
THE HIDDEN FACES OF CUSTODY: ANALYZING STRUCTURAL BIAS AGAINST MINORITIES UNDER CRPC AND BNSS

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ABSTRACT

The aim behind this research paper is to investigate prisoner's rights in police custody, and the procedures that govern them, under the Indian Code of Criminal Procedure (addressed as CrPC henceforth), and the newly proposed Bhartiya Nagrik Suraksha Sanhita Bill, 2023, henceforth referred to as BNSS for convenience.

The paper uses and analyses available statistical data of caste, gender and religious intersectionality in India, to deconstruct the systemic bias against minorities of the above mentioned categories within the Indian criminal justice system. Additionally, through a comparison of BNSS and CrPC, this paper attempts to shed light on the provisions and frameworks of both that may enable perpetuating these biases.

Further, case-studies and real life examples are discussed, to highlight the lived experiences of individuals against whom these biases are levered, and to probe into the role of political influences in police custodial practices.

Additionally, this paper discusses the apparent shortcomings in both CrPC and BNSS, and seeks to provide solutions to these issues, while simultaneously emphasizing on the need for comprehensive legal reforms in order to uphold minority rights and ensure equitable treatment in police custody.

Keywords: Bias in judiciary, police custody procedures, prisoners' rights, minority incarceration, caste bias in criminal justice.

INTRODUCTION

An efficient policing system is the fulcrum of a flourishing society where human rights of each individual are mutually respected and any deviance is treated with sensitivity according to principles of equity founded in the laws. In this backdrop, it is pertinent to mention the oath laid down in the Law Enforcement Code of Ethics, as provided by the International Association of Chiefs of Police:

“As a law enforcement officer, my fundamental duty is to serve the mankind, to safeguard lives and property, to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence and disorder; and to respect constitutional rights of all men to liberty, equality and justice.”¹

While it is conceded that the institution of police has done a commendable job in becoming the guardians of law and order, it is still tainted with irregularities of discrimination and bias. These forces depend largely on personal beliefs and value systems² that one is nurtured with by their kin. In this backdrop, the current article discusses the categorical discrimination that dominates the procedure of detaining a person under police custody. The employment of brutal measures by those in uniform that result in the rising trend of custodial deaths have become a key element in police investigations.³ Custodial deaths have been on a rise over the course of last five years⁴, which demands a serious inquiry into the exercise of unfettered powers of our policemen, *quis custodist custodes* (who will police the police?)⁵

The article shall first trace the development of prejudice of police towards the targeted groups of gender minorities comprising of women and transgenders, religious minorities, and caste-based oppression through brief historical references. The following segment shall give an introduction of various legislations that have been introduced to tackle the menace of bias. The penultimate portion shall look into contemporary developments in the sphere, where socio-economic progression has led to the inculcation of modern values that promote equality. Lastly, the final limb of the paper provides insights and suggests corrective measures that can be

¹ Law Enforcement Code of Ethics, adopted by IACP, October 1957.

² *Supra* note 4.

³ Statement by R.K. Anand, Former Vice President, Indian Law Institute, given at the ‘VIII International Symposium on Torture’ held in New Delhi, September 1999.

⁴ Monthly Salient Statistics of Cases Registered/ Disposed by NHRC, India, available at: <https://nhrc.nic.in/complaints/human-right-case-statistics> (last visited on 4th March, 2024).

⁵ Editorial, “Sign, Yes; Obey, No” *The Times of India*, June 21, 1998.

utilised by the state regime in order to ameliorate the dwindling conditions of the targeted communities.

Historical oppression of minorities: A timeline

Despite the deceptively diverse and inclusive culture exhibited by nations worldwide, there lies a dark underbelly of complex narratives of oppression and marginalization experienced by gender, religion, and, in the case of India, caste minorities as well. Understanding the timeline and history of such oppression is crucial to understanding the dynamics of power and privilege that have shaped various societies across the globe over the centuries.

Apart from facing social discrimination both from individual members and systems as a whole, these marginalized groups are exploited further in spheres of criminal justice and police custody. This paper specifically discusses the history of oppression of gender minorities, i.e., women and trans people, and those from lower castes in India. Exploring critical historical events, social structures, and cultural practices may further help the understanding of the roots of systemic inequality and how it disproportionately impacts these groups almost daily.

Exploitation and discrimination against trans individuals in the criminal justice system

Heteronormative norms and patriarchal views are the dominant narratives that run society, which have enabled a history of violence and discrimination against trans people across the globe, and in India. Though the Supreme Court has granted trans individuals the status of third gender in India⁶, the criminal justice system has continuously failed these individuals, given the number of instances of police brutality and illegal detention⁷, along with atrocious acts of rape and sexual violence. There are brutal stories of forceful kidnapping and castration of transgenders, which are well-documented⁸. Moreover, transgenders do not have separate prisons. They are often kept in prisons according to their biological sex, which goes against one of the critical tenets of the NALSA judgment⁹, which states and emphasizes the right of self-identification of gender and the necessity for separate detention facilities for such individuals who may need it.

⁶ (2014) 5 SCC 438

⁷ People's Union of Civil Liberties. A study of Kothi and Hijra sex workers in Bangalore. PUCL-K (2003)

⁸ Zia Jaffery. The Invisibles: A tale of the eunuchs of India. New York, NY: Pantheon Books, 1996.

⁹ *Supra* note 1

This is testament enough to how transgenders are prosecuted without valid evidence or through improper procedure, and it only stands to be perpetuated by the social biases that enable such behavior from authorities in power.

Though there has been a marked departure from heteronormativity on paper by the Indian judicial and criminal justice systems after the decriminalization of Section 377 of the Indian Penal Code¹⁰, the emphasis on “gender-neutral” laws often fails to consider the fact that not all genders are subject to the same chances of violence. The idea of a gender-neutral legal system would only work upon the presumption that no pre-existing socio-legal biases may work their way into the due processes of the system.

Systemic discrimination against women in the criminal justice system

Despite the supposed modernity and advancement of the world, women continue to face several issues in their day-to-day life, including being the victims of heinous crimes such as rape, domestic violence, sexual assault, and human trafficking.

In the Indian context, according to the National Crime Records Bureau report from 2019¹¹, crimes against women increased by 7.3%, further highlighting the fact that women are more susceptible to violence in personal spheres as compared to alien spheres of the outside world. Despite the existence of stringent punishments against these crimes, it is evident that it not deter crime enough, owing to the fact that lot of cases get dismissed or acquitted due to various social biases and narratives that shape the legal process in the country. The law by the book defines crimes that are compoundable and non-compoundable¹², and goes on to add that rape and other sexual offences are not compoundable offences.

Therefore, this would ideally mean that no compromises or out-of-court settlements are allowed for such crimes, socio-legal and economic factors often come into play, and the parties are forced to settle by the accused, which ends up being an encumbrance to the strict punishments provided under the Indian Penal Code¹³.

¹⁰ AIR 2018 SC 4321

¹¹ Crime in India-2019, National Crime Records Bureau, retrieved from <https://ncrb.gov.in/sites/default/files/CI%202019%20SNAPSHOTS%20STATES.pdf>

¹² Code of Criminal Procedure, 1972, Section 320.

¹³ Indian Penal Code, 1860, Section 376

The recent overturning of cases like *Roe v. Wade*¹⁴ on the global scale goes on to further prove that laws may not achieve their intended purpose in the presence of socio-political beliefs and biases perpetuated by social institutions.

Discrimination in the Indian criminal justice system on the basis of caste

It is no news that the Indian criminal justice system has been actively involved in the practice and propagation of systemic bias on the grounds of caste. An investigative journalism endeavour conducted in 2020¹⁵ further went on to show that casteist practices were still being followed in prisons across the country, with sanctions from prison authorities and prison manuals of India, including the Prisons Act of 1894.

A particularly heinous practice is observed in the Uttar Pradesh manual: The term "reasonable respect to caste prejudices of prisoners" is included in Rule 719, which protects upper-caste inmates who oppress lower-caste inmates. This has resulted in severe abuse and degrading treatment from prisoners of higher caste.¹⁶

Though the Model Prison Manual¹⁷ supposedly complies with international standards for the treatment of prison inmates, it clearly can be observed that there is a severe lack of implementation of these procedures, as individual states rely on their own prison manuals to run prisons. Though the Prevention of Atrocities Act is supposed to act as a safeguard to help keep people from lower castes safe from abuse and discrimination, it only has inadequate provisions which are very loosely and restrictively interpreted, ensuring that not many individuals who partake in casteist behaviours get convicted by the Act¹⁸.

The Constitution of the country guarantees fundamental rights under Part III of the constitution to the prison inmates, along with a safeguard against discrimination on the basis of caste and untouchability under Articles 15 and 17, neither of which seem to be actively enforced. Article

¹⁴ 410 U.S. 113 (1973)

¹⁵ Sukanya Shantha, *From Segregation to Labour, Manu's Caste Law Governs the Indian Prison System*, December 10, 2020, available at <https://thewire.in/caste/india-prisons-caste-labour-segregation>

¹⁶ Saurav Dutta, *How Caste plays out in the Criminal Justice System*, January 5, 2019, available at <https://www.newsclick.in/how-caste-plays-out-criminal-justice-system>

¹⁷ Model Prison Manual for the Superintendence and Management of Prisons in India, 2003, Rules 2.15.1, 15.22, 19.09(xxxviii), 24.02 notes (ii), 24.35.

¹⁸ Anand Teltumbde, *Why the 'misuse' of the SC/ST Act is nothing but a bogey*, April 6, 2018, available at <https://economictimes.indiatimes.com/news/politics-and-nation/why-the-misuse-of-the-sc/st-act-is-nothing-but-a-bogey/articleshow/63648662.cms?from=mdr>

21 further includes the right to live with dignity and not a mere animal existence¹⁹, which clearly has not been accorded to prisoners from lower castes.

Conclusion

From the above-discussed cases and lived experiences, socio-political systems and biases in India reveal a deeply entrenched system of discrimination within the criminal justice system. Transgender individuals face egregious abuse despite legal recognition of their rights and safety, disclosing the lack of transparency and accountability in the system.

The same goes for women, who, despite legal safeguards, continue to suffer increasing amounts of violence due to social bias and gender stereotypes. The experiences of trans individuals facing not only physical violence but also systemic neglect within detention facilities exemplify the urgent need for policy interventions and cultural shifts. Caste-based discrimination is rampant in the criminal justice systems that are supposed to cure society of it, with prisons turning into arenas that perpetuate caste hierarchies and abuse sanctioned by archaic laws and institutional practices.

Constitutional guarantees seem to have failed to protect its people under the aegis of equality and dignity. Hence, it is imperative to discuss and bring about comprehensive systemic reforms addressing these social prejudices and ensuring the effective implementation of laws. In addition to legislative changes, education and awareness campaigns are also a necessity to challenge entrenched social prejudices and foster a culture of equality and respect for human dignity regardless of class, caste, gender or sexual identity, and any other social identity.

PROVISIONS AND LEGISLATIONS TO CURTAIL THE PROBLEM

The Supreme Court in its numerous judgements have sought to establish legal accountability of police officers who are responsible for derogating the rights of those in their custody. In the Indian Constitution, the subject of 'police' falls in the State List of the 7th Schedule, which gives powers to the State Governments to produce legislations to regulate policing in their respective states. The following sub-heads have been divided for ease of analysis.

¹⁹ 1964 SCR (1) 332, ¶345-346

I. Constitutional Provisions

The Constitution of India provides for the preservation of a person's right to life and personal liberty under Article 21, Part III²⁰. A parallel provision is found in the International Covenant on Civil and Political Rights which gives the right to life a primal position to make it 'inherent'²¹ and non-derogatory²². The amplitude of reliefs that can be granted by the courts of law under this article has been time and again extended by the apex court in a number of cases, some of which are discussed progressively. Prior to the 44th Constitutional Amendment, the courts held a regressive view with respect to right to life amongst other fundamental rights, making it subject to overriding. This was embodied in the case of *ADM Jabalpur v. Shivkant Shukla*²³ where the imposition of emergency was a valid ground for overriding of right to life. During the formative years of an independent India, the Supreme Court attempted to examine whether the 'procedure established by the law' as required by the said article meant a 'fair and reasonable procedure'. The meaning was thereafter assigned in the case of *A.K. Gopalan v. State of Madras*²⁴ where the laws made by the State legislature were given competency to override article 21, and that the courts of law do not have the power to inquire into the reasonability of the said order. This created a setback to the sphere of constitutional rights of accused in custody.

The judgement was thereafter examined in the case of *Maneka Gandhi v. Union of India*²⁵ where the apex court clarified that the procedure undertaken to deprive a person of his right to life should have a just and fair substance to it, and cannot be "*arbitrary, fanciful or oppressive*". With respect to the definition of life as per Article 21, it has been given a wide connotation taking into its ambit the right to possess limbs and organs.²⁶ The meaning of life also entails the right to live with human dignity and the means for its upkeep, which is beyond mere

²⁰ The Constitution of India, art.21. It provides, "No person shall be deprived of his life or personal liberty except according to procedure established by law." This provides that this right has been provided against the State and its machineries only, which includes the institution of police as well.

²¹ International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 art. 6.

²² International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 art. 4.

²³ *ADM Jabalpur v. Shivkant Shukla*, A.I.R. 1976 S.C. 1207.

²⁴ *A.K. Gopalan v. State of Madras*, A.I.R. 1950 S.C.27.

²⁵ *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C.659.

²⁶ *Kharak Singh v. State of U.P.* A.I.R. 1978 S.C. 1259.

physical presence.²⁷ Thus, the right against torture was protected under Article 21, though it is not formally inculcated.

A principal objective of conflicting torture in police custody is to extract information from the accused. The person is made to suffer physically and emotionally to an extent where the person finally gives in. The Constitution of India has provided for a right against self-incrimination under Article 20(3), which reads as, “*No person accused of any offence shall be compelled to be a witness against himself*”. The Supreme Court has held in the case of **Yusuf Ali v. State of Maharashtra**²⁸ that the motive of police to inflict torture on the accused in their custody shall be presumed to be for extracting confessions. The right was more specifically dealt with in the case of **Nandini Satpati v. P.L. Dhani**²⁹ where former justice Krishna Iyer imposed certain guidelines to safeguard a person’s rights under police custody. It gave recognition to the right against self-incrimination and right of the accused to stay silent. Even if there is any mode of pressure, howsoever grave but substantial to compel a person to confess, it shall be a “compelled testimony” which is violative of the right against self-incrimination. The police in order to avoid accountability for such presumption should adhere to the prescribed guidelines. However, the case did not recognise the right to stay silent within this right against self-incrimination. Therefore, non-incriminatory questions are permissible, and the accused is “*bound to answer where there is no clear tendency to incriminate.*” Even though involuntary confessions made during police interrogation are inadmissible in the court of law, custodial torture is a growing menace especially in third world countries like India. The presumption of innocent until found guilty is the crux of Indian criminal jurisprudence, which is also a right granted under International Covenant on Civil and Political Rights under Article 14(2).³⁰

The third right that is available for accused persons under the police custody is the right to be informed of the grounds of arrest. The arresting authority is duty-bound to bring the grounds of arrest to the notice. Article 22(1) of the Indian Constitution reads, “*No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest.*” The same article also confers a right on the accused to appoint a legal practitioner of his own choice and to let him defend his case. The parallel provision to this can

²⁷ Francis Corlie Mullim v. The Administrator, Union Territory of Delhi, A.I.R. 1981 S.C.746.

²⁸ Yusuf Ali v. State of Maharashtra, A.I.R. 1968 S.C. 150.

²⁹ Nandini Satpati v. P.L. Dhani, A.I.R. 1978 S.C. 1075.

³⁰ International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 art. 14(2). It provides that, “*everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to the law.*”

be found in Article 14(3)(b) of the International Covenant on Civil and Political Rights, which begins from the time a person is taken into police custody. The subsequent clause under the article, provides for the presentation of the arrested person before a magistrate within twenty fours of arrest³¹, albeit the constitution does not provide that the state shall bear the expenses of the counsel so appointed.

II. Legislative provisions

The Criminal Procedure Code, 1973 (*hereinafter referred to as 'Code'*) embodies the procedure that have to be complied with when a police officer arrests an accused. The Indian Penal Code provides that third degree torture that causes hurt to a person in police custody shall attract a 10-year imprisonment³². In cases of death in police custody, the maximum punishment is prescribed as capital punishment. Apart from this, the Police Act, 1861 also describes punitive actions to be taken for torture inflicted in police custody.³³

Section 167 of the Code provides that when an investigation cannot be completed within 24 hours as required by Section 57³⁴ of the Code, a person may be held in the custody of police for a maximum period of 24 hours, and upto 15 days with an order by a Magistrate.³⁵ Executive Magistrates are permitted to grant police custody for a period extending 7 days. This is opposed to judicial custody where a person may be held for a period of 90 days within the physical custody of a Magistrate for crimes of aggravated nature. The Constitutional rights of an arrestee comes into play from the date of his arrest³⁶, a corollary to which is Section 50 of the Code, which requires the arrestee to be aware of his grounds of arrest. A careful reading of Section 167 provides that the officer in charge of the police station or the inspector himself must have sufficient grounds to believe the information so provided for the arrest and that the investigation cannot, under any circumstance, be completed within 24 hours.³⁷ Additionally, the Magistrate's power of remand is not absolute in nature; it must be judiciously exercised when demanding

³¹ The Constitution of India, art. 22(1).

³² The Indian Penal Code, 1860 (Act 45 of 1860) s.330, 331.

³³ The Police Act, 1861 (Act 5 of 1861) s. 29.

³⁴ The Criminal Procedure Code, 1973 (Act 2 of 1974) s. 57. It provides that "*no police officer shall detain in custody a person arrested without warrant for a longer period than under all circumstances of the case is reasonable, and such period shall not, in absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.*"

³⁵ The Criminal Procedure Code, 1973 (Act 2 of 1974) s.167.

³⁶ Article 22 of the Constitution of India provides that an arrestee must be informed of his grounds of arrest and should be presented before the nearest Magistrate within a period of 24 hours.

³⁷ Central Bureau of Investigation v. Anupam Kulkarni, 1992 SCR (3) 158.

grounds exist.³⁸ After the court has taken cognisance of an offence, if it deems necessary to postpone the commencement of the trial it may do so on reasonable grounds and may by a warrant, remand the accused in custody. However, under no circumstance can the custody exceed fifteen days at a time.³⁹ Hence, the two crucial elements of provisions regarding the rights of the accused under police custody are ‘reasonable grounds’ and ‘period of fifteen days.’ While the element of time is non-negotiable and cannot be breached except for when provided by the Code⁴⁰, the requirement of reasonable grounds becomes an abstract function. Although the code provides that an high ranked officer not below the position of a Station House Officer (SHO) or the investigating officer himself should take decisions based on justifiable grounds, there is a dearth of legislative compliance with respect to these grounds. The courts have attempted to make the measure of these reasonable grounds more concrete, but they fall short of a generalised mechanism.⁴¹ The provision checks the arbitrary use of powers by the police authorities, through a legal examination of an accused person’s arrest and detention.

Parallel to the right against self-incrimination as provided by the Indian Constitution, the Code prohibits involuntary confessions or testimony of the like to become admissible in the court of law⁴², thereby protecting the accused or suspect from such liability that would otherwise be attracted. The code also permits the accused to be a competent witness who may give evidence on oath, in order to defend himself.⁴³

Conversely, the code also provides procedural defences that police authorities may take to tackle vexatious legislations⁴⁴ Police officers have taken the defence under Section 197 of the code that demands a sanction to be delivered by the government in order to proceed with the prosecution of police officers, who have committed a criminal offence “*while acting or purporting to act within the discharge of his official duty.*” The Supreme Court of India in the case of **P.P Unnikrishnan v. Puttiyottil Alikutty**, discussed the scope of Section 197 to hold the following:

³⁸ Raj Pal Singh v. State of U.P, 1983 CrL.J. 109.

³⁹ The Criminal Procedure Code, 1973 (Act 2 of 1974) s. 309.

⁴⁰ Babubhai v. State of Gujarat, (2010) 12 SCC 254.

⁴¹ Premium Granites & Anr. v. State of Tamil Nadu & Ors., (1994) 2 SCC 691; Sukhwinder Pal Bipan Kumar & Ors. v. State of Punjab & Ors., (1982) 1 SCC 31.

⁴² The Criminal Procedure Code, 1973 (Act 2 of 1974) s. 162, 163(1).

⁴³ The Criminal Procedure Code, 1973 (Act 2 of 1974) s. 315, 342(a).

⁴⁴ Jaysingh Wadhu Singh v. State of Maharashtra, 2001 CrLJ 456.

“There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.”

However, the above-mentioned provision is available for defence by police officers only when they are able to prove that the criminal conduct was done while discharging his official duty. Moreover, the misconduct should be in nexus with the official duty that the police officer intended to discharge. Hence, these caveats are what makes the code favourable towards the marginalised communities upon whom harm is unduly inflicted.

FINDINGS AND ANALYSIS

When the accused in custody belong to the oppressed segment of the society, the inherent bias of the police authorities comes to play. Cases of horrific torture against women include pressing of burning cigarettes and insertion of iron rods in her private parts, sexual harassment and rape, torture on their children amongst other monstrous atrocities. These are just a brief overview of what happens to female inmates behind the bars, when she is reduced to a mere animal existence at the mercy of police officers.⁴⁵ Transgenders and people from queer community are not spared either. They are subjected to disgraceful means of violence targeted at their sexual identity that violate their right to privacy amongst other human rights that are mentioned above.⁴⁶

Custodial torture and resultant deaths have been increasing on a yearly basis, especially towards socially and economically backward classes. Data provided by the National Commission of Human Rights provides that six people have died every day in police custody in India between the period of 2018 and 2021, with Gujarat reporting the highest number of custodial deaths.⁴⁷ While these trends create an appalling picture, what is even more scarring is that there has been no conviction for a single police officer since 2011.⁴⁸ Shocking as it may

⁴⁵ *Supra*, note.

⁴⁶ Discard Regressive Laws that Legitimise Violence Against Transgender People, available at : <https://thewire.in/lgbtqia/discard-regressive-laws-that-legitimise-violence-against-transgender-people> (last visited on March 5, 2024).

⁴⁷ DNA Web Desk, “Six people die in custody each day in India, Gujarat tops the list between 2017-20” *DNA India*, May 9, 2022.

⁴⁸ Kaviesh Kinger, “The path for Indian torture legislation: Where are we now and where should we go?” available at <https://www.bridgeindia.org.uk/the-path-for-indian-torture-legislation-where-are-we-now-and-where-should-we-go/> (Last visited on March 5, 2024). This article has referred to the data collected by National Crime Records Bureau.

sound, 60% of these people who died in police custody belonged to the poor and disadvantaged communities, who were Muslims, Dalits and Indigenous tribal communities.⁴⁹

A pertinent point to note here is that the disadvantage is a double-edged sword. The communities that endure suffering at the hands of the police are both socially downtrodden, and economically weak. The institution of policing is not only tainted with the problem of discrimination, but also the problem of influencing by the progressive class who belong to the superior segment of the society. The media, often cited as the fourth limb of a democracy, has been instrumental in portrayal of policemen as pawns in the hands of the privileged few. Crimes committed in the upper echelons are often covered up by the law enforcement agencies, and the destitute become the scapegoats to take the blame. In this process, due to their lack of political outreach and social support, they are put through the torturous process of investigation, and are often wrongly convicted.

Comparison with Bhartiya Nagarik Suraksha Sanhita

In this backdrop, it is pertinent to note the modifications that the newly introduced Bhartiya Nagarik Suraksha Sanhita (*hereinafter referred to as BNSS*) purports to make. The erstwhile Code provides that the police may detain an accused in its custody for a period of 24 hours, an order by the magistrate can extend it to 15 days, which may be extended on legitimate grounds. However, under no circumstance can the police custody extend beyond 60 or 90 days (depending upon the type of offence).⁵⁰ The BNSS changes the procedure, making the 15-day period to be applicable either wholly or in parts, at any time during the primary 40 or 60 days out of the 60/90-day period. The new legislation also does not require the investigating officer to present reasons to seek police custody for an accused in judicial custody.⁵¹ This shall mean that the police shall have more discretion in taking an accused under its custody, which can delay the granting of bail by the Magistrate.

RECOMMENDATIONS

This limb of the paper puts forth corrective measures that can be undertaken by law enforcement authorities to tackle the problem. It is evident that employing these improvements

⁴⁹ National Campaign Against Torture, Annual Report on Torture in India (June, 2020).

⁵⁰ *Supra*, note 26.

⁵¹ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 187.

at the ground level is necessary, since it is the lower rank of policemen that interact with the public at large.

1) Programmes for micro- sensitisation

Educational and sensitisation drives that aim to instil knowledge about the diversity amongst the public should be conducted for lower ranked officers. While their superiors undergo strict examinations like those of civil services, the ground level staff lags behind with their elementary level of brief conceptual understanding. The police staff must acquire knowledge beyond a superficial idea of criminal provisions, and be mindful of the impact that one error from their behalf can make on the entire case.

2) Employing from a diverse range of candidates

Diversity within the police institution can work wonders in order to promote feelings of fraternity, thereby producing behaviours that favour people across all communities. The legislation has rightfully inculcated the provision of reservation for people belonging to socially backward communities in order to elevate their condition which simultaneously, expanded the horizon of the existing force. Working in cohesion with their peers who come from various segments of the society will atleast ensure acknowledgement within the policemen of communities beyond their circle. This shall, in turn, be favourable when different varieties of cases come up and our policemen will already be aware of how to legitimately deal with the same. On the flipside, it shall also tackle the problem of understaffing, which is one of the compelling reasons to opt for third degree measures that aid in solving the large burden of cases quickly.

3) Cooperation between different institutions

Both government and non-government organizations have played an instrumental role in ameliorating the condition of the oppressed. Their recommendations based on scientific surveys have played a crucial role in bringing the issue to forefront. Both need to recognise their strengths and join hands in order to produce efficient results that can go a long way for tackling the issue of discrimination in police custody, and its after effects.

CONCLUSION

This paper has provided a comprehensive understanding and understanding of the structural bias against gender and caste in the criminal justice system in India, exploring the deeply entrenched inequalities that seem to prevail despite the legal safeguards and constitutional provisions that claim to protect minorities.

Through a comprehensive analysis of historical context, legal provisions, and secondary data, it is very evident that marginalized groups face systemic hurdles that are actively implemented by the system in every stage of the criminal justice process, which seems to be a pattern not just in India, but the globe.

Gender disparities manifest in the form of discriminatory attitudes, inadequate legal protections and loopholes and institutional biases that disproportionately impact women and transgender individuals, while caste-based discrimination perpetuates unequal access to justice with Dalits, Adivasis and other historically oppressed groups experiencing strong personal and systemic prejudices in arrests, trials and prison sentences.

After a thorough analysis of the causes and consequences of such biases, this paper also provides a comprehensive list of recommendations and solutions that may significantly help to eradicate these discriminatory practices, while emphasizing on the efforts required from enforcement agencies, civil society actors, and the legal system itself. It also discusses the need for fostering social awareness, challenging stereotypes and empowering marginal communities in order to build an equitable and just society that promises justice, liberty, equality and fraternity for all its citizens regardless of gender, caste or religious affiliations.