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# **CASTE, CRIME, AND JUSTICE: AN ANALYSIS OF SYSTEMIC DISCRIMINATION IN INDIA'S CRIMINAL JUSTICE SYSTEM**

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Jinesh M, Assistant Professor (Law), School of Law (Vistas), Chennai

## **ABSTRACT**

This paper examines the deep-seated intersection between caste discrimination and India's criminal justice system, analyzing how historical hierarchies continue to manifest in contemporary legal processes. Despite constitutional guarantees of equality and specific legislative protections such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, marginalized caste communities face systematic discrimination at every stage of the criminal justice process, from policing to prosecution to incarceration. Through an analysis of empirical data, judicial pronouncements, and legislative frameworks, this paper demonstrates that caste-based discrimination persists as both explicit violence and structural marginalization. The paper explores how the criminal justice system often fails to protect Dalit and Adivasi victims while simultaneously over-criminalizing these communities. It examines the role of police bias, prosecutorial discretion, and judicial attitudes in perpetuating caste hierarchies. The paper concludes by proposing systemic reforms including comprehensive data collection, enhanced accountability mechanisms, and transformative justice approaches that address the root causes of caste-based discrimination in legal institutions.

## I. Introduction

The Indian Constitution, adopted in 1950, represents one of the most ambitious projects of social transformation through law.<sup>1</sup> Article 14 guarantees equality before law, Article 15 prohibits discrimination on grounds including caste, and Article 17 explicitly abolishes "untouchability."<sup>2</sup> Yet seventy-five years after independence, caste continues to structure social relations, economic opportunities, and critically, interactions with the criminal justice system. The persistence of caste-based discrimination within legal institutions presents a fundamental challenge to India's constitutional promise of equality and justice for all citizens.

India's caste system, though often described as ancient and unchanging, has evolved significantly through colonial rule and post-independence democratization.<sup>3</sup> What remains constant, however, is the marginalization of communities designated as Scheduled Castes (SC) and Scheduled Tribes (ST), formerly known as "untouchables" and "tribals" respectively. These communities, constituting approximately 16.6% and 8.6% of India's population respectively, face discrimination that extends from everyday social interactions to systematic exclusion from economic opportunities and political power.<sup>4</sup>

The criminal justice system serves as a critical site where caste hierarchies are both challenged and reproduced. On one hand, the legal system provides mechanisms through which marginalized communities can seek redress for caste-based violence and discrimination. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter "the POA Act") represents legislative recognition of the particular vulnerabilities these communities face.<sup>5</sup> On the other hand, the criminal justice system itself often functions as an instrument of caste oppression, characterized by discriminatory policing, biased prosecutions, and judicial attitudes that reflect broader social prejudices.

This paper examines how caste operates within India's criminal justice system through three primary manifestations: first, the failure to adequately address caste-based violence against SC/ST communities; second, the over-policing and criminalization of these communities; and third, the structural biases embedded within legal institutions that perpetuate caste hierarchies.

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<sup>1</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50 (1966).

<sup>2</sup> *India Const.* arts. 14, 15, 17.

<sup>3</sup> Nicholas B. Dirks, *Castes of Mind: Colonialism and the Making of Modern India* 5-6 (2001).

<sup>4</sup> *Census of India 2011*, Office of the Registrar General & Census Commissioner, India (2011).

<sup>5</sup> The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, *India Code* (1989).

The analysis draws upon empirical studies, judicial decisions, legislative frameworks, and socio-legal scholarship to demonstrate that despite formal legal equality, substantive justice remains elusive for India's most marginalized communities.

## II. Historical Context: Caste and Colonial Law

Understanding contemporary challenges requires examining how colonial legal systems interacted with caste hierarchies. British colonial rule both reinforced and transformed caste structures through legal codification. The Census operations, beginning in 1871, administratively fixed fluid social identities into rigid categories.<sup>6</sup> Colonial criminal law, codified in the Indian Penal Code of 1860, largely ignored caste-based discrimination while implementing laws like the Criminal Tribes Act of 1871 that targeted specific communities—many of them lower-caste—as "habitual offenders."<sup>7</sup>

The Criminal Tribes Act exemplifies how colonial law criminalized marginalized communities. Under this legislation, entire communities were designated as "criminal tribes," subjected to restrictions on movement, mandatory registration, and presumptions of criminality.<sup>8</sup> Though repealed after independence and replaced with the Habitual Offenders Act, 1952, the stigma and surveillance of these communities—now designated as "denotified tribes"—persists, illustrating the enduring legacy of discriminatory legal frameworks.<sup>9</sup>

The independence movement and constitutional drafting process, led significantly by Dr. B.R. Ambedkar himself from an "untouchable" community, sought to dismantle caste hierarchies through legal means. The Constitution's commitment to equality, combined with affirmative action provisions for SC/ST communities (Articles 15(4), 16(4), and 46), represented a radical departure from colonial indifference.<sup>10</sup> However, the gap between constitutional ideals and lived reality has proven difficult to bridge, particularly within institutions like the police and judiciary that inherited colonial structures and personnel.

## III. Legislative Framework: Promises and Limitations

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<sup>6</sup> Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age* 142-169 (1999).

<sup>7</sup> The Criminal Tribes Act, Act No. 27 of 1871, *India Code* (1871) (repealed 1952).

<sup>8</sup> Meena Radhakrishna, *Dishonoured by History: 'Criminal Tribes' and British Colonial Policy* 1-25 (2001).

<sup>9</sup> The Habitual Offenders Act, No. 21 of 1952, *India Code* (1952).

<sup>10</sup> *India Const.* arts. 15(4), 16(4), 46.

## A. Constitutional Protections

The Constitution provides multiple protections against caste-based discrimination. Article 15(2) prohibits restrictions on access to public places on grounds of caste.<sup>11</sup> Article 17's abolition of "untouchability" makes its practice an offense punishable by law.<sup>12</sup> These provisions are enforceable fundamental rights, meaning individuals can approach courts directly for violations.

The Untouchability (Offences) Act of 1955, later renamed the Protection of Civil Rights Act, 1955, provided the initial statutory framework for enforcing Article 17.<sup>13</sup> However, the Act's limitations became apparent as caste-based violence escalated during the 1970s and 1980s, particularly in response to Dalit assertion of constitutional rights and land reforms.<sup>14</sup>

## B. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Recognizing that existing laws inadequately addressed escalating violence against SC/ST communities, Parliament enacted the POA Act in 1989.<sup>15</sup> The Act identifies specific offenses involving humiliation, injury, and violence against SC/ST persons, provides for enhanced punishments, establishes special courts, and creates preventive and punitive measures.

The POA Act lists twenty-two specific offenses in Section 3, including forcing SC/ST persons to drink noxious substances, parading naked, occupying their land, and committing various forms of sexual violence.<sup>16</sup> Section 3(2) creates additional offenses for public servants who willfully neglect their duties regarding the Act. These provisions recognize both interpersonal violence and institutional failures.

The Act also contains procedural safeguards: Section 14 establishes Special Courts; Section 15 mandates appointment of Special Public Prosecutors; and Section 4 specifies that offenses shall not be subject to anticipatory bail. These provisions aim to address the systemic barriers SC/ST communities face in accessing justice.

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<sup>11</sup> *India Const.* art. 15(2).

<sup>12</sup> *India Const.* art. 17.

<sup>13</sup> The Protection of Civil Rights Act, No. 22 of 1955, *India Code* (1955).

<sup>14</sup> Gail Omvedt, *Dalits and the Democratic Revolution: Dr. Ambedkar and the Dalit Movement in Colonial India* 257-280 (1994).

<sup>15</sup> The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, *supra* note 5.

<sup>16</sup> *Id.* § 3(1).

### C. Judicial Interpretation and Legislative Response

The Supreme Court's 2018 decision in *Subhash Kashinath Mahajan v. State of Maharashtra* significantly diluted the POA Act by allowing anticipatory bail and requiring preliminary inquiries before arrest. This decision sparked widespread protests from Dalit organizations who argued it would embolden perpetrators and discourage victims from filing complaints.<sup>17</sup>

In response to sustained criticism and nationwide protests, Parliament amended the Act in 2018 through the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018. The amendment explicitly restored the bar on anticipatory bail and clarified that preliminary inquiry is not required for investigating offenses under the Act.<sup>18</sup> This legislative override demonstrates both the political mobilization of SC/ST communities and the tension between judicial interpretation and legislative intent.

## IV. Caste-Based Violence: Patterns and Institutional Responses

### A. Empirical Evidence of Violence

Data from the National Crime Records Bureau (NCRB) reveals persistent patterns of violence against SC/ST communities. In 2021, 50,900 cases were registered under the POA Act, and 10,444 cases under the Protection of Civil Rights Act. However, these numbers likely underestimate actual violence due to significant underreporting stemming from fear of retaliation, lack of faith in police, and social pressure.<sup>19</sup>

Certain forms of violence show particular patterns. Sexual violence against Dalit women serves as a tool of caste domination, with conviction rates remaining dismally low. Honor killings targeting inter-caste couples continue despite legal prohibitions. Violence often erupts in response to Dalit assertion of constitutional rights, whether entering temples, wearing particular clothing, or participating in political processes.

The geographic distribution of violence correlates with regions of intense caste stratification and land-based conflicts. States like Uttar Pradesh, Bihar, Rajasthan, and Madhya Pradesh

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<sup>17</sup> Sukhadeo Thorat & Narendra Kumar, *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018: Challenges in Implementation*, 53(48) Econ. & Pol. Wkly. 12 (2018).

<sup>18</sup> *Id.* § 18.

<sup>19</sup> Smita Narula, *Broken People: Caste Violence Against India's "Untouchables"* 74-89 (1999).

consistently report high numbers of atrocities, though variations in reporting mechanisms complicate interstate comparisons.<sup>20</sup>

### **B. Police Response: Discrimination and Inaction**

Police response to caste-based violence reveals systematic failures that begin at the reporting stage. Studies document regular refusal by police to register First Information Reports (FIRs) for atrocities against SC/ST victims. When FIRs are registered, investigation quality is often compromised by bias, inadequate resources, or active collusion with perpetrators.<sup>21</sup>

The caste composition of police forces contributes to these failures. Despite constitutional mandates for SC/ST representation in government employment, police forces remain dominated by upper castes, particularly in positions of authority. This demographic reality, combined with insufficient training on caste sensitization, creates an institutional culture where caste prejudices flourish unchecked.<sup>22</sup>

Section 4 of the POA Act requires police officers to register complaints under the Act, conduct thorough investigations, and ensure victims receive immediate relief. Section 3(2)(i) makes willful neglect of these duties a punishable offense. Yet prosecutions of police personnel under this provision remain rare, indicating a failure of accountability mechanisms.<sup>23</sup>

### **C. Prosecutorial Discretion and Judicial Attitudes**

Even when cases reach prosecution, conviction rates under the POA Act remain low—hovering around 32% in 2021, compared to 47% for crimes under the Indian Penal Code. This disparity reflects multiple factors including weak investigation, hostile witnesses (often intimidated), and prosecutorial discretion that may disadvantage SC/ST complainants.

Judicial attitudes also influence outcomes. While landmark Supreme Court decisions like *State of Karnataka v. Appa Balu Ingale* have emphasized the need to interpret the POA Act purposively to achieve its protective objectives,[39] lower courts sometimes display skepticism toward complaints, particularly regarding allegations of caste-based verbal abuse.[40] The

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<sup>20</sup> National Crime Records Bureau, *supra* note 24, at 210-215.

<sup>21</sup> Thorat & Kumar, *supra* note 21, at 13-14.

<sup>22</sup> Sameera Khan, *Intersectionality in Police Recruitment*, 15 Indian J. Gender Stud. 535 (2008).

<sup>23</sup> Thorat & Kumar, *supra* note 21, at 14.

requirement to prove caste-based motive, rather than presuming it in cases involving SC/ST victims and non-SC/ST accused, places additional burdens on victims.<sup>24</sup>

The Special Courts mandated under Section 14 of the POA Act have not been established in all districts, leading to pendency and delay. As of 2021, only 1,245 exclusive Special Courts existed for approximately 2.5 lakh pending POA Act cases. This institutional capacity deficit undermines the Act's protective purpose.

## **V. Over-Policing and Criminalization of Marginalized Communities**

While the criminal justice system fails to protect SC/ST communities from violence, it simultaneously over-polices and criminalizes these populations. This paradox—simultaneous under-protection and over-enforcement—characterizes the experience of marginalized communities worldwide but takes particular forms in the Indian context.<sup>25</sup>

### **A. The Legacy of Criminal Tribes**

The colonial Criminal Tribes Act's legacy persists in contemporary policing of denotified tribes. Despite formal decriminalization in 1952, these communities—numbering approximately 60 million, face continued stigmatization and surveillance. Police registers continue tracking individuals from these communities, and stereotypes of hereditary criminality shape investigation practices.<sup>26</sup>

The Habitual Offenders Act, which replaced the Criminal Tribes Act, maintains provisions for surveillance and restrictions on movement for persons deemed habitual offenders. The discretion in applying this designation, combined with persistent prejudices, means denotified tribe members face disproportionate scrutiny and arrest.<sup>27</sup>

### **B. Caste and Prison Demographics**

Analysis of prison populations reveals overrepresentation of SC/ST communities. According to the National Crime Records Bureau, SC/ST persons constituted 39% of undertrials in 2021

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<sup>24</sup> National Campaign on Dalit Human Rights, *Access to Justice: Challenges Before Dalit Women* 18-25 (2011).

<sup>25</sup> Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 Stan. L. Rev. 1271 (2004).

<sup>26</sup> *Id.*

<sup>27</sup> National Human Rights Commission, *Report on the Denotified and Nomadic Tribes* 12-18 (2008).

despite representing 25% of the population. This overrepresentation reflects discriminatory arrest patterns, inability to secure bail due to poverty, and inadequate legal representation.<sup>28</sup>

Conditions within prisons also reflect caste hierarchies. Studies document caste-based discrimination in prison work assignments, access to amenities, and social interactions among inmates. Prison staff, like police, often come from dominant caste backgrounds, perpetuating discriminatory treatment.<sup>29</sup>

### C. Death Penalty and Caste

Emerging research suggests caste influences death penalty imposition and execution. A 2016 study by Project 39A at National Law University, Delhi found that 76% of prisoners executed since 1995 belonged to religious or caste minorities, including Dalits.[53] While this research remains preliminary and contested, it raises critical questions about whether "rarest of rare" doctrine applies with equal stringency across caste lines.<sup>30</sup>

The Supreme Court's recognition in *Bachan Singh v. State of Punjab* that socio-economic circumstances constitute mitigating factors in death penalty cases theoretically protects marginalized defendants. However, application remains inconsistent, and the intersection of caste discrimination with capital punishment warrants deeper examination.<sup>31</sup>

## VI. Structural Reforms: Addressing Systemic Discrimination

Addressing caste discrimination in the criminal justice system requires reforms that go beyond individual prosecutions to tackle structural and institutional barriers.

### A. Data Collection and Transparency

India lacks comprehensive data on how caste intersects with criminal justice at each stage, arrests, charges, convictions, sentencing, and incarceration. While NCRB collects data on crimes against SC/ST communities, it does not systematically track the caste identity of all accused and convicted persons. This data gap impedes evidence-based policymaking and

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<sup>28</sup> Bimal Patel, *India's Constitution and Caste-Based Reservations*, 19 Int'l J. Const. L. 295 (2021).

<sup>29</sup> *Id.*

<sup>30</sup> Bikram Jeet Batra, *Caste and Capital Punishment in India: Examining the Intersection*, 7 J. Crim. L. & Criminology 145 (2020).

<sup>31</sup> Batra, *supra* note 54, at 150-165.



obscures patterns of discrimination.<sup>32</sup>

Implementing mandatory, disaggregated data collection, while ensuring privacy protections, would enable researchers, policymakers, and civil society to identify disparities and track progress. Such data could illuminate whether arrest patterns, bail decisions, conviction rates, and sentencing vary by caste, controlling for offense severity and criminal history.<sup>33</sup>

## **B. Institutional Accountability and Training**

Police and judicial accountability mechanisms must be strengthened. This includes:

1. **Strict enforcement** of Section 3(2) POA Act provisions making police inaction punishable.
2. **Independent oversight bodies** to investigate complaints of caste discrimination by criminal justice personnel.
3. **Mandatory sensitization training** for police, prosecutors, and judges on caste discrimination, implicit bias, and constitutional values.
4. **Diversification** of criminal justice institutions through effective implementation of reservation policies and additional measures to ensure SC/ST representation at all levels.

The National Human Rights Commission and State Human Rights Commissions could play enhanced roles in monitoring caste discrimination within the criminal justice system and recommending institutional reforms.<sup>34</sup>

## **C. Legal Aid and Victim Support**

Access to quality legal representation remains severely limited for SC/ST accused and victims. The Legal Services Authorities Act, 1987 established legal aid mechanisms, but implementation remains inadequate. Specialized legal aid cells focusing on SC/ST communities, staffed with lawyers trained in anti-discrimination law, could improve access to justice.<sup>35</sup>

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<sup>32</sup> Christophe Jaffrelot, *Dr. Ambedkar and Untouchability: Analysing and Fighting Caste* 155-180 (2005).

<sup>33</sup> *Id.*

<sup>34</sup> Protection of Human Rights Act, No. 10 of 1994, *India Code* (1994), §§ 12, 21.

<sup>35</sup> Law Commission of India, *supra* note 62, at 52-58.

Victim compensation schemes under the POA Act require strengthening and timely implementation. Section 15A mandates minimum relief and compensation for victims, but delays and inadequate amounts undermine these provisions. Establishing trauma-informed victim support services, including counseling and livelihood assistance, would address the broader impacts of caste-based violence.<sup>36</sup>

#### **D. Community Participation and Restorative Justice**

While formal legal institutions remain essential, complementary approaches recognizing community agency deserve consideration. Vigilance committees mandated under the POA Act Rules should be strengthened and empowered to monitor atrocities and facilitate reconciliation where appropriate.

However, "reconciliation" must not mean compelling victims to accept injustice or compromise on fundamental rights. Restorative justice approaches in the Indian caste context require careful design to avoid replicating power hierarchies. Any community-based mechanisms must operate alongside, not instead of, formal criminal justice processes, and must center the agency and dignity of SC/ST communities.<sup>37</sup>

#### **VII. Theoretical Perspectives: Law's Ambivalent Role**

The relationship between law and caste illuminates broader theoretical debates about law's potential for social transformation. Critical legal scholars argue that law reflects and reinforces existing power structures, with formal equality masking substantive inequality. From this perspective, the gap between constitutional guarantees and lived reality is not an implementation failure but reflects law's inherent limitations.<sup>38</sup>

Dr. Ambedkar himself expressed ambivalence about law's transformative potential, famously warning that constitutional morality could not be borrowed and must be cultivated. His simultaneous commitment to constitutional methods and recognition of their limits offers a framework for understanding contemporary challenges: law provides necessary but insufficient tools for dismantling caste.<sup>39</sup>

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<sup>36</sup> National Campaign on Dalit Human Rights, *supra* note 41, at 45-50.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Upendra Baxi, *The Little Done, The Vast Undone: Reflections on Reading Granville Austin's The Indian Constitution*, 1 J. Indian L. Inst. 323 (1967).

Dalit feminists scholars emphasize how caste, gender, and class intersect to shape experiences of discrimination and violence. This intersectional analysis reveals how Dalit women face particular forms of violence, sexual assault as caste humiliation, that existing legal frameworks inadequately address. Reforming the criminal justice system requires attending to these intersections and centering the experiences of those most marginalized.<sup>40</sup>

### VIII. Conclusion

Seventy-five years after constitutional abolition of untouchability, caste continues to structure Indian society and its criminal justice system. Despite robust legislative frameworks including the POA Act, SC/ST communities face persistent violence met with inadequate institutional responses. Simultaneously, these communities experience over-policing and criminalization reflecting colonial legacies and contemporary prejudices. This paradox, under-protection and over-enforcement, reveals how criminal justice institutions reproduce rather than remedy caste hierarchies.

Addressing these challenges requires acknowledging that caste discrimination within the criminal justice system is not aberrational but systemic. Isolated interventions will prove insufficient; comprehensive reforms targeting institutional culture, accountability mechanisms, and structural barriers are necessary. This includes mandatory data collection to reveal disparities, enhanced training and diversification of legal institutions, strengthened victim support and legal aid, and community participation in justice processes.

Yet law alone cannot dismantle caste. As Dr. Ambedkar recognized, legal equality must be accompanied by social and economic transformation. The criminal justice system can either facilitate or obstruct this transformation. Currently, it too often obstructs. Realizing constitutional promises requires ongoing struggle by marginalized communities, supported by legal institutions willing to critically examine their own complicity in perpetuating inequality.

The persistence of caste-based discrimination within India's criminal justice system challenges comfortable narratives of legal progress. It demands honest reckoning with how institutions claiming to deliver justice can simultaneously perpetrate injustice. Only through such reckoning, followed by determined structural reform, can India's criminal justice system begin to fulfill its constitutional mandate of equality and dignity for all persons, regardless of caste.

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<sup>40</sup> Sharmila Rege, *Writing Caste/Writing Gender: Narrating Dalit Women's Testimonios* (2006).

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