INTRODUCTION

Tribes are indigenous people carrying the legacy of an ethnic culture and habit. In their effort to carry out traditional livelihood, they are victimized and ill-treated for their ignorance, poverty and lack of education. Even though we aspire of an egalitarian society there is very little effort in real sense to sensitise and develop tribal life. In addition to the atrocities that they face in their day to day life, if they fall prey into unlawful activities, the trauma increases leaps and bounds not only for the accused tribal but also for their families in their effort to get justice. Moreso, delay in access to justice adds to the woes of the estranged tribal people. Even though the Indian Constitution safeguards social, political, cultural, economic and educational rights of the tribals, it is still a far cry from the reality. The present study is a humble attempt to assess the extent of applicability or adaptability of Article 39A of the Constitution of India towards securing equal justice and free legal aid to the tribal people in India with special reference to the southern districts of West Bengal. It is the duty of the state to provide a legal system whereby every citizen will get access to justice through Court/ Tribunal or independent Forum within a reasonable time. With that end in view this study also attempts to provide strategies for developing appropriate and effective mechanism to make access to justice practicable and meaningful, especially to the poor and disadvantaged people, such as the tribal.

Indigenous People, Ethnicity and Institutional Racism

Indian population has six main racial ethnic groups: Negrito, Proto Australoids, Mongoloids, Mediterranean or Dravidian, Later Mediterranean or Alpine and Nordic Aryans. The tribal society believes in equality and respects all forms including plants and trees. There is a deep gratitude for mutual reliance between nature and human society. (Pitaniya, 2017, pp. 135-142). Tribal women play a major role in the administration of their natural, social, economic assets and agrarian growth but they remain retrograde due to out-of-dateideals, illiteracy, superstitions, overriding role of decision making social units and many other cultural factors. The status of tribal women is squat in both public and private realm. Neither traditional institutions nor the modern practices have been able to improve their status (Kolay and Bandela, 2015, pp.264-282). Ethnicity refers to the cultural practices and viewpoints of a given community of people which puts them apart from others. Different characteristics may serve to distinguish ethnic groups but the most usual ones are language, history or ancestry, religion, styles of dress or adornment. Institutional racism is the combined failure of an organism to provide an appropriate or professional service to people because of their colour.

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culture or ethnic origin which can be seen or detected in processes, attitudes and behavior which amount to discrimination through innocent prejudice, ignorance, negligence and racist labelling which handicaps minority ethnic people (Giddens, 2009, pp. 630-639).

**Criminal Justice Administration and Indian Constitution**

Justice is one of the important objectives to be realized by the Constitution of India as enshrined in the Preamble. The objective of ‘Justice’- social, economic and political is directly assimilated in Article 38 of Indian Constitution which inter alia provides: “The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.” According to Seervai, Article 39 intensifies the concept of justice (Seervai, 2012, p.280). The Supreme Court of India in Babu v. Raghunathji (A.I.R. 1976 S.C. 1734) held that social justice would include ‘legal justice’ that is the organization of administration of justice must deliver inexpensive, speedy and actual apparatus for realization of justice by all sections of the people regardless of their social or economic status or their economic assets.

The Constitution of a democratic country secures certain rudimentary rights and liberties to the people while criminal justice administration shields them by enforcing laws and punishing the offenders. The Indian Constitution also deliberated certain fundamental rights to accused person (Art. 21) and protection against arrest and detention in certain cases (Art.22). The constitution is a chariot where the four limbs of criminal justice system, viz. Police, bar, judiciary and correctional services are its horses. Symphonic efforts of all these four agencies are essential for ensuring that the Constitution achieves its goal to do justice to the people of India. The framers of the Constitution gave top priority to deliver ‘justice’ and that is why they recognized some basic rights to a suspect. The present study unearths barriers to access to justice in the criminal justice process by the accused tribal people and divulges the real execution of constitutional goals of rendering of justice to people.

**Development of Access to Justice**

Access to justice is the most frequented theme in the legal field in the last hundred years. It is a procedural term but may also mean something quite different, because every procedural regulation, including the creation or encouragement of substituies to the prescribed court system, having a prominent consequence on how the substantive law functions and how often it is enforced, in whose benefit and with what social influence. The term access to justice is not easy to define but it serves to focus on two basic purposes of the legal system (i) the system must be equally accessible to all and (ii) it must lead to outcomes that are independently and socially impartial. In early twentieth century and even before, access to justice was considered bourgeois laissez-faire model of viewing it as a commodity. Justice, like other possessions could be procured only by those who could afford its costs, and those who could not, were considered to be responsible for their fate. Thus, state continued to be inert to such problems as the ability, in practice, of a party to identify his legal rights and to indict or protect them sufficiently. People's inability to utilize the law and its institutions was not the worry of the state (Grath and Cappelletti, 1978, pp. 182-185).

Justice might refer to a concrete result- that is, ‘Justice’ in the sense of a fair outcome or getting ones due. The Supreme Court of the United States has suggested that it is valid to execute an innocent man, as long as he has had a fair trial (Freidman, 2009:4). The concept of ‘Access to Justice’ has two significant components- (a) it is a strong and effective legal system with rights, computed and maintained by functional legislations, and (b) it is a beneficial and available judicial or corrective system easily accessible by the literagite people (Kalifulla 2014, p.12).

Access to justice has to be situation specific. To maintain the equal level of access into the justice sector between the parties the disadvantaged must be brought extra facilities to attain the balance between them. This is called principle of positive discrimination. Principle of positive discrimination is not wrong per se. Sometimes it is necessary to overcome the lingering disadvantage faced by certain groups. This principle is accepted by our constitution also. Article 27 of Bangladesh Constitution declares that "all citizens are equal before the law and are entitled to equal protection of law." However, the next Article (Article-28) further pronounces that "nothing in this article shall prevent the state from making special provision in favour of women, children or for the advancement of any backward section of citizen." In this research, the principle of positive discrimination is very much necessary ensuring equal access to justice because the garment workers are always in weak position than the employer.

Access to justice is a crucial element for the realization of human rights and for its progress. It is not only the most rudimentary requirement of any system of justice or the most basic human rights of any system that imports to guarantee legal rights and also the hallmark of any sane and civilised society. Fundamental rights, civil liberties and supremacy of the rule of law prescribing vital checks and balances in any society are realistic ethics but would in themselves be meaningless without access to justice or the practical means of understanding and enforcing the laws of the land without strings (Shittu, p.2015).

Within this conceptual framework, the state could not remain as dynamicspectator. From 1945 onwards the concept of human and social rights has increased dramatically, particularly in Western Europe. Moreover, several countries in making new constitution and social contracts recognized impartial circulation and admittance in different services to citizens. It became standard that the state could play a vigorous role in administering and voicing such parity. Therefore, the right of access to justice which the state would support, goes hand in hand with the fundamental prerequisite of a state promising certain legal rights and securities to all citizens (Nash, 2013, p.105)

**Theoretical Foundation of the Study**

Ethnic discrimination can be perceived from conflict theory which views society as consisting of conflicting values with the state representing the interests of the powerful ruling class. Criminal law is observed as an apparatus for the safety of the dominant and elite and punishment is determined by non-rational factors like race and social class. Conflict theorists believe that those groups that impend the powers of the ruling
sections are more likely to be subjects of social control that is these groups are more criminalized and suffer greater rates of incarceration. Minorities, unemployed and the low income groups are relegated by the criminal justice system. (Banks, 2009; 96& Greene, 2015, pp. 123-140) Power operates differently in interpersonal settings, institutional contents and whole societies. According to Eric Wolf there are four modes of power- (1) individual power through the force of personality, (2) power exhibited by the capacity of one person to impose his will on another, (3) tactical or organizational power which controls the context in which people exhibit their capabilities drawing attention to the instrumentalities of power and how individual and social groups circumscribe the action of others within determinate settings, and (4) structural power is revealed in social relationships that organize and coordinate the settings themselves, it is power to control behaviour by governing access to natural and social resources (Wolf, 2011, pp.343-364). Together they lead to discrimination and harassment of the indigenous people by social institutions, in this regard more specifically the criminal justice system.

**METHODOLODY OF THE STUDY**

The study is based on analytical method wherein the researchers have collected all the primary data and information already available in various courts and analyzed the available data to make a critical evaluation of the material towards identifying barriers of access to Justice. As regards study of opinion survey of litigants and crime victims regarding their perception of law, justice, court and legal process- simple random probability method of sampling was adopted and collected from the courts subordinate to High Court in 6 (six) districts of West Bengal namely Metropolitan Court, Family Court, City Civil & Sessions Court, Juvenile Justice Board, Kolkata, Alipore District Court (24 Parganas South) Barasat District Court (24 Parganas North) Purulia and Howrah District Court. The sampling size is of 100 tribal people out of which 25 were female.

**Aims of the Study**

The study examines the following:

1. To what extent the administration of criminal justice in state of West Bengal provide sound and speedy justice to the indigenous people.
2. It also endeavors to reveal whether women tribal indigenous people receive any fair treatment in relation to access to justice.

**Revelations from the Findings**

Table-1 indicates the time taken at various stages for final disposal of criminal cases involving tribals. In each district of West Bengal one court of Additional Sessions Judge has been identified as Special Court for trial of cases under the Schedule Caste and Scheduled Tribes (Prevention of caste Atrocities) Act, 1989. However in Malda the Court of Sessions Judge, and in Kolkata the Court of City Sessions Judge, are identified as Special Court for such purposes.

- It is to be noted that 90% of the accused tribal persons appeared before the Court on the first day of appearance. On the other hand, in 56% cases copies of charge Sheet and other documents were supplied to the accused after lapse of 6 months to 5 years’ time.
- In 84% of the cases the examination of the accused took place on the first day while completion of trial from the date of framing of charge takes more than five years in 28% of cases and from a year to more than 5 years in 80% cases.
- Eighty one percent of cases took more than 2 years to get resolved out of which 34% of the cases took more than four years to get resolved.
- An in-depth study of offences against tribal women (25 cases) shows that 6 cases were decided after 3years, 9 cases were decided after 5 years, 3 cases after 10 years. More over all the three cases relating to rape against tribal women were decided after 10 years. The reasons are mainly due to their illiteracy, poverty, linguistic barrier, and indifferent attitude of the prosecution.

**CONCLUSION AND RECOMMENDATIONS**

The findings of the study remind us the observations of Dr. A.S. Anand, former Chief Justice of India which reflect the unsatisfactory state of affairs of our justice delivery system: “One of the greatest challenges that stares us in the face as we approach the 21st century is the failure of judiciary to deliver justice expeditiously, which has brought about a sense of frustration amongst the litigants.” In this regard, it deserves mention that the deprivation of basic needs of the marginal is not the sole cause of concern, a further add on is the institutional discrimination that the indigenous people suffer because of their ethnic status and ignorance. The fight for tribal rights remains incomplete without taking a step towards ensuring basic human rights and equal opportunities to them. Education, enlightenment and awareness can protect the tribal people from becoming scapegoats or easy prey to situations provoking crime.

**Table 1**

<table>
<thead>
<tr>
<th>Duration</th>
<th>Day 1</th>
<th>1-3 months</th>
<th>4-6 months</th>
<th>6 months - 1 year</th>
<th>2-3 years</th>
<th>4-5 years</th>
<th>5 years and above</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reporting the incident to the police station from the time of occurrence</td>
<td>8</td>
<td>50</td>
<td>22</td>
<td>20</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Completion of investigation</td>
<td>0.2</td>
<td>15</td>
<td>60</td>
<td>15</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supply of copies to the accused</td>
<td>0</td>
<td>20</td>
<td>14</td>
<td>8</td>
<td>26</td>
<td>22</td>
<td>28</td>
</tr>
<tr>
<td>Framing of charges</td>
<td>0.2</td>
<td>20</td>
<td>5</td>
<td>35</td>
<td>35</td>
<td>28</td>
<td>22</td>
</tr>
<tr>
<td>Appearance of the accused before the court</td>
<td>90</td>
<td>8</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosecution for production of witness</td>
<td>25</td>
<td>70</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Examination of the accused u/s 313 of the Cr.PC</td>
<td>84</td>
<td>16</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tending defense witness</td>
<td>68</td>
<td>32</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Completion of trial from the date of framing of charge</td>
<td>10</td>
<td>10</td>
<td>41</td>
<td>12</td>
<td>12</td>
<td>12</td>
<td>27</td>
</tr>
<tr>
<td>Total time for completion of case</td>
<td>7</td>
<td>12</td>
<td>21</td>
<td>34</td>
<td>34</td>
<td>34</td>
<td>26</td>
</tr>
</tbody>
</table>
The following recommendations are to be taken care of in order to provide them with a life away from criminality and provocation:

- Legal literacy on accessibility to the justice delivery system should be disseminated amongst tribal people by holding frequent awareness camps.
- Legal aid programmes should be undertaken by the District Legal Aid Services Authority and sub-divisional Legal Aid Committees.
- The Court Fee Act should be suitably amended to exempt tribal people from paying any court fees in suits/cases.
- The State prison authority may be moved to identify the number of under-trial tribals languishing in jails for want of legal aid and other reasons.
- The linguistic barriers may be removed by introduction of regional language in trial courts with interpreters wherever necessary.

These if made into a reality can possibly ensure the indigenous people with a healthy future and a life without stereotyping and discrimination.

References


How to cite this article:


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