

(2025) 03 KL CK 1295
In the High Court Of Kerala
Case No : Writ Petition (C) No. 25285 Of 2016

Suo Motu

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 03-03-2025

Acts Referred:

Constitution of India. 1950 — Article 21, 21A

Citation : (2025) 03 KL CK 1295

Hon'ble Judges : Nitin Jamdar, CJ;S. Manu, J

Bench : Division Bench

Advocate : P.Narayanan, Latha Thankappan, Santhosh Mathew, Mathew Naveen Thomas, P. Vijayabhanu, Amicus Curiae, Shameena Salahudheen, Indu Susan Jacob

Final Decision : Disposed Of

Judgement

Nitin Jamdar, CJ

1. This suo motu Petition concerns the practice of child marriage prevalent among the members of the tribal communities in Wayanad District.

2. As per 2011 Census data, almost one-third of the total tribal population of Kerala comprising communities such as Paniyas, Mullukurumas, Adiyars, Kurichyas, Ooralis, Kattunaikkans, Kanduvadiyar, Thachanadar and Kanaladi, is in Wayanad District. As a customary practice, the members of these communities often marry at an early age. As a result, the penal provisions of the Protection of Children from Sexual Offences Act, 2012 (PoCSO Act) are attracted and many face trial for offences under the Act. On this issue, in the year 2016, the District Legal Services Authority (DLSA), Wayanad, submitted a report to the Kerala State Legal Services Authority (KeLSA). KeLSA placed the report with a request to register a Public Interest Litigation. The Division Bench, by order dated 1 August 2016, admitted the petition and issued notices.

3. On 19 January 2018, the Union of India, represented by its Secretary, Ministry

of Women and Child Development, and the National Commission for Protection of Child Rights, represented by its Member Secretary, New Delhi, were joined as party Respondents. Further, on 23 June 2021, the KeLSA was directed to submit a detailed report on the awareness programs conducted for the tribal community people of Wayanad regarding the provisions of the PoCSO Act vis-a-vis customary marriages. The Authority was also directed to furnish the details of the number of cases registered, pending trial, and the concluded cases. The Petition thereafter remained pending from 2021.

4. We have heard Mr. Santhosh Mathew, the learned Senior Advocate along with Adv. Mr. Mathew Naveen Thomas, for the Kerala State Legal Services Authority, Mrs. Latha Thankappan, the learned Government Pleader, and Mr. P. Vijayabhanu, the learned Senior Advocate appointed as Amicus Curiae in the writ petition.

5. The age of consent, both under the Indian Penal Code, 1860, and the Protection of Children from Sexual Offences Act, 2012, is eighteen. In the present case, the concern highlighted is the marriages between the members of the tribal community below the age of 18. The key law in this regard is the Prohibition of Child Marriage Act, 2006 (PCMA). Under this Act, a Child is, a male under 21 years of age and a female under 18 years of age. Child Marriage is defined as a marriage where at least one party is a Child. The purpose of the PCMA is to eliminate child marriage, a practice that remains widespread in some parts of the society. This law aims to protect the health of the children and improve the status of women, particularly addressing the harm faced by child brides.

6. Reports by the United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA) have highlighted the evils of child marriages. Child marriage is a grave violation of human rights, which particularly affects the young girls. It endangers their health, education, and future, often leading to early pregnancies, high maternal mortality, and exposure to domestic violence. Girls married at a young age are often denied education, economic opportunities, and autonomy over their own lives. Many are forced into these marriages without informed consent, perpetuating cycles of poverty and gender inequality. In tribal communities, this practice remains deeply ingrained, driven by tradition, poverty, and a lack of legal oversight. Ending child marriage requires legal and social intervention.

7. The Hon'ble Supreme Court, in the case of Independent Thought v. Union of India and Another (2017) 10 SCC 800, addressed the issue of child marriage. It referred to the report A Statistical Analysis of Child Marriage in India based on Census 2011, published in June 2017. The Report states that child marriage violates human rights and hinders youth development. It forces children into marriage before they are mature enough to understand its implications. This practice violates the United Nations Convention on the Rights of the Child, which was ratified in the year 1989. The report pointed out that for girls, child marriage often results in early pregnancy, maternal and neonatal deaths, poor health,

disrupted education, limited employment opportunities, and exposure to violence. The Census data was referred to which showed an increase in female deaths among 15–19-year-olds, mainly due to complications from teenage pregnancies. Child marriage deprives children of their childhood and adolescence, restricts their freedom, and denies them access to education, healthcare, personal growth, self-development, and overall well-being.

8. In the case of *Society for Enlightenment and Voluntary Action v. Union of India* 2024 KHC 6570, the Hon'ble Supreme Court observed that in less educated, rural, and poor communities, people lack effective opportunities and life choices. The Court observed that child marriage violates the fundamental rights under Article 21 of the Constitution of India, including the rights to self-determination, autonomy, choice, health, education, and sexuality. Child marriages impose adult responsibilities on children when they are not mentally or physically prepared. The Court issued guidelines prioritizing prevention and protection over punishment to address the issue. It called for joint efforts from all stakeholders to eliminate child marriage through community-based solutions.

9. Among tribal communities, particularly in regions like Wayanad, the practice of child marriage has been passed down through generations as part of their customary practices. The absence of a legal framework regulating tribal marriages has allowed these customs to persist. However, the long-standing nature of this practice cannot be the sole justification of its continuation. The prevalence of child marriage in the tribal areas, though historically entrenched, needs to be addressed to protect the rights and well-being of the children.

10. The learned Amicus Curiae and the learned Senior Advocate for Respondent No. 9 submitted that while the practice in this area needs to be deprecated, the child marriage is a social issue that requires multifaceted approach, and the scope for passing judicial order is limited. By a judicial order, lowering of the age of marriage in the tribal communities cannot be directed only to save them from prosecution under the PoCSO Act, neither by judicial orders, can these deep-rooted practices be resurged. They submitted that the problem is complex and, to address it, requires changes to multiple laws, which are beyond the scope of this Public Interest Petition. While the need for intervention exists, the scope of judicial intervention has to be kept in mind.

11. As rightly submitted by the learned Amicus Curiae and the learned counsel for the parties, emphasis can be given to the awareness programs. We are informed that many Non-Governmental Organizations and public-spirited individuals are already working in this field. For the purpose of this Petition, we are of the opinion that the Kerala State Legal Services Authority (KeLSA) can contribute to this effort along with these organisations. KeLSA can conduct awareness programs to educate communities about the harms of child marriage and the rights of children under Articles 21 and 21-A of the Constitution of India.

12. The programs to be undertaken by the KeLSA can reach families, educators,

community leaders, and children, explaining how child marriage affects education, health, and personal freedom. Legal awareness camps, school workshops, etc. can promote education and skill development, which can be alternatives to child marriages. KeLSA can also work with child protection agencies, police authorities, and educational institutions to ensure that the residents of the area are aware of the legal provisions and the procedures for reporting violations. Therefore, while changes in law are important, community-based awareness and support programs are crucial.

13. With this object in mind, on 4 November 2024, we had directed that the DLSA, Wayanad, will work out a long-term plan of action for sensitization of the members of the communities. It was also directed that the DLSA will also invite suggestions from the officers of the concerned Government Departments and the Panchayats to formulate a plan of action for sensitization. For that purpose, the Chairman of the DLSA, Wayanad, will call for a joint meeting with the officers of the Government and the Panchayats and thereafter, work out a plan of action. A meeting was accordingly held.

14. A report dated 20 January 2025 is submitted by KeLSA that the DLSA, Wayanad convened a joint meeting on 19 December 2024 and based on the outcome of the meeting, prepared an Action Plan against child marriage.

15. KeLSA can thus co-ordinate with the Government agencies, Non-Governmental Organizations, and individuals committed to address the issue. Such co-ordination can facilitate effective sensitization programs, ensuring that awareness reaches communities where child marriage remains prevalent. The Gothra Vardhan Scheme is a scheme implemented by KeLSA under the NALSA (Protection and Enforcement of Tribal Rights) Scheme, 2015 and NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015. The scheme focuses on the empowerment and upliftment of tribal communities in Kerala by addressing critical issues such as education, poverty alleviation, healthcare, and legal awareness. It aims to bridge the gap between the tribal communities and mainstream society while respecting their cultural heritage and safeguarding their legal rights.

16. The Secretary of the KeLSA can conduct a review, every three months, to assess the steps taken under the sensitization program. This review can also identify any obstacles in implementation and suggest corrective measures. The KeLSA can be granted liberty to approach this Court for further directions, if necessary, to strengthen the implementation of these efforts.

17. With the inputs from the learned Amicus Curiae and the Kerala State Legal Services Authority, we direct the Respondents to take the following steps.

18. The Respondents as per the Action Plan will conduct awareness programs against child marriage in all Upper Primary, High, and Higher Secondary Schools in Wayanad District within three months, with support from the Education and Tribal Departments. The Departments will instruct the school authorities to

ensure that every student attends at least one session in a year. Similar awareness programs will be conducted in tribal settlements within three months, involving the Tribal Department, Scheduled Tribe promoters, and para-legal volunteers. These programs will continue annually, utilizing the Gothra Vardhan Scheme for better implementation. Films addressing the issue of child marriage can be screened at maximum venues during awareness programs. Posters highlighting the harms of child marriage will be circulated and displayed in tribal settlements and schools.

19. The Action Plan will be executed with the participation of the Education, Tribal, Social Justice, Women & Child Development Departments, District Child Protection Unit, Panchayats, Non-Governmental Organisations, public-spirited individuals, and para-legal volunteers. The Legal Services Authority will collaborate with the stakeholders to enhance sensitization efforts and drive social change.

20. The Respondents will conduct awareness sessions for the officers of the Tribal and Education Departments on preventing school dropouts to curb child marriage. The District Legal Services Authority will train the District Child Protection Unit and tribal promoters on the power of the Magistrate to issue injunctions against child marriage and guide them in seeking recourse to law. The District Legal Services Authority will review and update the Action Plan every year.

21. All statutory authorities will act in aid of the Kerala State Legal Services Authority in effectively implementing the sensitization program.

22. The Kerala State Legal Services Authority will supervise and monitor the plan, ensuring timely awareness, data collection, and intervention. Every six months, or at such intervals as directed by the Executive Chairman, the Member Secretary will submit a report as regards the activities undertaken to the Executive Chairman of the Kerala State Legal Services Authority.

23. The learned counsel for the parties submit that since the purpose of this Petition was to put a structured plan of action in place, and that has been prepared and directed, it is not necessary to keep this suo motu Petition pending. However, while we dispose of the Petition, we grant leave to the Kerala State Legal Services Authority to approach this Court if any directions need to be issued.

24. With this liberty to the Kerala State Legal Services Authority, this Petition is disposed of.