text that the Bhagwat Geeta where in Chp 4 verse 13

“chātūr-varṇyam mayā sṛṣṭam guṇa-karma-vibhāgaśhaḥ tasya kartāram api mām viddhyakartāram avyayam”³

Which talks about the varna system which bifurcates based on four varnas are the brahmins, Kshatriya, vaishya and shudra and they have been allocated work according to their varnas and which even create a restriction on the caste for interchanging their work also. Where such people are been recognised by the Constitution of India with the fast forward vision of the Chairman of the community Dr B R Ambedkar who has made special provisions for the Schedule caste and Schedule tribe but somewhere it lack to identify the provisions for secure right the rights of the unidentified tribe which were left from it. Where paper tries to understand how to secure the rights of such people who are been kept away from it and spread and make aware about their rights and providing status in the society. Through the lens of Great Retired Judge of High Court of Karnataka Justice K Chandru who fought for the rights of tribal and special for the ethnical women's to secured the ends of justice which can be seen from the book which he has written ie. “Listen to My case when women approached the courts of Tamil Nadu “⁴where we will understand the ways how a public-spirited person secured the rights of ethnical.

Rule

International Conventions & Human Rights

Universal Declaration of Human Rights (UDHR)

UDHR is a holy textbook which is recognised worldwide when it comes to the subject of Human rights the text is appertained to as the primary source of knowledge. It is the Magna Carta of the Human rights where was drafted by the great intellectualists who had the knowledge and legal wit in legal aspects and cultural backgrounds from all regions of the world. Where the Declaration was proclaimed by the United General Assembly in Paris on 10th December 1949. Where it sets a common notion for all the people in the world that for the first time its sets a standard Fundamental Human rights for people and the universal protector of the rights this document is made available in more than 500 languages which even doesn't create a hurdle for any person which makes the understanding and interpretation of this rights easier for a layman also. Where it gives recognition to the inherent dignity and equal status and inalienable rights for all the members of the human society which sets a basis for the foundation of Freedom Justice and peace in the world. Where preamble of the convention states a clear idea for the protection of human rights which can be inferred through “Declaration constantly in mind, shall strive by teaching and education to market respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States “⁵ Where we also understand that human rights are equal to all rather that person is tribal or person living in the metropolitan city its doesn't discriminate the major requirement is that he should be a HUMAN not more than that.

Article 1 of the UDHR reads as under

All populace are born free and equal in quality and rights. They are endowed justifiably and heart and will act towards each other during a spirit of brotherhood.

Art. 2 of UDHR reads as under

Everyone is entitled to all or any the rights and freedoms outlined during this protestation, without distinction of any kind, like race, colour, coitus, language, religion, political or another opinion, public or social origin, property, birth or another status. likewise, no distinction shall be made supported the political, jurisdictional or transnational status of the country or home to which an individual belongs, whether it's independent, trust, non-self-governing or under the other limitation of sovereignty.

Art. 6 of UDHR reads as under

Everyone has the proper to recognition everyplace as an existent before the law.⁶

Indigenous and Tribal Peoples Convention, 1989

That on the faith-full day of 27 th June 1989 where the General Conference of the International Labour Organisation in the seventy-sixth session. where this convention recognizes the tribal and their rights where it has made a distinctive donation to the indigenous and ethnical community where similar people are isolated from the world as they're down in the remote areas where people are from out of reach where it's simply insolvable impossible for the covenant to reach where the labour organisation has made and trouble and espoused the convection which gives recognizes and protects the rights of the tribal community which will promote artistic diversity, sociological harmony of humankind to transnational cooperation.

Article 1 clause2 reads that "Tone-identification as indigenous or tribal shall be considered abecedarian criterion for determining the groups to which the vittles' of this Convention apply."

Article 3 reads as under

Indigenous and tribal peoples shall enjoy the complete measure of mortal rights and abecedarian freedoms without interference or demarcation. The vittles' of the Convention shall be applied without demarcation to manly and women like members of those peoples.

No kind of force or compulsion shall be employed in violation of the mortal rights and abecedarian freedoms of the peoples concerned, including the rights contained during this Convention.⁷

Statutes***Constitution of India, 1950***

The Country like India which follows the common law tradition where the Constitution is Supreme which governs the Nation where the text which prescribes certain sorts of rights which are termed to be Fundamental Rights which are stated in part three of the Constitution of India where there areis various Article in the Constitution which talks about the basic rights as Article 14,15,21,19 and many more which states that whatsoever which caste, race, sex, gender, language, community it does not discriminates based on that they equally recognize each and every person under the eyes of law here article 14 protects each and every citizen or non-citizen where they person may be rich or poor or a tribal person whee the person it gives equal status to all and equal protection of the law. Where the Constitution also recognizes enshrined in Article 3428 which provides relating to the specification of tribes and tribal communities or parts or groups within tribes or tribal communities where they specify and gives recognition to them such as:-

1. Adiyar
2. Aranadan
3. Eravallan
4. Irular
5. Kadar
6. Kammara
7. Kanikaran
8. Kaniyan
9. Kattu Naickan
10. Kochuvelan
11. Konda Kapus
12. Konda Reddi
13. Koraga
14. Kota
15. Kudiya
16. Kurichchan
17. Kurumba
18. Kurumans
19. Maha Malasar
20. Malai Arayan
21. Malai Pandaram
22. Malai Vedan

23. Malakkuravan
24. Malasar
25. Malayali
26. Malaekandi
27. Mannan
28. Mudugar
29. Muthuvan
30. Palleyan
31. Palliyan
32. Palliyar
33. Paniyan
34. Sholagar
35. Toda
36. Urali⁹

This is the list of the tribes which are been identified by the Constitution in the State of Tamil Nadu but there are certain tribes like KURVA which are still not identified and listed under the list which needs recognition but there are certain difficulties where such tribes are uncontacted and stay in remote but in today's era where such communities are shifting towards the cities but the government fails to recognize their rights and they are been subjected to injustice.

Case Laws

Ramasamy vs State¹⁰

This is a landmark case which was fought in the courts of madras where the rights of the tribal were at the stake where the great social activates and good associate of the great communist leader A.K.Gopalan that is the former judge and the follower of the Marxist ideology retire judge of the madras high court Justice K.Chandru who donned his black gown and fought fearlessly in the high court of madras and other courts of law for the downtrodden and the tribal. The case comes to the chambers of Justice K.Chandru through an activist lady who was the teacher Zilla School of madras where the tribal lady name Pavitra approached for the Justice for her husband namely Rajakannu.

Facts

In the landmark case of Ramasamy vs State which is also known as the habeas corpus case which was fought in the High court of the Tamil Nadu and in the first time of history, trail was conducted and the witness box was set up in the high court room. Where the fiercing lawyer K.Chandru (then high court judge of madras) The matter was heard before the division bench of justice R. Balasubramanian and A.C. Arumugaperumal Adityan. Where the case was registered regarding the custodial death of Rajakannu was registered at the instance of CBCID Headquarters Chennai CR.NO.05 of 1994 against 6 persons for the offence of Burglary. As Rajakannu was a snake catcher on the one faithful day Rajakannu called at the house of the sarpanch for catching poisonous snake which was under the jewellery locker of the sarpanch the snake was caught by the snake and the sarpanch paid him some money and gave some rich packed in the cloth bag then he went back to his house as this person to Kuraba tribe. These people knows the art of catching the snake and preparing local medicine which use to act as an Antivenom against the poison. After some days there was a theft committed at sarpanch place where the jewellery of 1,50,000/-. Police during the investigation found back that Rajakannu being the suspect in the matter. They're after police have taken Rajakannu for the interrogations to the police station and him another person Govindraju was also taken to the police station for interrogations. Before the interrogation was the police was in the search of Rajakannu, when they were unable to find him out the police had gone to the place of Rajakannu and forcefully entre in his hut and boarded his wife Pavitra by pulling her in the van and taking her to the police station and rigorously interrogated her against criminal laws procedure. During this tenure within two days, Rajakannu was caught by the police and brought to the police station and continuously interrogated. Where the Rajakannu and his Brothers were assaulted by the policemen and continuously barbaric treatment was given by the police to them and both his hands were tied to the window and both the legs were tied and hit with a lathi in the very evil manner for making him commit the crime which he was not committed. When his condition got deuterated one fine day his wife Pavitra was called to the police station for some food for him. When Pavitra was feeding Rajakannu he hardly could mofussil in his mouth. Govindraju also had some mofussil, both were in a bad state they were in painstaking situation where the police had called Allopathic medicine for them, but they were not in that state to swallow that medicine.

Where the police saw that and got angry saying that Rajakannu still showing so many tantrums and accepting the guilt which provoked him and he kicked on his chest and dragged him in the lockup and told his wife to go and at the same time there was no moment from his side and she tried to wake him up but the police threw her out and told her we see to him and policemen called the relatives of the Rajakannu and informed them that he and his brothers are missing from the lockup when his wife reached home and she got to this information and she

was very shocked. This entire incident indicated that Rajakannu was the victim of the custodial death by the policemen.

Held

Where the high court made an observation and found that in the para no. 26 of the judgement accuse no. 1 to 5 are been convicted for life and accuse no. 6 have been acquitted where the high court upheld the order of session court at Vridhachlam.11

Methods

The researcher has used the Doctrinal Form of research by analysing all secondary data which is available on Human rights and tribes and the books and the case laws and the published data by the Karnataka State government relating to tribes and there recognition by our Constitution of India. Referred to the International convention's relating to that and drawn a conclusion on the basis of the same.

Analysis

While we analyse the concept of human rights which is the standardised phenomena where every human being have inherited rights to which they are entitled to. And these rights are inalienable in nature. where there are lot many conventions and covenants which are recognised internationally and there Constitutions in the country which the researcher has analysed while dealing with this research paper where the rights of the tribal which are indigenous and uncontacted are being out of the reach of the government and constitution have not to give identification and recognition in the Constitution and therefore they are been deprived of there rights and privilege's which they are legally entitled too. Even there is less amount of awareness which is there in such a tribe because of remoteness where the tribes are settled it merely difficult for the government to reach and provide.

But it is a very sorry state of affairs where we are living in the 21st-century era and they people are living in the stone age without electricity and proper food and shelter and medical facility which is the basic need of the person and educations which also and essential right of the Children which are also not been given to them. where the intention of the drafters and the legislators coming up with the Constitution and the Conventions and Covenants where there intent and purpose is not been served to the fullest as they are created with certain intention and for welfare and benefit of certain people but somewhere it lacks.

There are certain people who fight for this people to secure the ends of justice but even they face lot of hurdles during that such as good example would be Justice K Chandru who devoted his entire life for the Tribal, Downtrodden and people who are secluded from the society and made an effort for securing the rights of the people through the Courts of Law. The man of tremendous integrity and enthusiasm for do something for the tribal and unidentified tribes which we can infer through the landmark Judgment of Ramasamy vs State where Justice K Chandru secure the rights for RajaKannu by arguing his case where he is the perhaps the only person who fought for such people pro bono and made an contribution towards the society. The man in his entire career has disposed 90,000/- cases to secure the rights of people. Where in the matter of M. Kalithai vs State of Tamil Naidu¹² where the same case of habeas corpus where her husband Mariswamy was given justice by Justice K Chandru.

Conclusion

That research has existences studied the human rights and the constitution of the India and various international convection and covenants like UDHR, ITPC and the great contribution of the international who identify and recognize and identify the tribes where it is merely impossible to contact such tribes and the ain headrail of conversations which complicates for making them aware about their rights. As they are settled in such as remote areas which are the more remote in the mofussil where government and their scheme hardly reach such tribes but awhile it is very interesting to know that the united nation of the general assembly took the efforts and realise the need of the hour that even tribal are humans they deserve rights which are exclusively under Articles of the UDHR, ITPC. When we take a glance at the constitution of India which is the magnanimous document that created the provisions for every aspects. But the schedule which identifies the tribes failed to recognize certain tribes which need to be taken into consideration by the legislatures and may amendments for the same.

The third pillar of the nation is the judiciary which plays a vital role in the protection of rights of the tribal which we have seen in above mention cases. There are certain activist and public spirit people which show their courage and interest and even dedicated their entire life for the downtrodden and the tribal and seek justice for them just like Justice K. Chandru former judge madras high court dedicated as an entire life and career for such people and fought for justice for them. Today we find very few human beings dedicate their life to the downtrodden and tribal to secure their right without any monitoring expectations. Such humans are the gems to the nations that place a vital role in the protection of human rights.

Justice Chandru in his introductory chapter of the book states that "The book offers more; it reminds us law is not static. The law comes alive every time it is re-read, re-interpreted to include the rights of more people in more situations; and when it responds to the question and the issue people raised- through resistance to inequality in a specific situation. It is not just people who benefit then. Public awareness, Inform public opinion

enrich the reading of the law, and the institution such as courts, which are there to create and deliver justice to all citizens”¹³. This shows the temples of justice are never run backfoot when the time comes the rights of the weaker class of the society is at stake, they protect it. This shows courts are not only for the people who can afford big counsels but for the downtrodden and tribal too.

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