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AN ANALYSIS OF THE MINORITY COMMUNITIES IN THE CRIMINAL JUSTICE SYSTEM IN INDIA

Kaumudi Deshpande[1]

Abstract

This paper analyses the difficulties encountered by minority populations within the Indian Criminal justice system, underscoring the disparities between constitutional promises of equality and the reality of law enforcement practices the criminal justice system often fails to uphold these rights, particularly for vulnerable groups, such as Dalits, women, minors, and members of the LGBTQIA+ community. The paper also looks at the criteria of minority identity in India, the legal safeguards offered, and the widespread problems of unlawful imprisonment, and poor living conditions in jails. The system grants significant discretionary powers to authorities, leading to widespread abuse, especially by the police. Vulnerable populations, including minorities, frequently experience illegal detentions, imprisonment, and even "legal torture," which is socially and legally tolerated. Those who oppose the dominant political narrative risk being labelled anti-national and subjected to sedition charges. The paper aims to examine the definition of minority groups in India, their legal rights, and the specific challenges they face within the criminal justice system, particularly in prisons. It will evaluate existing policies and measures designed to protect these rights and assess their effectiveness in addressing the inequalities. The research suggests reforms to create a more inclusive and egalitarian system of justice, ensuring fair treatment for all, regardless of their community background.

Keywords- Minority community, Criminal justice system, Prison system, Discriminatory

Practices

INTRODUCTION

The Indian society has always been practicing a binary system that connotes people be a part of either a majority or a minority community; one is either treated like a king or tormented and threatened to be jailed for merely just existing. Even though the Constitution of India provides equal rights to everyone, in reality the Indian criminal justice system does not practice these rights. There is a huge and frightening gap between the laws given in the statutes of India and the practices carried out in the name of law in India.

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The criminal justice system also vests the State with a lot of discretionary powers, which makes the authority blind to power and thus exercises abuse of such powers. Authorities such as the Police, who are expected to carry out investigations and help in delivering justice to the victims, are one of the most common examples of those who exploit their powers, especially towards the vulnerable groups in India. Illegal detentions and imprisonments are highly common in India, and the concept of 'legal torture' is socially and legally tolerated. Anybody whose views are against the hegemony is and can be branded as anti-national and the State can invoke sedition laws against them.

In this paper, the author will highlight the challenges minority communities face in India's prison system. It will also analyze the policies and measures introduced for this cause and whether they efficiently achieve the goals of practicing equal rights. Lastly, it will suggest some ways in which the criminal justice system can exercise egalitarianism and deliver justice to those who are vulnerable.

Research Objectives

- To examine the definition of minority in India and their rights
- To analyse the practices and procedures executed by the authorities in the Indian Criminal Justice System
- To assess challenges faced by minority communities in the prison system of India
- To suggest policies for access to justice to minority communities in India

Research Questions

1. Who is considered as a minority and what are the rights which are given to minorities?
2. What are the issues that are faced by the minorities in the Indian criminal justice system?
3. What are some ways that can help in making the Indian criminal justice system efficient and eradicate discriminatory practices?

Hypothesis

The measures that are taken inorder to protect minorities' rights in the criminal justice system, inclusive of victims and witnesses, have not provided fruitful results because violence against minorities and vulnerable communities is still practiced all over India.

Statement of Problem

Vulnerable groups in India are treated horribly in jails and detention centres. Minority communities such as Dalits, women, juveniles, and people from the Tribal and Queer Community are discriminated against if they are involved in criminal justice system in India. Thus, as a victim of severe discrimination, many people refrain from complaining as they believe that they might get stuck in a vicious cycle and somehow end up in lock-ups.

Review of Literature

Minorities in the Criminal Justice System, *Palais des Nations*, Geneva, 24-25 November 2015[2]

1. This is a report by the United Nations Network on Racial Discrimination and Protection of Minorities. It discusses the issues against racial discrimination and the importance of the protection of minorities all over the world. It further discusses the measures that the UN takes to prevent violence against minorities in the criminal justice system and protect their rights and regarding its application. This report, however, does not contain the implications and application in India.
2. **The Real 'State' in India is its Criminal Justice System by N.C. Asthana, 26th October 2021**[3]

   This article is based on the implications of UAPA in India and how the actual position of the Indian criminal justice system is highly discriminatory and targets the minority or vulnerable groups that are

[2]UNITED NATIONS NETWORK ON RACIAL DISCRIMINATION AND PROTECTION OF MINORITIES*available at* https://www.ohchr.org/en/minorities/un-network-racial-discrimination-and-protection-minorities. (last visited Sep. 18, 2024).
[3] N.C. Asthana, *The Real "State" in India Is Its Criminal Justice System*, The Wire (Oct. 26, 2021) *available at*https://cms.thewire.in/tag/n-c-asthana. (last visited Sep. 18, 2024).

present in India. It further discusses the police brutality that the minority groups in India face. It also highlights how the British and the present criminal justice system are starkly practicing illegal and discriminatory agendas in order to target vulnerable and minority communities. However, this article does not contain any empirical data which can be used to represent the ill-treatment of minorities in the Indian criminal justice system.

3. **Committee on Reforms of Criminal Justice System by the Government of India, Ministry of Home Affairs, Report, Volume I, March 2003.**[4]

This report represents a thorough effort by the Government of India to examine and analyze the issues within the Indian Criminal Justice System and propose reform policies. The Malimath Committee prepared this report, which is divided into four parts. It discusses the fundamental principles that should be incorporated into the justice system, along with the roles of investigations, prosecution, and the judiciary, and provides an analysis of crime and punishment in India. However, this report has been in existence since 2003, making it nearly 21 years old. As a result, some of the proposed reform policies may be outdated and may no longer be applicable to the current Indian criminal justice system. Additionally, actions taken by the Indian government concerning minority communities, as highlighted in the Universal Periodic Review by Minority Rights Group International during the 27th Session in May 2017, further underscore the need for ongoing evaluation and potential updates to these policies.

This review is on the actions that the Indian Government took with respect to minority communities. It begins with discussing the uprisings against religious minorities in India and how religions like Christian and Muslims, Dalits are excluded from the atrocity act. It further discusses the lack of access of justice to several minority victims because of their background

[4]Ministry of Home Affairs, COMMITTEE REPORT ON REFORMS OF CRIMINAL JUSTICE SYSTEM, INDIA (2003)*available at* https://www.mha.gov.in/sites/default/files/2022-08/criminal_justice_system%5B1%5D.pdf. (last visited Sep. 18, 2024).

and the ill-treatments that they face due to detention centres and the prison system in India.

4. **Actions of the Indian government with respect to minority communities, Universal Periodic Review, Minority Rights Group International, 27th Session, May 2017.**[5]

This review is on the actions that were taken by the Indian Government with respect to minority communities. It begins by discussing the uprisings against religious minorities in India and how religions like Christian and Muslims, Dalits are excluded from the atrocity act. It further discusses the lack of access of justice to several minority victims because of their background and the ill-treatments that are faced by them due to detention centres and prison system in India.

Significance of Research

It is no secret that minority communities are much more exposed to violence and discriminatory or illegal practices being done against them due to their vulnerability. The injustices against minority communities have always been an issue with the Indian Criminal Justice System. Various reform policies have been initiated but the ill-treatment of these communities is still prevalent because caste, sex and sexuality continue to be a reason for discriminating against people.

What Constitutes A Minority in India?

The term "Minority" has been used in the Constitution of India but it is not really defined in the Constitution. Currently, such communities are those which are notified under the National Minorities Commission Act, 1992 and considered as minorities by the Central Government. Till date, the Central Government has notified that the following will be considered as minority communities, Muslims, Christians, Sikhs, Buddhists, Parsis and Jains. However, in the case of *DAV College*

[5]MINORITY RIGHTS GROUP, *available at* https://minorityrights.org/actions-of-the-indian-government-with-respect-to-minority-communities-universal-per, iodic-review-27th-session-may-2017/. (last visited Sep. 21, 2024).

Bhatinda v. State of Punjab,[6] it was held that to determine who constitutes a religious or linguistic minority, the State should be taken into consideration as a community might be dominant in one state and the minority in the other.[7]

Minority communities in India related to sex and sexuality are drastically different from the linguistic or religious minorities. Queer community is still stigmatised and considered invisible in India, even after the green flag from the Indian Judiciary, the society fails to recognise their presence in the country and thus, queer community is considered as a minority community. In *Naz Foundation v. Government of NCT of Delhi*,[8] the Delhi Court concluded that the presence of Section 377 of the IPC[9] which criminalised homosexual relationships was offensive to the Constitution's Article 14,[10] which guaranteed right to equality for everyone in India. Later in 2014, the Supreme Court declared that transgender people will be from a 'third gender'.[11]Finally, in 2018, the Supreme Court ruled that criminalisation under Section 377 of the IPC was "unconstitutional, irrational, indefensible and manifestly arbitrary."[12]

Furthermore, the discrimination of women based on their gender still prevails in India. Extremely vulnerable are those women who are discriminated because of their gender and religion or caste. Women from religious communities are much more susceptible to discrimination than women of a dominant religious community or a woman from an urban area. Such women are often subjected to abuse, both mental and physical; they lack basic amenities like education, financial independence or employment opportunities.

[6]*DAV College Bhatinda* v. *State of Punjab,* AIR 1971 SCR 677 (India).
[7] Ananthakrishnan G, *Who Is a 'Minority' in India? What the Constitution Says, How Supreme Court Has Ruledavailable at* https://12ft.io/proxy?q=https%3A%2F%2Findianexpress.com%2Farticle%2Fexplained%2Fexplained-who-is-a-minority-in-india-supreme-court-7840064%2F. (last visited Sep. 18, 2024).
[8]*Naz Foundation* v. *Government of NCT of Delhi*, 2009 (6) SCC 712.
[9]Indian Penal Code, 1860, S. 377.
[10]Constitution of India, A.14.
[11]*National Legal Services Authority* v. *Union of India,* AIR 2014 SC 1863
[12]*Navtej Singh Johar & Ors.* v. *Union of India,* AIR 2018 SC 4321

Being a woman in a patriarchal and male dominant society puts the entire female population in vulnerable position as they are treated unfairly and unjustly by their own community as well as the other communities too. Due to preconceived notions that women from minority communities are meant for "designated jobs" such as being a house help or engage in menial jobs or even forced labour; their basic educational rights are taken away from them which leaves them with no option but to do menial jobs.[13]

The victims of communal violence are mostly the part of a minority community and are faced with barriers to get justice for the wrongs that happen against them. The process of fighting for justice is usually so overwhelming for the minority victims that they in most of the cases do not go through this process. From registering a complaint and filing a case to getting several adjournments and engaging several advocates with high fees along with court fees, the financial and mental burden usually gets too much for them to deal with and much deserved justice is never served.[14]Justice is usually left unserved due to the institutionalised prejudice towards minorities which makes it twice as difficult for them to approach authorities and officials in the Indian criminal justice system and the aid or help which is supposed to be provided to everyone without being prejudiced or discriminatory. Unfortunately, the discriminatory practices are still prevalent in government institutions which are meant for delivering justice. According to the international standards, the victims to communal violence have been classified as "ex-gratia" which makes it mandatory for the State to provide them with "adequate, effective, prompt, and appropriate remedies, including reparation."[15] Additionally, the recommendations which were given by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) for ensuring progress towards the reparation of gender-based violence have lacked implementation in India. Even though, there are several laws in India that protect the rights of minority persons,

[13]*Id.* 2
[14]MINORITY RIGHTS GROUP *available at* https://minorityrights.org/2017/04/24/actions-indian-government-respect-minority-communities-universal-periodic-review-27th-session-may-2017-10577/. (last visited Aug 23, 2023).
[15] Ibid.

their social standing remains the same and communal violence or gender/sexuality-based violence still exist in India despite having legal rights.

Laws that Protect Minority Communities in India

India is a multi-religious, multi-cultural, multi-lingual, and multi-racial country, the Constitution of India is a facilitator to this social pluralism which is present and the Constitution is enshrined with preservation and promotion of minorities' rights since secularism is a pillar for the Indian Constitution. Independent institutions such as the Indian Judiciary, Legislature, Commissions for Human and Minority Rights along with several NGOs help protect and promote these rights. The Constitution of India facilitates two kinds of rights to the minority communities, one is those rights which are common to every citizen of India and the other rights are those which are specifically drafted for the protection of minorities identity.

Apart from the Fundamental Rights which are guaranteed to everyone in India, minority communities are guaranteed specific rights such as-

Article 29[16]and 30[17]provide a right to any section of citizens to establish educational institutions in order to conserve their language, script, culture etc. furthermore, as discussed previously, the National Commission for Minorities Act of 1992 has led to the establishment of National Commission for Minorities which provides protection to the existence of minorities present in India. The Commission has the authority to assess the minorities' development and aid in maintaining their constitutional guarantees, they also have the power to conduct investigations if any case of discrimination is reported. The National Commission for Minorities (NCM) has been delegated with powers of that of a civil court and can summon people or send a notice for production of any document that may be required for investigation or examination.[18]

[16] Constitution of India, A. 29.
[17] Constitution of India, A.30.
[18] Aishwarya Javalgekar, *Minority Rights in India*, FOUNDATION FOR LIBERAL AND MANAGEMENT EDUCATION CULTURAL STUDIES AND INDIAN LAW (2016).

Additionally, the National and State Human Rights Commissions are constituted in India for safeguarding the rights guaranteed by the Constitution and ensuring that the basic human rights are not being infringed or violated. NHRC has been consistent in its goals of preserving and promoting human rights in the Indian society and prevent breaches of human rights by individuals, especially those from marginalised groups of the society.[19]

Ill-Treatment of Minority Communities in Indian Criminal Justice System

National Crime Records Bureau releases a series of annual statistical reports for prisons in India which comprises of data collected from prison headquarters of all the States and Union Territories. The first edition of this statistical report was prepared in 1995 and the latest report was published in 2021.[20]

It is no surprise that the Prison system in India has been suffering from a variety of issues ranging from overcrowding to violent clashes or jail breaks. It is necessary to understand that even though the prisoners are accused of grievous crimes, they are deemed to have basic human rights. They should be subjected to better treatment by the prison authorities and they are provided with living conditions that are not overcrowded or inhabitable.

According to the data provided in NCRB Report,[21] a total number of 5,54,034 prisoners were confined in various jails across the country out of which the jails on a national level have an overall occupancy of males (134.0%), females (77.9%) and transgender persons (211.6%). While looking at occupancy rates in Central Jails, the division is as follows, males- 125.0%, females- 91.5%, transgender persons- 225.0% at the end of year 2021. It is worthy to note that the occupancy rates for transgender persons are much more than the binary genders. While looking at the overall

[19]Office of the High Commissioner for Human Rights, *Measures to promote and protect the rights of minorities in India,* NV. GEN/PMI/353/03/2020. (2020).
[20]NATIONAL CRIME BUREAUS RECORD *available at* https://ncrb.gov.in/en/prison-statistics-india. (last visited Sep. 25, 2024).
[21]*Id.*

occupancy rate i.e., 123.7%, it can be concluded that all these jails are heavily populated and leading to overcrowding.

Additionally, there is another practice in the Indian prisons and that is mis-gendering of transgender people, where they are put in jails according to their sex assigned at birth, which might be unsafe for these communities. Several accounts highlight instances where transgender women have been kept in male prisons, often resulting in sexual violence and harassment. According to one transwoman, who was the only one of the five transwomen among 2000 male prisoners, shared that any attempt to protest or even speak out would be seen as an open invitation for rape or physical abuse. She endured regular mental and sexual assaults from the cisgender men around her. They molested and raped her along with the other four transwomen. She revealed that the inmates, prison authorities, jail staff everyone had turned a blind eye to such mistreatments that were being conducted in the jail and sadly despite repeated complaints during her 17 months stay at the prison, the situation never got better for her.[22]

It is also important to note here that despite several requests put forth by transgender persons to be shifted to their gender specific jails, the jail authorities had continued to ignore their demands due to the lack of "provisions in the prison rules."[23]

Despite the Indian judiciary explicitly outlining the rights of trans people and establishing laws to safeguard their human rights and protect them from discrimination, no such improvement has been observed in a practical sense, especially in the Indian Criminal Justice System. As mentioned earlier, the Supreme Court of India, in the landmark judgment of *National Legal Services Authority v. Union of India,*[24] Justice K.S. Radhakrishnan held that "Transgender persons' right to decide their self-identified gender is also upheld, and the centre and state

[22] Sukanya Shantha, *Misgendering, Sexual Violence, Harassment: What It Is to Be a Transgender Person in an Indian Prison,* THE WIRE (Nov. 2, 2021)*available at* https://thewire.in/lgbtqia/transgender-prisoners-india. (last visited Sep. 17, 2024).
[23]*Ibid.*
[24]*Supra 10*

governments are directed to grant legal recognition of their gender identity such as male, female, or as third gender."

Furthermore, the overcrowding in several jails in India has resulted in the deterioration of living conditions, resulting in unsanitary and unhealthy living situation for inmates. The most affected are the women who are pregnant or children. In 1997, it was reported that even the most secure jail in India, Tihar Jail, faced serious health hazards and "appalling" sanitary facilities. The jail was unequipped with basic first aid and was understaffed in the medical sector. It was stated that these living conditions were inhabitable and even though, no one expects a jail to be comfortable, basic human needs and cleanliness is bare minimum to demand for.[25]

Abuse of inmates, especially those belonging to minority communities, is a serious issue witnessed by the prisons of India. There are many cases of physical abuse done by the prison guards, with unwarranted beatings being an "integral part of prison life." Unfortunately, women prisoners are often subjected to custodial sexual abuse and even custodial rape by the police. It is also to be noted here that many migrant women in the prison systems, who lack connections to their community, makes it extremely difficult for them to protest or defend themselves from the unnecessary abuse.

One of the major issues in the Indian criminal justice system is the use of third degree tortures in the prison, which dolefully go completely unnoticed. The truth is no media coverage or human rights commission is involved in such issues, while it is fundamental for the prison system to provide a safer system for minority communities. People who are imprisoned for communal violence are also most likely to take matters into their own hands inside the prison and instigate communal violences between the inmates.

[25] Shubham Kashyap, *Major Problems of Prison System in India*, THE TIMES OF INDIA*available at* - https://timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/. (last visited Sep. 17, 2024).

Reforms Suggested For Betterment of Criminal Justice System towards Minority Communities

Firstly, transpeople should be given separate spaces in a jail which is made for the gender they identify as and not their gender which is assigned at birth. If the legislature has initiated an Act,[26] which provides for safeguarding of rights for transgender persons, then their protection under the Indian Criminal Justice System should also be addressed in the legislation.

The issues related to overcrowding and safety or health hazards should be taken care of by regular sanitising and cleaning, establishing sanitary practices. Medical personnels should be instituted in such establishments so that if the inmates are suffering from any medical issue, it can be addressed speedily especially if there are pregnant women present in the prison.

Many people from minority communities might not have access to educational institutions or vocational courses which can be instituted as a practice for rehabilitation and welfare of such prisoners. These facilities will help them in the future to be capable to acquire several job opportunities and live a better life than the one in a prison.

Furthermore, there should be a permanent position for someone from the National Commission for Minorities or National Human Rights Commission to ensure that the basic rights which are guaranteed by the virtue of several laws, legislations and the Constitution are provided to the prisoners and no discriminatory practices are conducted against them in prison system.

Lastly, inculcating gender sensitive training to the prison authorities and even the inmates can help avoid the amount of physical, mental and sexual abuse against minority communities in India. There lacks an understanding that people should be treated with respect irrespective of their religion, caste, class, sex/sexuality etc. so awareness camps or regular sensitising can have a better impact on the prisoners and might create for a safer space for the minority communities.

[26]The Transgender Persons (Protection of Rights) Act, 2019

Conclusion

India has discriminatory practices prevalent even in the 21st century and this is the result of the lack of equality in the minds of people belonging to this society. In India, people have long been divided and continue to place greater importance on titles they are born with rather than the actions that they do. This has fostered a society that is often judgmental, cruel and shallow. People belonging to minority communities have always been subjected to some kind of discrimination and this has followed them through the thick walls of prison too. Even though, the Indian Judiciary has addressed such issues, in practicality and applicability India has not made much of a progress but if the Courts and the Legislature in India takes up these issues seriously and work to make the Indian Criminal Justice System better and reformed for the minority communities then India might be successful in eradicating such demeaning practices from the society.