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How POCSO Act continues to unfairly impact tribal communities in Kerala

Socio-economic conditions, educational backwardness, poor awareness of the Act and customs lead young men and women into early marriages bringing them into conflict with law.



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A TRIBAL COLONY IN MALAPPURAM

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NEWS **POCSO ACT IMPACT ON TRIBALS** | MONDAY, DECEMBER 19, 2022 - 15:44



Written by [Saritha S Balan](#) [Follow @Sarithasbalan](#)

In the first week of December 2022, Tamil Nadu Director General of Police C Sylendra Babu issued a circular advising the Investigating Officers (IOs) of Protection of Children from Sexual Offences (POCSO) Act cases not to make hasty arrests if complaints stem from romantic relationships. The circular was issued keeping in mind issues faced by tribal communities, which follow traditions and get married quite early, often unaware of laws.

Recently, Chief Justice of India DY Chandrachud [urged](#) the Parliament to address the growing concern about punishing adolescents for romantic relations under POCSO act. The CJI said, "the POCSO Act criminalises all sexual activity for those under the age of 18, regardless of whether consent is factually present between the two minors in a particular case," he said. Ten years after the POCSO Act was enacted to protect children from sexual abuse, youngsters belonging to tribal communities in Kerala, who develop romantic relationships and marry early following the tribal traditions continue to be prosecuted and convicted facing long terms after being charged with rape. The cases of sexual abuse of children by adult members of the community have been low, according to an official who worked with District Legal Service Authority in Wayanad.

The Delhi High Court in October this year had held that the POCSO Act was enacted to protect children from sexual assault and not to punish consenting romantic relationships. There are also concerns that the increasing the legal age of marriage of women for marriage from 18 to 21 will bring more people into conflict with the law.

Featured Videos from TNM

POCSO Act continue to victimise tribal communities

TNM travelled to tribal hamlets in Nilambur and Wayanad, spoke to members of tribal communities and activists to understand why they continue to face arrests and incarceration for being in conflict with a law that has been in force for a decade.

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A major reason according to activists is the lack of awareness about the law itself, educational backwardness and the failure of authorities to sensitise the communities about the consequences of early marriage. The average age of men at the time of marriage is 20 while girls would be as young as 16. The sentences handed down by the court to men who are convicted is around 10 years.

Activists often cite the stories of Babu and Sivadasan, who were unaware of the Act and had to spend many years in jail after marrying under-age women from their community. Babu, a tribal youth from Paniya community was 21 when he got married in 2015 with the love of his life, a 16-year-old girl from the same tribe. They started living together after the wedding.

The teachers of the school where the girl was a student came to know about the marriage after she became pregnant and informed the police who arrested him. "I did not know that this law existed. Our only intention was to live together and i never wanted to sexually abuse her," says Babu. The story of 19-year-old Sivadasan from Muthanga in Wayanad, is similar.

In August 2012, barely two months after the Protection of Children from Sexual Offences (POCSO) Act was enacted, Subhash (name changed), a tribal youth from Kattunaika community, who eloped with a 16-year-old girl he loved, was arrested. "I was away for work when the police came for me. Her father had filed a missing complaint with the police," says Subhash, who had no idea that such an Act existed. He spent around five years in jail after the arrest.

While marriages involving underage girls may not be immediately known outside the community, the men are booked under POCSO Act when the girls get pregnant or they visit hospitals for pregnancy-related medical care or delivery.

“They don’t know to lie, so when they asked to state their age they would be candid about it, leading to registration of cases under the Act,” says Amurtha Sisna, who has done research on the impact of POCSO cases on tribal communities. Cases are also registered when such marriages or pregnancies are reported by Anganwadi teachers and tribal promoters.



Amrutha Sisna

One reason why the tradition of marrying young has not stopped is that the communities don’t consider legal age as marriageable age. “What they consider the time of marriage is the transformation period from adolescence to adulthood. For men it’s their physical fitness that is considered to be a marriageable age,” says Amrutha.

Chithra Nilambur, a tribal activist, says marriages below the age of 18 are common among Paniya and Kattunaika communities. While the Paniyas live in forest fringes, Kattunaikas live inside forests.

“Among these tribes there is a custom of choosing a husband for girls when they attain puberty. That girl will have the freedom to marry that person or someone else later. This is continuing even now,” says Chithra, state president of the Adivasi Aikyavedi and vice president of All India Union of Forest Working People.

Krishnankutty, the Kattunaika Moopan (head of the hamlet) of Appankavu, however attributes early marriages in his colony to romantic liaisons, rather than adherence to customs. “The youngsters have mobile phones and they get befriended at an early age. There is more connectivity now and there is a limit for the elders to intervene. Child

marriages used to happen early with parents even fixing them when the child is born but this is not happening anymore,” says Krishnankutty, who feels tribal traditions are not anymore the main reason for such marriages which get the youngsters in conflict with law.



Krishnankutty

Vella of Payyampally colony in Wayanad too says the custom of marrying off adolescent girls is not prevalent anymore and it's love affairs that leads to marriages which are in conflict with law. “Rituals like vayassariyikkal kalyanam (ceremony to celebrate menarche) were meant to intimate the community that the girl was of old enough for marriage and an alliance would be fixed. The wedding will be held after a year,” says Vella. The one year gap would give them time to arrange money needed for the wedding. “For one year the bridegroom takes care of the things at the bride's house. At that time, their age was never a concern,” says Vella.



Vella

Biju Kakkathode, a tribal activist from Kakkathode hamlet near Sultan Bathery, feels underage marriages are rampant among tribals even now because of educational

backwardness.

A former District Collector of Wayanad, Kesevendra Kumar, had issued directions not to mindlessly register cases against tribal youth and to do a thorough analysis of the issue before FIRs are filed but this was not followed, says Biju. In 2020, the State Police Chief had assured that complaints regarding slapping cases against tribal youths who marry underage women from the community will be taken seriously. Behera, while speaking to the media after the event, stressed on the need to amend the laws to solve the issue.

Availing bails not easy for landless tribespeople

According to reports, since the enactment, a total of 422 tribal men in the state have been charged under the POCSO Act, until July 2021. In Wayanad alone, 202 men were charged under the Act. Out of them, 121 cases went under trial at a special court in Kalpetta during the period 2013 to 2020.

While 63 persons were acquitted by the Kalpetta court, 22 were found guilty. A total of 48 cases went under trial in a fast track court in Kalpetta and saw four acquittals during the period. The Juvenile Justice Board, Mananthawady, registered 33 cases in the same period out of which three were found guilty and five were acquitted.

Palakkad district with 81 cases stood second in the list after Wayanad. While two men from tribal communities were found guilty, eight persons were acquitted by courts in Palakkad during the period.

For those youngsters who were in romantic relationships and still languishing in jails, getting bail isn't easy. Sivadasan, could secure a bail after three months, that too due to the intervention of Dr Hari, a homoeopathic practitioner and activist, who works among tribes.

"The person who stands surety for bail should produce the original of their title deed. Many from tribal communities are landless and won't have title deeds," says Biju. It's difficult for them to find people from their own community who can furnish sureties for bail or provide tax receipts that show land ownership. Getting people from other communities to stand surety for them is also not always possible, says Biju.



Biju

“The sad part is that tribespersons are sometimes not even aware of their legal rights. On the days of hearing many won’t be even able to present themselves in court as they may not have money for bus fare,” says Biju. “It was due to work by human rights activists that at least some people came out to provide surety and ensure bail for them,” says Biju.

Dr Hari, who started a campaign for release of Babu and Sivadasan after they were booked in 2016 under the Act, says when it comes to POCSO cases involving people from the general community, the state and its machinery is ready to compromise and facilitate out of court settlements. “The social condition of tribes make them vulnerable and they cannot even avail bail on time because no one would stand surety,” says Hari. They also find it hard to obtain legal assistance even from those providing free legal aid, he alleges.

Babu, who got bail after spending two years in jail had to remain in prison for six more months as there was no one to stand surety for him. “I could get out only after Hari sir (Dr Hari) arranged the surety,” says Babu. Subash too had to continue in jail despite securing bail because there was no one to provide surety. He too was released with help from Hari. Both Babu and Subash now live with the same partner they chose with children.

Biju, who belongs to the Paniya tribe, believes people from tribal communities have to undergo the ordeal only because they are not a pressure group in Kerala. “They lack political power and cannot exert pressure like the Nair Service Society, the Sree Narayana Dharma Paripalana Yogam or the Jamaat-e-Islami. If a tribesperson is arrested no one would go to the station and question it,” says Biju.

There have been some attempts to sensitise tribal communities on issues related to early marriage and the POCSO Act including an awareness film jointly made by the District Legal Services Authority (DLSA), Wayanad and the [Tribal Department](#). The movie named 'Incha' was exhibited at tribal colonies in Wayanad. The movie tells the story of Inja and Vella who marry according to tribal customs.

Rajesh K, a former secretary of Wayanad DLSA, says by 2021, around 256 POCSO cases were registered against people belonging to Scheduled Caste and Scheduled Tribe communities in Wayanad. "Of this, only below ten per cent is SC. The rest of the cases have been slapped on people from ST communities," says Rajesh.

School dropouts leading to early marriages

Though numbers have come down in recent years, school dropout among students belonging to Scheduled Tribes is a major issue in Kerala. A total of 861 students dropped out of schools in the state in 2019-20 alone, forming 21% of the total dropout from all communities. Wayanad topped the chart with the highest number of dropouts (466). A [January 2020 study](#) by Kerala Institute for Research Training and Development Studies of Scheduled Castes and Scheduled Tribes (KIRTADS) found that early marriages were a reason why these dropouts happened among students of Paniya community. Ammini, a tribal woman and activist from Ambalavayal in Wayanad says a high number of POCSO cases are registered against members of Paniya community.

Distance between educational institutions and home was also a major issue, apart from livelihood struggles. Santha of Malachi colony in Nilambur says when making both ends meet is a struggle, educating children can't be a priority. The KIRTADS study too showed that education of children is not a priority for families because of hardships. Many tribal students do not feel comfortable in hostels, because of food, language barriers in learning and behaviour by others, which make them dropout of studies. Once back home they have to shoulder responsibilities in the family.

The houses where they stay have no privacy. "Many live in one bedroom or two bedroom houses having a size of 450 sq ft. Kids and adults live in the same room. This might lead to the children witness sex between parents," says Ammini, suggesting that they may want to emulate the act with their peers. Amini adds, "Though larger homes have been a long-term demand, tribes do not have a say in developmental issues"

“There should be enough hostel facilities to accommodate all the tribal students at least till Plus Two. In Kerala there are only below 150 pre-matric hostels and only 20 Model Residential Schools (MRS). This is not enough to admit all the students,” says Chithra.



Chithra

However, Lekshmi of Appankavu hamlet in Nilambur is of the view that the government cannot be entirely blamed for this. “There is a free transportation for day scholars, hostel facility and monthly allowance for hostels. However the monthly allowance has been stopped for the past one year. Kids do not go for higher studies, many stop after the 10th standard or Plus Two,” says Lekshmi, adding that she doesn’t know the reasons.

Biju attributes lack of interest towards education to the alienation they experience in educational institutions. “School is still an alien world for tribal students due to the medium of teaching. There is no genuine interest among authorities to educate the tribal students,” says Biju.

Alcohol consumption and tobacco addiction too has been identified as issues faced by the Paniya community, according to the KIRTADS study, which also recommended including a pedagogy that takes into account these aspects while teachers are trained.

Need for sensitisation

Activists like Chithra want the state government to take more steps to make people aware of the POCSO Act and consequences of early marriages. “The government has to run these programmes with the help of NGOs, projects like Integrated Child Development Scheme (ICDS), Anganwadi

teachers and Scheduled Tribe promoters. Only the government can effectively intervene in tribal areas because of restricted access,” says Chithra.

Biju says there are officials, including in departments like health and agencies like ICDS, who are not aware about the POCSO Act. “The system is not functional because of two things: lack of awareness and absence of long term commitment on the part of the officials,” says Biju who feels child marriages happen among even school students.

Should the age of consent for sex in India be lowered to 16 from 18 years? Yes, say activists and several High Courts.

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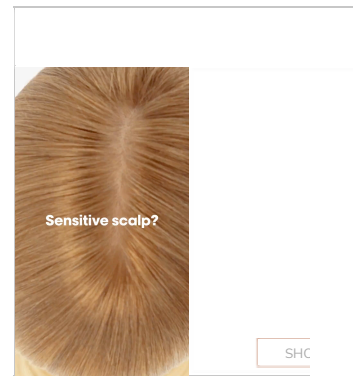


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Kerala Class 12 board exam results out, pass percentage at 82.95%

Seventy-one students scored 1200/1200 marks in the Class 12 board exams, whose results were announced by the Kerala Department of Higher Secondary Education (DHSE) on May 25.



EDUCATION | THURSDAY, MAY 25, 2023 - 20:36



TNM Staff [Follow thenewsminute](#)

The Kerala Department of Higher Secondary Education (DHSE) on Thursday, May 25, announced the results for Class 12 board examinations. The overall pass percentage of this year stands at 82.95%. A total of 3,76,135 students attempted the Class 12 examination, and 3,12,005 of them have passed. This year's pass percentage has seen a marginal decrease from last year's 83.87%.

The pass percentage is 79.19% in government schools, 86.31% in government-aided schools and 82.70% in unaided schools. According to a press statement by the education department, a total of 1,94,511 girl students and 1,81,624 boy students appeared for the examination. While the pass percentage of girls stands at 89.31%, for boys it is at 76.13%. Further, as many as 71 students have scored

1200/1200 marks in the examination. Seventy-seven schools have recorded a 100% pass percentage, while 10 schools recorded a pass percentage below 30%. A total of 41,511 students have scored A+ in all subjects.

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Among the districts, Ernakulam has secured the highest percentage with 87.55%, and Pathanamthitta has secured the lowest (76.59%). Department-wise, the pass percentages are: 87.31% in Science, 71.93% in Humanities, 82.75% in Commerce, 75.30% in Technical and 89.06% in Fine Arts.

Further, as many as 34,786 candidates appeared for examinations through the State Council for Open and Life Long Education (SCOLE), out of which 16,950 passed out, recording a pass percentage of 48.73%.

The department has announced that the results can be checked on the following websites from 4 pm on Thursday: www.resultkerala.gov.in, www.dhsekerala.gov.in, www.keralaresults.nic.in, www.results.kite.kerala.gov.in, www.prd.kerala.gov.in, and on the following mobile apps – PRD Live, SAPHALAM 2023, iExaMS.

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