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Under the Shadow of Bias: Critical Examination of Law Enforcement Actions as Against the Experiences of Marginalised Groups in India

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ABSTRACT

This research delves into the intersection of law enforcement practices and socio-legal marginalisation in India and emphasises how institutional bias within law enforcement disproportionately affects religious minorities, caste-oppressed groups and other similarly situated vulnerable communities. The study exposes the dual role of policing agencies- as protectors of the legal order and as potential instruments of coercion to unveil their complicity in reinforcing social hierarchies through subjugation, active and passive violence, silence and evasion.

Employing a doctrinal approach supplemented by empirical findings from human rights bodies and judicial inquiries, this piece analyses key legal safeguards present in the erstwhile Code of Criminal Procedure, 1973 (hereinafter as, CrPC) alongside landmark rulings of the Supreme Court of India. It makes explicit the consistent failure of state authorities to uphold the constitutional mandates of Articles 14, 15 and 21 to reveal how inherent biases manifest in day-to-day law enforcement mechanisms in the country.

Through detailed case studies of custodial violence against oppressed groups, the use of draconian laws and a routine denial of police protection in caste, religious and gender-based violence, this paper demonstrates how discriminatory policing practices continue to remain entrenched in India's everyday legal processes. The paper reminds us of the delays, refusals, and manipulations in the lodging of FIRs which operate as tools of systemic exclusion.

The study argues for impending reforms in state mechanisms to hold the law enforcement agencies accountable, through independent complaints authorities, community policing models and the institutionalisation of anti-discrimination training. In doing so, the paper aids the discourse on transformative justice, state accountability, and the democratisation of law enforcement in India.

Keywords: *Systemic discrimination, marginalisation in policing, structural bias, intersectionality in law enforcement, empirical legal analysis.*

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I. INTRODUCTION

The structure and hierarchies of a society have an overarching influence on the functioning of the core systems in a country. The people on the top of the chain actively or passively determine the access to relief or the lack of it for the ones below them. Such social hierarchies do not exist in isolation, rather they are backed by organised supremacist compliance. Communities that have faced historical and systematic subjugation over decades continue to be denied equal privileges as accorded to others. From this it follows that the said communities have a much harder time gaining access to procedural reliefs, and are often faced with active bias owing to their social position which further deteriorates their standing. Law enforcement agencies across the world have been brought into question for their ill-treatment of marginalised sections of society time and again during crime reportage, detention, arrest, investigation and police custody irrespective of what the law may provide. However, what are the underlying factors perpetuating this bias and do they hold true to the test of what the law of the country provides? The objective of this research is to delve deep into the said systemic biases particularly focused on the actions of the Indian Police Services in juxtaposition to the Code of Criminal Procedure, 1973 which is the source of the agency's powers. Putting the two in comparison will bring out the procedural inadequacies in the said actions allowing us to highlight the abuse of power.

II. UNVEILING BIASES: INSIGHTS FROM THE STATUS OF POLICING IN INDIA REPORT 2019 ON MARGINALISED COMMUNITIES AND THEIR IMPACT ON CRIMINAL JUSTICE PROCESSES

There exist various marginalised communities in India owing to the deep-rooted social cleavages held by the country. The list, although not exhaustive, is long but can be generally understood under the heads of caste, religion, economic status, sexual orientation, ethnicity, disability, gender identity and so on. It must be noted that bias against communities are created often because of generalised experiences and stereotypes with regard to the communities. A study conducted by Common Cause, Centre for the Study of Developing Societies (CSDS) and Lokneeti known as The Status of Policing in India Report, 2019 ² alleges a direct link between underrepresentation of marginalised groups in law enforcement agencies and the subsequent biases against them. Building on this, one could deduce the importance of the presence of such groups in law enforcement agencies in order to curb such biases. The said report revealed extraordinarily amusing information with respect to the bias in police agencies against caste-

² (Status of Policing in India Report, 2019, 13 November 2019) <https://www.commoncause.in/uploadimage/page/Status_of_Policing_in_India_Report_2019_by_Common_Cause_and_CSDS.pdf> accessed 1 May 2024

oppressed persons and minority groups in the country. The central question of the study was whether police personnel think that such oppressed groups are inherently more likely to commit crimes as against other socio-politically privileged groups.

There exists a sense of institutional bias against the marginalised communities which further exacerbates the vulnerability of such groups. In order to understand the report better, it is important to look at certain data that the report provides. The findings of the report revealed that in Uttarakhand, Jharkhand, Maharashtra and Bihar, two-third or more police personnel held the view that the Muslim community is more likely to be inherently prone towards committing violent activities. Similarly, Karnataka and Uttar Pradesh have the largest share of police force which feels that Dalits are 'highly likely' to be naturally prone to committing criminal activity. Such is the case in Rajasthan and Maharashtra where the same is felt about the Adivasi community. Further it was also discovered that almost half of the police persons in Madhya Pradesh and Karnataka believe that people from Other Backward Classes are organically prone to be violent. This particular bias has also reflected in the way the police views the complaints filed by caste-oppressed groups. In this report it was also highlighted that when disaggregated by caste groups of police personnel, the Upper Caste police staff was more likely to hold the understanding that in their experience complaints filed under the The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989³ (hereinafter, as The SC & ST Act, 1989) are usually either false or have motivations.⁴

III. POLICE NEGLECT AND VIOLENCE AGAINST THE VULNERABLE

Apart from caste and religious groups deep-rooted prejudices exist against other vulnerable groups like illiterate persons, nomadic tribes and transgender persons, wherein the police is often partisan in their abuse and harassment. This has reflected in various complaints of police violence against transgender individuals particularly the *Koti* communities like Hijras⁵ and Kinnars. A study conducted by the National Institute of Epidemiology conducted with 60,000 transgender persons across 17 states in India highlighted that the 'greatest perpetrators of violence' against transgender persons are the police and law-enforcement authorities.⁶ In the context created by the abysmal state that exists, it is imperative to study the biased opinions of the police personnel against these communities. A profound citizen-police interface can only be

³ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989

⁴ *Id.*

⁵ *Id.*

⁶ Anasuya SI, 'The Gender Beat: Most Harassment of Transgender People Is by Police' (*The Wire*, 19 April 2016) <<https://thewire.in/gender/the-gender-beat-most-harassment-of-transgender-people-is-by-police-kolkata-student-assaulted-by-moral-police>> accessed 1 May 2024

achieved once these prejudices are wiped off and due process is upheld.

(A) The Law, The Police and The Conundrum of Non-Registration of FIRs

Section 154 of the CrPC⁷ provides for the recording of information in cognizable cases as and when such information is received by the police. From this it follows that the police cannot refuse to file an FIR under this section, this was also the holding in the case of *State of Haryana v. Bhajan Lal* (1992)⁸ and *Lalita Kumari v. Government of Uttar Pradesh* (2014)⁹ wherein the court emphasised on the presence of the word “shall” in the said section making the recording of information mandatory. However, till date marginalised communities are denied this procedural privilege of getting the information of a cognizable offence committed against them registered by the police.

In the case of *Praveen Kumar v. State of GNCT of Delhi* (2020)¹⁰ the victim, a Dalit person had been abused, publically humiliated and harassed while derogatory casteist slurs were hurled at him. The victim fearing his life approached the Fatehpur Beri police station with his complaint where the police personnel outrightly denied registering his complaint against the accused, a socio-politically privileged elite member of the society. The police wilfully neglected their duties under Sections 5 and 4 r/w 15A(8) (C) of The SC & ST Act, 1989¹¹ r/w Rules 5 & 7 of the Rules 1995¹². The police even had the power to arrest the accused without a judicial warrant of arrest considering the cognizable nature of the offence. The Delhi High Court therefore ordered proceedings against the police officers for wilful neglect.¹³ This is one of the many cases that highlight the apathy of police prejudice against marginalised groups and their never ending favours to the privileged classes.

Non-filing of FIRs is more common in India than we think and is further fueled by the biases held by the policing agencies against marginalised sections for whom it is even more difficult to do so. A few years back the non filing of an FIR caused the suicide of a Dalit gang rape victim who was appalled by the treatment met out to her because of her caste-identity.¹⁴

⁷ s. 154, The Code of Criminal Procedure 1973

⁸ *State of Haryana v. Bhajan Lal*, 1992 Supp. (1) SCC 335

⁹ *Lalita Kumari v. Government of UP* (2014) 2 SCC 1

¹⁰ *Praveen Kumar v. State of GNCT of Delhi* (2020) CRL.M.A. 2660-61/2020

¹¹ *Id.*

¹² The Scheduled Castes and the Schedule Tribes (Prevention of Atrocities) Rules 1995

¹³ Tripathi K, “‘This Is the Height of Police Apathy’: Delhi HC Directs Proceedings against Police Officers for Not Registering Fir on Complaints of Abuse and Harassment of a Dalit Man [Read Judgment]” (*Live Law*, 29 April 2020) <<https://www.livelaw.in/top-stories/this-is-the-heights-of-police-apathy-delhi-hc-directs-proceedings-against-police-officers-for-not-registering-fir-on-complaints-of-abuse-and-harassment-of-a-dalit-man-155941>> accessed 2 May 2024

¹⁴ Pandey M and Ranjan, ‘Dalit Woman Kills Herself after Police Refuses to Lodge FIR on Gang-Rape’ (*Hindustan Times*, 2 October 2020) <<https://www.hindustantimes.com/bhopal/dalit-woman-kills-herself-after-police-refuses-to-lodge-fir-on-gang-rape/story-iCl9VDHA8VHaZRLB1N2wa1.html>> accessed 1 May 2024

Interestingly, there is a vital consequence of non-registration of such complaints viz. that if a criminal action is not registered it will actually never be evaluated in the annual criminal records of the country. This in turn means that the country will never actually have a true account of the crimes committed against its marginalised sections, hence it is made mandatory to file such information under the CrPC and the same was reiterated by the Supreme Court in *Lalita Kumari v. Government of UP* (2014)¹⁵

IV. THE LAW ENFORCEMENT DILEMMA: DISCRIMINATION AGAINST RELIGIOUS MINORITIES IN FIR FILING AND POST-FILING PROCEDURES

Whatever we have learnt in the above situations is also true for religious minorities in the country, particularly Muslims who face active discrimination in not just filing of FIRs but also the procedures post-filing. In the case of *Kazeem Ahmad Sherwani v. State of Uttar Pradesh* (2021)¹⁶ the FIR was filed after a year and a half of the commission of the offence of hate crime against the petitioner. This FIR too was the product of the courts order to produce the case diary maintained u/s 172 of CrPC¹⁷ after over a year and not an organic following of the procedure. The court made note of the laxity shown by the Uttar Pradesh police in filing the FIR and the denial of an inquiry which in turn demonstrates clear prejudice against an already socio-politically oppressed community.

Justice KM Joseph noted the severity of the hate crime highlighting the pulling of the beard, which is a sign of religious practise, and use of derogatory bigoted language. An ironic fact of the proceedings in the Supreme Court is that the Additional Solicitor General KM Natraj representing the state in the case was unwilling to accept the argument that this is a hate crime irrespective of the prima-facie evidence in the matter. It is to be noted that the case provides for a cognizable offence and hence under Section 156 of CrPC¹⁸ the police had the power to investigate the case without judicial intervention. However, the police kept denying investigation and did not even incorporate the most relevant sections of the Indian Penal Code, Section 153A¹⁹ and 295A²⁰ in the case. This institutional prejudice has caused the denial of the Constitutional and procedural rights of victims of heinous criminal activity because of their identities.²¹

¹⁵ *Id.*

¹⁶ *Kazeem Ahmad Sherwani v. State of Uttar Pradesh W.P. (CrI.) No. 391/2021*

¹⁷ s. 172, The Code of Criminal Procedure 1973

¹⁸ s. 156, The Code of Criminal Procedure 1973

¹⁹ s. 153A, The Indian Penal Code 1860

²⁰ s. 295A, The Indian Penal Code 1860

²¹ Tiwary A, 'Fir On Noida Hate Crime Complaint Registered after 1.5 Years : Supreme Court Expresses "distress" at up Police Laxity' (*Live Law*, 6 February 2023) <<https://www.livelaw.in/top-stories/fir-on-noida-hate-crime->

V. EROSION OF TRUST: IMPLICATIONS FOR MARGINALISED COMMUNITIES IN INDIA

An inference can be drawn from situations like these that there are valid reasons why The Status of Policing in India Report, 2023²² suggests that poor, Dalits, Muslims and Adivasis trust the police the least. It is simply an analytical deduction that police bias against these communities has never allowed for the requisite trust to set in. The abuse of powers of the police and the constant battering of the rights of victims of marginalised communities has come in open conflict with the criminal justice system and has caused it to be questioned from this particular viewpoint. The creation of a hostile environment by the policing agencies hurts India's criminal due process model significantly causing it to forgo the due process. The National Crime Records Bureau reports have continuously revealed that two-thirds of the prisoners in India are undertrials, this undertrial population has disproportionate numbers of persons from marginalised sections i.e. Dalits, Adivasis, Muslims, non-literate, poor persons and so on.²³ Another report by the National Dalit Movement for Justice (NDMJ) and National Campaign on Dalit Human Rights (NCDHR) - 2018²⁴ lays down a sense of pattern of constant targeting and victimisation of marginalised communities by police agencies in India. The deep entrenched police prejudices lead to delayed investigations of the cases u/s 155²⁵ and 156 of the CrPC which is the major cause of large numbers of Dalits, Muslim and Adivasis languishing in jails as undertrials.

VI. CUSTODIAL VIOLENCE IN INDIA: A HEIGHTENED TORTURE FOR MARGINALISED COMMUNITIES

The India: Annual Report on Torture 2019 by the National Campaign Against Torture (NCAT) revealed that 1731 persons died in custody in the year 2019, out of which 1606 deaths were in judicial custody while the remaining 125 occurred in police custody which is an average of five persons per day. The report stated that out of the 125 deaths in police custody, 60% were from marginalised communities including 13 Dalits and tribals, 15 Muslims and 37 from low-income backgrounds. The report further goes on to lay down the methods utilised for the said torture

complaint-registered-after-15-years-supreme-court-expresses-distress-at-up-police-laxity-220876> accessed 1 May 2024

²² (*Status of Policing in India Report, 2023*, 10 March 2023) <https://www.commoncause.in/wotadmin/upload/REPORT_2023.pdf> accessed 1 May 2024

²³ *Id.*

²⁴ (*SWADHIKAR Annual Report 2018-19*, June 2019) <<http://www.ncdhr.org.in/wp-content/uploads/2019/08/Annual-Report-18-19-Final.pdf>> accessed 1 May 2024

²⁵ s. 155, The Code of Criminal Procedure 1973

including hammering nails in the body (Gufran Alam and Taslim Ansari of Bihar) applying roller on legs and burning (Rizwan Asad Pandit of Jammu & Kashmir), 'falanga' wherein the soles of the feet are beaten (Rajkumar of Kerala), stretching legs apart in opposite side (Rajkumar of Kerala), hitting genitalia (Brijpal Maurya and Lina Narjinari of Haryana) and applying chillies to them, urinating in the mouth and forcing to perform oral sex, beating after stripping (Mohammed Tanveer and Lina Narjinari of Haryana; Minuwara Begum, Sanuwara and Rumela of Assam), and kicking in belly of pregnant woman (Minuwara Begum of Assam).²⁶

Such gruesome torture is perpetrated to extract confessions and statements by the police in the country, the report makes it evident as to how custodial violence is in itself an utmost violation of human rights. Additionally, when socio-politically marginalised communities are at the receiving end of this it is magnified to much greater proportions. In line with the police prejudice that we established in the earlier parts of the paper, it is an easy deduction that marginalised groups face much aggravated forms of such custodial torture.²⁷

VII. ABUSE OF CUSTODIAL POWER: PROLONGED DETENTIONS AND AGGRAVATED VIOLENCE AGAINST MARGINALISED COMMUNITIES IN INDIA

Section 167 of the CrPC²⁸ provides for authorisation by Magistrate of the detention or custody of an accused in a situation where the investigation cannot be completed within 24 hours. This section is often misused by the law enforcement agencies to keep an accused in custody for long periods of time on grounds of non completion of investigation. Marginalised individuals are often more vulnerable to prolonged custody and its associated abuses, as they may lack access to legal aid or resources to challenge such detention, which is true for these vulnerable communities that face the wrath of systematic marginalisation and oppression. The NCAT report also highlighted that in various cases the police personnel made sure to destroy so far as possible incriminating evidence of torture by surpassing post-mortems and/or cremating the body of the deceased torture victims in a rush.

This is the situation while India has laws against custodial violence, although not an outright statute, but Sections 330²⁹ and 331³⁰ forbid voluntarily causing simple and grievous hurt in order to extort confession from anyone. It is evident from the illustrations provided by the

²⁶ (India: Annual Report on Torture 2019, 26 June 2020) <<http://www.uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>> accessed 1 May 2024

²⁷ *Id.*

²⁸ s. 167, The Code of Criminal Procedure 1973

²⁹ s. 330, The Indian Penal Code 1860

³⁰ s. 331, The Indian Penal Code 1860

sections that this law does apply to the police personnel in respect of prisoners and makes the offence punishable with seven and ten years imprisonment respectively and also fine. In the custodial death case of *DK Basu v. State of West Bengal*³¹ the Supreme Court laid down certain guidelines with respect to the conduct of police personnel while dealing with arrests and interrogations of arrestees. Justice A.S. Anand popularly observed “*Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society.*”³²

Regardless of the presence of this law, police persons do not shy away from using violence unhindered against prisoners, most of whom are just facing trial and are not convicts. Does subjecting a probable innocent prisoner to such ghastly forms of torture, subjugation and violence satisfy India’s commitment to the principles of human rights and natural justice? It does not come as a surprise that there is utter impunity to the perpetrators of this torture. The National Crime Records Bureau which comes under the Ministry of Home Affairs has been reporting since 2005 until 2018 that with respect to the death of 500 “persons remanded to police custody by court”, only 281 cases were registered, 54 police personnel were mentioned in the chargesheets but not a single police person has been convicted of this gruesome crime till today.

VIII. CONCLUSION

The institutional prejudices entrenched in the law enforcement agencies of India against marginalised sections has lead to the erosion of trust in the criminal justice system. Such biases reflected in their actions and attitudes perpetuate a continuous cycle of discrimination and violence which in turn further marginalises already dispossessed groups. Custodial violence underscores the dire situation faced by marginalised communities in police custody. The horrifying level of violence inflicted upon individuals reflects a blatant disregard for human rights and due process. The gap between the police and the communities it is meant to serve can

³¹ *DK Basu v. State of WB*, AIR 1997 SC 610

³² Aftab J and Khan N, ‘Custodial Torture and Deaths: The Dark Side of Indian Police’ (*Live Law*, 17 July 2020) <<https://www.livelaw.in/lawschool/articles/custodial-torture-and-deaths-the-dark-side-of-indian-police-160035>> accessed 1 May 2024

only be narrowed if the systemic biases are addressed and accountability is taken for the abuses. It is therefore imperative to periodically reform the policing agencies through intensive and dedicated diversity and sensitization trainings.

Better recruitment policies aimed at promoting proportional representation from marginalised communities must be adopted by the state. This needs to be coupled with a stringent chain of accountability mechanisms to deal with personnel engaged in discriminatory behaviour. It is also recommended that there be institutionalised independent oversight bodies tasked at monitoring such actions of the police agencies, in order to hold them accountable for their abuses and misconduct. The most fundamental of all suggestions is to address the underlying socio-political factors that allow vulnerable communities to be exposed to such situations. Economic, social and educational empowerment of these communities as also suggested by the Sachar Committee³³ is imperative to their overall growth as equal citizens of the country. In furtherance of which the state may use positive discrimination to give preference to such vulnerable communities in order to provide the cushioning they may require to foster.

³³ 'Sachar Committee Report' (*PRS Legislative Research*) <<https://prsindia.org/policy/report-summaries/sachar-committee-report-high-level-committee-examine-socio-economic-and-educational>> accessed 1 May 2024