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Casteism in Indian Criminal Justice System

SANJUTHA.T[1] AND HARSHA.A[2]

ABSTRACT

In India, caste cruelty is still high. Although the government enacted various special laws for the economically and socially oppressed people in the name of democracy, it still continues to exist in society. Among those, the judicial system is no exception. Muslims, Dalits and tribes constitute more than 55% of under trial prisoners, says NCRB report which is not proportionate to their population in the country. They are not only kept under trail but also are subjected to torture and custodial deaths which violates their fundamental human rights. This paper attempts to find the reasons, procedural and structural discriminations against the people who are less in total population, but more in prison strength and also it states the laws which are provided by the government to protect these people and recommends steps to bring these laws into reality.

I. INTRODUCTION

In Pre-independent India, there was a British made law called Criminal Tribes Act 1871, which branded certain community people as habitual criminals and made the males to report weekly to the police station. The government of India replaced the Criminal Tribes Act with the Habitual Offenders Act, following independence. In 2007, the UN asked for the repeal of this act. But even after the Criminal Tribes Act was repealed, it continued to be held in other ways. In 2014, Tamil Nadu police arrested 14 tribes from the kuravar community and subjected them to third degree tortures for confession of the crime even though the crime was not committed by them. The Pardhis in Madhya Pradesh are continuously suffering as such kuravars in Tamil Nadu. The tribes are still labelled under habitual offenders. This incident made the national committee on Scheduled Caste to probe and release a scathing report on police atrocities.

II. CASTE BASED STATISTICS OF PRISONERS

Muslims, Dalits, and tribes constitute 39% of India's total population. Contrary to this, over 55% of the undertrial prisoners are Muslims, Dalits or tribes.

[1] Author is a student at Tamil Nadu Dr.Ambedkar Law University, India.
[2] Author is a student at Tamil Nadu Dr.Ambedkar Law University, India.

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SC and ST prison population is higher in correspondence with their total population in the country, says the NCRB report.

In that, two vulnerable sections i.e Dalits and Adivasis, of Indian society make up for 34% in prisons, their share in the general population is 24.2%. In which, SC constitute 22% of prisoners in the total population of 21.6%. 12.4% of the prisoners are from tribes with 9% of the total population.

Assam, Tamil Nadu, Maharashtra and Rajasthan are the states which have major differences between the percentage of SC/ST population and prisoners.

In which, Tamil Nadu has a total SC/ST population of 21.2% disproportionately, 38.6% of prisoners are from SC/ST castes, which make up a 17% difference.

III. REASONS FOR INCREASED NUMBER OF SC/ST UNDERTRIAL PRISONERS

According to the report given by the National committee on Scheduled Caste, the foremost reason is 'deliberately delayed police investigation' and delay in filing charge sheets, many arrested without being aware of their charge. This is a violation of their fundamental right to know of their accusation given under article 22(2) of the Indian Constitution. The other reasons are low police population and low bench strength of judges, which results in delay of the investigation and trial process. With 151 police personnel for a population of 1,00,000. India has one of the lowest police to population ratios in the world. The endemic caste bias among police leads to unnecessary arrest and mistreatment.The lower caste gets arrested in the demonstration of the counter case filed by the dominant caste.The main reason behind the issues is the lack of opportunity given to these people in society which pushes them to commit crimes and a biased system against backward caste and poor people which makes them vulnerable to arrest. The inequality in society is reflected in the prison population.

Even though our constitution has given the right to legal aid as a fundamental right under article 39A, it is not available to those who are in need of legal aid. The Adivasis and Dalits find it difficult to access the legal remedies. The Main reason behind this is their lack of education and money. The people from the oppressed class are mostly unaware of the legal provisions regarding bail and sureties. Because of their illiteracy and poverty, they are not able to get legal aid. Even after getting recourse to court, they are not capable of producing witnesses against the powerful people, there is a huge chance of manipulation. These are being used by police and dominant people. It becomes easier for the real culprits to keep them jailed.

A Dalit man Anil had an altercation with the dominant caste man who gets paralyzed after a week. So he filed a suit against Anil saying that the dalit man is responsible for his condition soon after which Anil was arrested and kept under trial.

Due to financial backwardness, his family suffered a lot in paying his litigation costs. They sold their vehicle to pay the amount also even after he was released he was unable to get a government job due to the case in his name.

IV. MAXIMUM UNDERTRIAL ACCUSED BELONGS TO LOWER CASTES:

According to NCRB reports 2019, 7 in 10 prisoners are under trial in India. From 2002 to 2019, 2 in 3 prisoners (64%) are from BC (30%), SC (22%) and ST (12%) and 5 in 1 under trial prisoners are Muslims (21.5%). 5 in 10 SC and ST in India fall below the lowest wealth bracket according to the National Family Health Survey. While the cases filed by dalits and adivasis proceed slowly, the investigation and process for their counter cases is speedy. The speed of trials in India depends on financial and family support. The quality of legal aid in India is dull. As per Legal Service Authorities Act, almost 80% of people in India are eligible for legal aid but only 15 million people got legal service. Also lawyers providing these services work for name sake and don't actually put efforts to put their client in favour as these lawyers are not paid well. Article 39A of Indian Constitution provides legal aid so that money can't be a hurdle to justice but in reality it is not followed so. Also the lack of education and awareness regarding their rights and bail them to prison as NCRB report 2019 says 29% of under trials are uneducated and 41% of them completed only SSLC.

V. PROCEDURAL AND STRUCTURAL PROBLEMS

Caste based treatment:

Once the accused are sent to jail, a firm caste system is followed in prisons in the democratic country. Special privilege is given to prisoners who belong to upper castes irrespective of their behavior in prison and the crimes committed by them. The core democratic principle 'equality before law ' is not being followed in prisons. It is a fundamental right which provides that the accused is presumed to be innocent until proven to be guilty. But the prisoners are subjected to physical and mental torture which is biased to lower caste people.

Every person belonging to a lower caste would have at least one of their relatives or friends in prison at least once in their lifetime. This is because most of the minor cases are pinned upon these backward caste people as they don't have financial or political support. As they are illiterate or semi literate and unaware of their rights the dominant officials use their

powers to abuse them. Indian prisons don't follow the standard minimum rules given by the United Nations for treatment of prisoners and the fundamental human rights of these prisoners are violated as they are subjected to inhuman treatment particularly the dalits and adivasis are subject to these tortures due the caste based discrimination.

Prison officials regularly review the legal status of undertrials to determine whether they have spent enough time in custody to warrant release under Section 436A of the Code of Criminal Procedure (CrPC).

Modern prison manual 2016 suggests, there should be one guard for 6 inmates, but in reality, 10 inmates with one staff. Only 66.3% of the sanctioned posts are filled with the lowest rate of 21.1% in Bihar.

VI. INCIDENTS THAT SUPPORTS THE DISCRIMINATION:

The SC people Anil (26 yrs old) and Suresh (36 yrs old) from Maharashtra have been under trial since 2016 saying that they had tried to commit murder. He claims that the dominant caste member filed a case against him with whom he had conflicts previously. He got bail in March 2017. Like this, nearly 37% of undertrials spent three months and a year in jail.

The problem here is more than what we just see, for running the case they need lakhs of money, even after the release they have to work hard to repay them, which causes more stress and psychological depression. There is also difficulty in getting jobs for the prisoners outside. They have to undergo these troubles throughout their life, just because of wrong accusation by the name of caste dominant.

It will affect their family and even generations. It leads to the oppressed to remain oppressed. The continuous accusation of certain castes won't let them develop even though the constitution grants them reservation, when the caste system prevails in the society constantly.

VII. REAL LIFE EXPERIENCE BY A JOURNALIST

Journalist Prashant Kanojia shares his experience in prison where he was discriminated and treated in a inhuman way as he belonged to dalit community. He was arrested by Uttar Pradesh police for 2 retweets where the 1st time he was in prison for 7 days and 2nd time he spent 80 days in prison. He states that the reason for his arrest remained unrevealed to him until he was released and after the grant of bail the police took 6 days for verification. 1st when he was taken to the Lucknow police station the officials addressed him with casteist insults and abuses and said that Ambedkar and reservations had gone into the heads of these people. Electric shock was given to him. The police would have even killed him. The

prisoners had an ID card in which they were identified by their subcastes. When the police can't identify the real criminals they charge the crimes on innocents belonging to poor marginalized lower caste people especially on adivasis and dalits. The prisoners were asked to pay money for basic facilities as most of them were poor and unable to pay. The police and prison system is corrupt and casteist.

VIII. CASTE BASED DISCRIMINATION IN INDIAN JUDICIARY

The crimes against Dalits have increased 66% more even after the passing of the POA Act in the last decade but the conviction cases in the act are very few. In 2015 two dalit girls were ordered by panchayat to walk naked and raped, until a petition is made to Supreme Court and it directed officers to investigate the issue no action is taken by the police. The representation in the Supreme Court of India is out of proportion. Only after 30 years of Independence a judge was appointed from BC to the Supreme Court. Even after 73 years of independence there is still caste dominance in every Field which is evident from the fact that no SC was appointed as Supreme Court judge in the history. More than 50% of the judges of the Supreme Court belong to upper castes. Proportionate to their population in the country how more than 50% of judges are from upper castes without discrimination and domination is the question of the stand. As the judiciary is dominated by upper caste people, they eventually lead to discrimination to the lower caste people in delivering justice.

Casteism in custodial deaths

According to NCAT report 2019 out of 125 police custodial deaths 75 (60 %) of them belonged to economically weaker and marginal communities including 13 victims from dalits and tribal community and 15 from muslim community.

Reports supporting caste discrimination:

Regarding the caste practices in the criminal justice system, only few reports were available. The best one among them is 'criminal justice in the shadow of caste' prepared by National dalit movement for justice, national compaign on dalit human rights, in 2014. Another one is Justice Frustrated:The Systemic Impact of Delays in Indian Courts, a compilation of essays on the Indian legal system, co-edited by Daksh, a civil society organization.The above reports are a clear study with realistic data.

IX. STEPS TAKEN BY GOVERNMENT AND SUPREME COURT

Those who commit a crime punishable by less than seven years should not be arrested in the ordinary course of the Supreme Court's decision.

The 154th report of the Law Commission (1973) and the Supreme Court (2006) recommended the need to separate police agencies charged with law, order and investigation.

Legal provisions related to protection of SC/ST people:

Article 17 - abolished the practice of untouchability

Article 21 - right to be free from degrading and inhuman treatment, the right to integrity and dignity of the person, and the right to fast-track justice when read in conjunction with Article 39A on equality of justice and free legal aid.

Article 23 - prohibition of bonded labour (mostly SC people) and Article 24 for bonded children.

Article 45 - free and compulsory education to all children till the age of 14

Article 43 - calls on the state to secure a decent standard of life for all citizens.

Article 46 (DPSP) - The State shall promote with special care the educational and economic interest of the weaker section of the people, and in particular the SC/ST people.

Article 15(4) - Provides for reservations in educational institutions for the advancement of SC/CT people. It provides a way for the reservations in police forces.

Article 330 - Reservation of seats in the lok Sabha, While **Article 332** provides for reservations in state assemblies. It has continued for 4 decades.

Article 16(4) - provides for reservations in public employment for those who are less represented.

Article 338 - To give effect to this article, The national commission for SC/ST people had been set up.

Protection of civil rights act,1955

It was set up to enforce the abolition of "untouchability". Until 1973 there was no conviction of atrocities that resulted in the establishment of the Protection of civil rights cell.

Still there were hardly any convictions, this is because of the vulnerability of the police to take action against the caste hindus. Society as a whole has never agreed to PCR legislation.

Scheduled caste and scheduled Tribes protection act,1989:

It came into force because of the failure of the PCR act ,1955. It extended its scope to violence against the vulnerable class and not just untouchability. It includes various aspects of violence unveiled by caste hindus.It is not necessary to pronounce the name of the caste in

order to be punished.But in the prisons, uttering the caste names is still happening and issuing IDs with sub-castes are the scenes in reality.

The legislation also punishes officials who commit the listed offences. The fabrication of false evidence in cases against members of scheduled castes or scheduled tribes is a crime under section 3. The punishments are established under the same.

X. FAILURE IN IMPLEMENTATION:

Upper caste police are already biased.

They presume that the complaints of the dalits are fabricated or false.That's the mindset they are working with.Anyone who has ever assumed that something was wrong will end up proving that the cause was not fair.

— Dalit district superintendent of police.

There is only two percent conviction under this act.The investigating officers mostly are upper-caste and the accused are wealthy enough to bribe the judges and the officers.it apparently reflects in the low or no convictions from the upper caste. There is no special court for them to get justice, approved by the dalit lawyer who has been practicing in tamil nadu for 17 years.

People do not have a lot of convictions under the Prohibition of Atrocities Act. On the other hand, there is an increasing number of Dalits and tribes in prisons**.** From this, we can conclude that both inside and outside of the prisons, only the low caste vulnerable people are being targeted and tortured.

There is a necessity to strengthen the institutions which are for the Dalits and tribes welfare. But still it is at the paper level.

XI. RECOMMENDATIONS

1. Till now, we have never seen such big public debates or media coverage regarding this issue. Even this is not a simple issue to be solved out. But it is the major problem challenging our constitutional basic fundamental right of equality. So media attention towards the cruelties should be brought to light.

2. The economic profile of the prisoners should be released. Only from such clear data of geography, sub groups and economic profile, one can find how the law is being misused in rehabilitation of such prisoners.

3. The United Nations Convention against torture should be ratified by the Government

4. The government should take special care on caste based discrimination and targetting in the index of habitual offenders against SC,ST, Dalits, Muslims and adivasis by conducting timely inspections.

5. Special training should be provided to police to create a discrimination free prisons and they should be thought of their rights and responsibilities towards the SC,ST and other backward class of prisoners.

6. Basic fundamental amenities provided in prison like medical assistance, beddings and ample wages for employment should be free from discriminations as these are human rights it could not be violated in any sense

7. The oppressed people are the ones who are in serious need of legal aid. So the government should strengthen the system of legal aid by appointing more lawyers for certain community people who are economically weak.However, the reality is that legal aid lawyers are not well paid and have no incentive to do the right thing.Legal aid system is the need of the hour which may help most of the prisoners who are illiterate and poor . The central government should pass a separate act regarding legal aid. The law commission's recommendation of fresh lawyers to do a compulsory 2 year spell with legal aid should be mandated.

8. The NCRB should release the disaggregated data on subgroups which helps to study the trends in incineration deeply.

XII. CONCLUSION

In the post-independence era**,** many laws were made for the marginalized people like scheduled castes and scheduled Tribes (prevention of atrocities act)1989 and protection of civil rights act 1955 which has been overseen by the national commission on the atrocities against scheduled caste and scheduled Tribes. This commission has only civil court rights and it is not sufficient to protect those people. It has to be given criminal jurisdiction. State complicity extends to the non -registration of cases under these acts against the caste Hindus who play a major role in politics and judiciary. Dalits and tribes lack political representation. Unless the high officials and society's attitude towards dalits, and tribes changes, the humiliation and unequal treatment caused to them can't be changed.

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