

Tribal Undertrials

In the first quarter of the 19th century, the prison was a place for the detention of the undertrials. Unfortunately, even today, Indian prisons are almost filled with undertrial prisoners. Prison data reveals that undertrial prisoners constitute 65% of the total prisoners in India, with a significant increase in this percentage over the years. Irfan Ahmad and Md Zakaria Siddiqui, in an article in this journal (EPW, 4 November 2017) highlighted the over-representation of minorities in prison. More explicitly, Adivasis, Dalits, Christians, Muslims all are over-represented in prisons when compared to their total population. The tribal population in India is 8.63% of the total population, but comprises 11.33% of the total prison population. Both Dalits and tribals are over-represented in undertrial populations.

Vijay Raghavan opines that governments use prisons as an instrument of social control, and emphasises the need for quality legal aid service to undertrials (EPW, 23 January 2016). There is much literature elaborating the inability of certain sections of society to negotiate within the criminal justice system, especially in terms of seeking bail. When the court grants bail to an accused, the issue of security in terms of property arises. Thus, persons who do not possess property face difficulty in securing bail. The court supposes that only fear of forfeiting property ensures the availability of the accused in the court. However, compulsory surety for bail sends the explicit message that justice is more favourable to people who possess property.

Further, why should property be the only criterion of securing liberty? This is despite an abundance of academic writing explaining the exclusion of certain sections from securing justice, particularly bail, because of the absence of property. However, the tribal experiences of under-trial imprisonment deserves careful and immediate attention, because tribals live in forestlands which are not considered immovable property.

Extending this discourse to Kerala, although the Kerala development model has enabled high social development, it has been criticised for exclusion of certain sections of society, especially the tribal population. Furthermore, a significant share of the tribal population dwell in forests and do not own property. The struggle for land has been kindled long ago and continues still. It was in 2006 that the government enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act. This act ascribes rights to forest-dwelling tribes, entitling them to hold a piece of forestland either for self-cultivation or for any other common occupation or habitation so as to ensure their livelihood. The important question here is whether the title deed, issued as per individual forestland, is considered as immovable property. It is in this context that the absence of land and title over immovable property is to be analysed.

From data on undertrial tribal prisoners collected from the prison department of Kerala through a right to information inquiry, it is learnt that there are 150 under-trial tribal prisoners in different prisons in Kerala. One of the important concerns of the inquiry was whether these prisoners are being denied bail due to the absence of a title deed for immovable property. However, there exists a serious limitation of data on the number of tribal prisoners who have been denied bail due to this particular reason. A majority of the prison heads replied that the prison department does not maintain any such records and asserted that it falls under the purview of magistrate court.

However, very few prison heads replied that there are tribal persons, who are denied the bail because of the absence of title deed over immovable property. More clearly, data from the district jail in Manathavadi, Wayanad reveals that there are four tribal persons who are denied bail because they failed to submit the surety. Data from the central prison in Thrissur also uncovers six more such cases. This does not mean the remaining tribal prisoners receive bail. My impression from the prison remand files is that very few do get bail, while a majority of them continue as undertrial prisoners until their verdict. A careful and detailed analysis reveals that the tribal category is almost excluded from the justice system, or they are not in a position to negotiate with the criminal justice system. I also want to add that a majority of these undertrial prisoners are charged under a simple provision of the Akkari Act.

The remand files also reveal that non-tribal prisoners facing similar charges get bail relatively easily. It is in this context that the demand to change property as criteria for securing liberty has been raised.

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(Courtesy: EPW)
