

CRIMINAL JUSTICE IN THE SHADOW OF CASTE

STUDY ON DISCRIMINATION AGAINST
DALIT AND ADIVASI PRISONERS
& VICTIMS OF POLICE EXCESSES

**National Dalit Movement for Justice
(NDMJ) - NCDHR
New Delhi**

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& VICTIMS OF POLICE EXCESSES.

Adv Rahul Singh

National Dalit Movement for Justice (NDMJ) - NCDHR
New Delhi

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National Dalit Movement for Justice, Maharashtra

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We extend heartfelt thanks to Mr. Paul Divakar, Chair person, Asia Dalit Rights Forum; Ms. Sana, Commonwealth Human Rights Initiative (CHRI); Mr. Matthew, Peoples Watch, Tamil Nadu; Mr. Vijaya Shankar, Human Rights Foundation, Tamil Nadu, Ms. Sindhuja, Amnesty International, Karnataka; Mr. Pandiyan, SASY, Tamil Nadu; Mr. Satish, Centre for Dalit Rights, Rajasthan; Mr. Vidhyanand, NDMJ, Bihar; Mr. Dulat Ram, Bhartiya Jan Seva Ashram, U.P, for enlightening us during conceptualizing this study with their guidance and immense experience in the working with police institutions and Jails.

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Adv. Rahul Singh
National Program Coordinator
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PREFACE

Police institution and Jails constitute an important component of the criminal justice administration system. The UN and national standards on police investigation and the prisons very clearly lay down the rights of the arrested persons and prisoners- be it undertrials or convicts. The principles of the fair trial also emphasize the fact that as far as the undertrials are concerned, the rule should be bail and not jail.

Unfortunately, the condition in India is very pitiable. There is a high increase in Dalits and Adivasis being the victims of police excesses. The other important issue that haunts the jail administration is the issue of overcrowding, and one of the reasons for this is that a large proportion of the jail population consists of undertrials. The other phenomenon that is haunting over the last couple of years is the high number of Dalit, Adivasis and other minorities in Jails.

Though studies are being conducted on police excesses, till date no in-depth study has been made on the prejudices against Dalit and Adivasi prisoners in Indian Prison System. This study is an astounding one of its kind, which aims to explore the pains and agony of victims of police excesses and those incarcerated. The study interestingly brings out the instances of discrimination based on caste at every layer of the criminal justice administration system i.e pretrial stage and inside the prisons. This report is an attempt to begin to break this silence.

Any attempt to comprehend prejudice, torture, and the trauma it wreaks, by someone who has not experienced it will inevitably be inadequate. The experiences, emotions, and thoughts of torture survivors and incarcerated can by no means be fully and properly described.

I appreciate the efforts of our partners, study coordinators, national secretariat staff for their support in brining out this study.

Mr. Rahul Singh is a remarkable researcher who has similarly brought out the study on the functioning of Special Courts under SCs and STs (PoA) Act 1989 and Rules 1995 and broke the myth that caste does not play any role when it comes to the judiciary. Once again he has relentlessly researched various human rights standards on the rights of prisoners and tried to out-burst the impediments faced by victims of police excesses and those incarcerated.

I believe that this research study will certainly break the silence for framing progressive policies, guidelines and legal provisions; which can open up numerous possibilities in accessing justice to survivors and victims of caste discrimination.

Dr. V.A. Ramesh Nathan
General Secretary
National Dalit Movement for Justice-NDMJ
National Campaign on Dalit Human Rights –NCDHR

LETTER OF APPRECIATION

The Caste based discrimination and “Untouchability” which affects Dalits and Adivasis as they struggle for their rights and entitlements in diverse spheres of life. Police and prisons are not an exemption. This is in addition to their struggle for dignity and self-respect. Very few cases catch the attention of the media causing a public outcry in the state and slowly merge into the everyday reality of Dalits. It is a big blow to the development of Dalit communities as they oppose and challenge the suppression and exclusion and all forms of violence against them. Therefore the issue of police excesses and discrimination with Dalit and Adivasi prisoners inside the jails also needs to be understood from the above perspective.

Issues with police excesses and rights of arrestees, prisons and prisoners’ rights are not new but caste discrimination within these institutions and judiciary’s active role in safeguarding these rights is. There seems to be a stop and go nature of reforms in India when it comes to police and jails reforms, a trend disruptive of the interest and activism exhibited by civil society. On the other hand there seems to be a complete silence when it comes to caste.

The top strata of the police and prison services are mostly held by upper caste police officials and often tend to be clueless about the situation on the ground, and do not have adequate training to tackle the nature of such correctional facilities. Their mindsets tend to be entrenched with caste prejudice. Structural Issues are consistent and ever-encompassing. In addition to this, the Police and prison institutions are severely understaffed and untrained. There is a certain inconsistency with the efforts of all concerned stakeholders. There is no uniform action to tackle the issue of police excesses with vulnerable communities and to understand the reasons of disproportionate number of Dalits, Adivasis and Muslim minority in the prisons.

I feel that there is a need to form a National Forum, with stakeholders from all parties and organisations to tackle such issues. This report brings out the deep prejudices, and a general complacency with the bureaucratic nature of police and prison institutions in India. Everyone feeds off the myth that, nothing can be done and police and prisons shall always remain as they are and therefore hardly anything can be done about such issues.

The system of bureaucratic inaction must be broken by bringing in a system of accountability against those who fail to do their duties and therefore endanger the rights of the most vulnerable community in India .

Consistent call for new legislation seems to be an unnecessary fallacy as on-ground implementation is missing. Every organization in civil society may be limited by their own mandate. So it is even more important for the cooperation of all concerned organizations to work together to tackle the issue of police excesses and incarceration.

On behalf of Asia Dalit Rights Forum I congratulate Mr. Rahul Singh for his dedication and the team of National Dalit Movement for Justice for their commitment towards accessing the rights for dalits and adivasis across the country and bringing out a wonderful study with case studies on police excesses, prisoners rights and impediments being faced by inmates inside jails based on caste. This seems to be a first of its kind of a study, which brings out instances of prejudices inside the jails. On behalf of Asia Dalit Rights Forum accept my appreciation for the excellent job you and your study team have done.

On this day of International Human Rights Day and celebration of 20 years of National Campaign on Dalit Human Rights, when I am lettering this appreciation, I am reminded of Baba Saheb's wisdom when he alerts as he says 'Rights are protected not by law but by the social and moral conscience of society'. We need to strengthen ourselves as survivors, witnesses and human rights defenders in our journey towards realizing justice.

Best wishes to you and I am convinced that somewhere this silence will be broken !!!!

JAIBHIM AND JOHAR!!!

Paul Divakar,
Chairperson,
Asia Dalit Rights Forum,
New Delhi.

FOREWORD

It gives me immense pleasure to write the foreword for this book at a time when the Supreme Court of India and the Law Commission of India along with over 41 countries at India's third cycle of the Universal Periodic Review have emphasised the urgency for India's ratification of the United Nations' Convention against Torture, a convention we signed 21 years ago.

I greatly appreciate the tremendous work undertaken for this piece of work by National Dalit Movement for Justice and National Campaign on Dalit Human Rights and their partners in the states of Tamil Nadu and Rajasthan. This study on discrimination with Dalit and Adivasi prisoners and victims of police excesses is an important documentation given the fact that Dalits and Adivasis have always been first in line at the receiving end of torture from police and in prison – from the time of their arrest till their punishment in jail.

Amnesty International India in its report 'Justice Under Trial: A Study of Pre-Trial Detention in India' had stated that "India's undertrial population has a disproportionate number of Muslims, Dalits and Adivasis". The National Crime Records Bureau in its 21st Prison Statistics in India - 2015 report, recorded that over 55 % of the undertrials prisoners in India are either Dalits, Adivasis or Muslims. An analysis of this data reveals that this number is grossly disproportionate to the combined population of Dalits, Adivasis and Muslims which amounts to 39% of the total population according to the 2011 census.

Custodial violence refers to violence both in police and judicial custody. Torture of various forms are recorded in this country, which has resisted all forms of international pressure at refusing to ratify the UN Convention against Torture and the issue of caste being addressed by the UN CERD Committee. All this despite our Constitutional mandate against caste discrimination, untouchability and torture, our galaxy

of laws, rules, guidelines, our judgments of the apex court and the various high courts and the institutions that we have created at the national and state level. They are known as National and State Human Rights Institutions for human rights and other thematic rights on women, children, scheduled castes, scheduled tribes, safai karmacharis, persons with disabilities, minorities and right to information. In this report which looks at cases from Tamil Nadu and Rajasthan through the testimonies of various victims, we see that institutions like the National, State and District Legal Services Authorities have a long way to go for people to place trust in them in matters relating to access to justice in cases of custodial violence.

It is high time for the higher judiciary, all Chairpersons and Members of the NSHRIS, all political parties and academicians to pay attention to the recommendations that emerge from this report and to ensure that this practise of custodial violence where the Dalits and Adivasis are worst hit along with their Muslim brethren continue to find opportunities to access and ultimately enjoy speedy justice and are not forced in despair to look for non-legal forms in their pursuit. It is the lack of adequate institutional response with passion for victims that forms the basis of violent forms that various movements of the poor in our country are forced to take recourse to.

Henri Tiphagne
Executive Director,
People's Watch
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INTRODUCTION

Context and Rationale for the Study:

Scheduled Castes (SCs) and Scheduled Tribes (STs) in India are among the worst sufferers of crime and injustice. Since 2009, registered crime against the Scheduled Castes has risen by 40%². An increase in registered crimes need not necessarily mean an increase in the actual instances of atrocities; however, the sheer volume itself is telling. As many as 422,799 crimes against Dalits and 81,332 crimes against Adivasis were reported between 2006 and 2016³. Over the decade to 2016, crime rate against Dalits rose by 25%; from 16.3 crimes per 100,000 Dalits reported in 2006, to 20.3 crimes in 2016. Atrocities/crime against SCs have increased by 5.5% in 2016 (40,801) over 2015 (38,670). Atrocities/crime against STs have increased by 4.7% in 2016 (6,568) over 2015 (6,276). This does not factor in the huge problem of unreported offences. Moreover, the nature of atrocities being reported points to a trend of targeted violence against entire communities, which is likely to continue. At the same time, conviction percentage under the SCs and STs (PoA) Act in conjunction with IPC remained at 25.7% for SCs and 20.8% for STs. The acquittal percentage ended with 74.2% for SCs and 79.2% for STs.

Additionally, data on caste background of arrested and convicted persons also points to a disparity. According to National Crime Records Bureau (NCRB) the proportion of Schedule Caste (SC)/ Scheduled Tribes (ST) population in Prisons is much higher than their proportionate population in the country as a whole. An analysis of the caste-based classification of under trials from NCRB Report 2014 reveals that:

- 21.6% are from Scheduled Castes and 12.4% are from Scheduled Tribes⁴. Dalits and Adivasis—two of the most vulnerable sections of Indian society—make up a considerable number of India's prison population. Although the proportion of

2. "Why crime is rising against India's lowest castes and tribes," India Spend, 4 July 2016: http://www.indiaspend.com/cover-story/why-crime-is-rising-against-indias-lowest-castes-and-tribes-29049?utm_content=buffer149a8&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.

3. National Crime Record Bureau, Crime in India Reports from 2006 to 2016

4. Prison Statistics of India, 2015

these two communities in India adds up to about 24.2%, their share amongst prisoners is considerably higher at 34%. Dalit's make up 22% of prisoners, almost one in four. Their proportion in population is about 21.6% according to Census 2011. While Adivasis make up 12.4% of prisoners, their share in the general population is 9%⁵.

- Major states that have reported considerably high difference between percent age of SC/ST population and prisoners are Assam, Tamil Nadu, Maharashtra and Rajasthan. While the percent of SC/ST population in Tamil Nadu is 21.2, the percentage of SC/ST prisoners in the state is 38.6 – a difference of 17.4 percent⁶.

These facts together point to a pattern of targeting Dalit and Adivasis and call for investigation of factors leading to the continued victimization of the community by the Police and further victimization as under trials. The experience of Dalit and Adivasi organizations and activists working at the ground on atrocities against Dalits and Adivasi reveals several reasons for the above targeted violence. Lack of access to justice and competent legal remediation mechanisms being the most important reasons. This disturbing trend is because they are economically and socially under-privileged, who are some times targeted with counter cases / false cases and unable to fight costly cases or often even, pay for bail. Whenever Dalit or Adivasi victims of atrocities present a report to the Sub-Inspector or Circle-Inspector in charge of Police Station and if the latter records FIR and register a case, these officials, instead of arresting the assailant(s), often register FIRs against the SC/ST victims on the basis of counter reports filed with them by the assailant(s). This is done with the sole intention of counter blasting the complaint filed by the SC victims. As a result of the counter cases, SC victims of atrocities are being arrested and subjected to criminal litigation as accused in the counter cases. Dominant castes utilize this method in a concerted effort to make the 1989 Act dysfunctional. Since counter cases are on increase and are dominating not as private cases but as state cases, i.e. as cases filed by the police, it is the responsibility of the government to save the SCs and STs from the harassment and disaster caused to them as a result of counter cases⁷...

This form of caste bias further aggravated by the forms of police excesses which includes 'Illegal arrest and Detentions', 'Fake Encounters', 'Extortion', 'Torture', 'Filing False Cases' 'Custodial crimes such as murders, rapes and sexual abuses against women' etc. According to NHRC report, SCs account for a sizeable number of

5. Prison Statistics of India, 2015

6. Prison Statistics of India, 2015

7. Report of the Justice Punnayya Commission of Enquiry into the Practice of Untouchability

deaths in judicial custody in Bihar, Uttar Pradesh and Maharashtra... SC inmates are routinely insulted, intimidated and forced to do menial work inside the jail and carry out various commands of not only the jail staff but sometimes of caste Hindu prisoners as well⁸. Patterns of Police Atrocities identified by Human Rights Watch include: custodial torture and deaths; encounter deaths; raids on SC colonies after inter-caste clashes; violence against Dalit women; false arrests of Dalits; violence to crush peaceful protests by Dalits; violence against entire Dalit colonies while searching out a Dalit accused; and violence against Dalit villagers caught in crossfire in insurgency/ naxalite affected areas⁹. In areas where security forces operate, they have been “responsible for gross violation of the rights of the tribal people including arbitrary arrests, illegal detention, torture, custodial kills and extrajudicial killings in the name of “counter-terrorism” measures¹⁰. ”

A lot of ongoing work on protective legislations such as the Prevention of Atrocities Act (PoA) has been the focus of initiatives addressing discrimination against Dalits and Adivasis in India. However, experiences and research on the situation of Dalit and Adivasi communities in different contexts has shown that there is a predominance of systemic discrimination at all levels, calling for the need for sound monitoring mechanisms within these systems. Till date there is no comprehensive data / framework available which works with Dalits and Adivasis who are accused of crimes or prisoners from their entry into prison till their final release. Current civil society initiatives focus on one or two issues related to prisoners’ rights at different points in time. It is only a few institutions, which are raising these issues. NGO initiatives have mainly been on specific services such as legal aid and awareness, counseling within jails, provision of legal support for bail and release from prison. Campaigns on prison reforms have also tended to focus mainly on specific aspects such as unnecessary detention of under trials, access to visitors or institutional advocacy on the criminal justice system. No work so far has been specifically located in the area of discrimination in the implementation of various procedures from the entry to the release and rehabilitation of a prisoner.

Specific issues and concerns:

Experience of interventions in jail show that there are several access points to justice from the point of entry into prison to the point of release. At each stage, howev-

8. NHRC, Report on Prevention of Atrocities against SCs, New Delhi, 2004, pp.120-1

9. Human Rights Watch, Broken People: Caste Violence against India’s “Untouchables”, New York, 1999

10. Asian Indigenous & Tribal Peoples Network, The State of India’s Indigenous and Tribal Peoples 2009, New Delhi, 2009, p.4)

er, there is discrimination and hence denial of rights to Dalit and Adivasi prisoners based on the Caste. In other words various discriminatory practices occurring across the linear line as under trials, convicts and released prisoners. Though there are various statutes such as the Prisoners Act, 1894; the Model Manual Prison India, etc. and various precedents which have been laid down in landmark cases which provide for the rights which these prisoners are entitled to. However, the problem today lies not in the availability of these rights but in the implementation of these rights and precedents. The major problems faced by these inmates are not only of not getting a trial but that of denial of various rights based on discrimination:

- Opportunity to access the necessary steps for bail/trial/release, which results in harsher convictions or languishing in prison for longer terms.
- Even though bail is granted prisoners are not released.
- High amount of surety ordered by courts which indigent prisoners can't pay/ opportunity to show assets as surety for bail.
- Rejection of surety bonds due to lack of money or verification of addresses etc.
- Lack of access to competent advocates and adequate legal representation.
- Inhuman treatment in jails.
- Facing poor conditions.
- Lack of proper medical facilities.
- Lack of mechanisms to inform various rights available to the inmates.
- Time allotments to meet visitors.
- Allotment of work and barrack.
- Inhuman treatment during medical check ups.
- Furthermore, there is a provision for making arrangements for parent child interaction/meeting in prison and the prison personnel are responsible for arranging the meeting but they hardly arrange for the same.

This study thus looks at laws and mechanisms and contexts particularly located in addressing systemic discrimination experienced by Dalit and Adivasis and other marginalized community members facing trial on false accusations and those who in prisons or jails in India.

The initiative would thus help to build and introduce mechanisms for monitoring discrimination in prisons. The study is an initiative to bring in pioneering study work on discrimination against Dalit's and Adivasis facing counter/ false cases and

police accesses and also situation of Dalit's and Adivasis in prisons. The study proposes recommendations based on the findings on addressing this discrimination through monitoring mechanisms for improved access to justice and prisoners' rights in India.

Purpose of the Study:

To promote and strengthen civil society initiatives and legal mechanisms to effectively address discrimination and human rights violations faced by Dalit's and Adivasis falsely implicated upon and those in prisons through action research, documentation, and policy intervention and ensuring just judicial outcomes for Dalit and Adivasis.

Study Parameters:

- 1) **Proportion of Dalits and Adivasis in mates in Prisons – Analysis** - This section primarily seeks to document the proportion of Schedule Caste (SC)/ Scheduled Tribes (ST) population in Prisons than their proportionate population in the country as a whole. An analysis of the caste-based classification of under trials and convicts.
- 2) **Challenges faced by Dalits and Adivasis in accessing their legal rights:** In fact fundamental rights of accused, arrestees, detainee, under trials, prisoners and convicts have been secured by various criminal laws of India and also by Constitution of India and through its judicial pronouncement Supreme Court of India has made out a strong case for prison reform and in the process it has shaped a code in this regard. This section primarily seeks to document various difficulties/ challenges that a prisoner faces during his sentence in prison i.e. from the day of his arrest, his years in prison, to his release vis a vis the implementation of various provisions of laws, policies and precedents of judiciary. This is neither monitored adequately and nor are adequate tools present to assess the situation. Majority of these voiceless people remain in prison pending trial or conviction. They are denied bail for want of monetary security. And trials take years. Often, they have no lawyers, live in pathetic conditions, do not have access to adequate medical care, and are likely to be tortured or exploited. Many times, the legal aid lawyers and prison officials are also unaware of the existing legal standards. The system fails the prisoners at every turn and often times the agencies blame each other for non-performance and unaccountability. Dalit and Adivasis are specifically vulnerable to this situation. This section will examine implementation of these provisions, identify reasons and solutions.

- 3) **Caste based discrimination practiced in prison premises:** This section seeks to document experiences of Dalit and Adivasis inmates in terms of treatment given to them, attitude of officials etc. Assigning work in the prisons, availability on legal remediation such as Bail, Parole, revisions access to relatives /visitors, custodial deaths, access to medical facilities, access to Parole once inside the Jails, Court attendance for instance, on a day of court attendance, as many as 150 prisoners may need to attend court to fight the case for their release. However due to a shortage of police escorts, who are often placed on duty elsewhere, only 60 prisoners may be taken. The selection of these sixty prisoners is dependent on several factors and the background, power and influence of the prison inmates and prone to the biases of prison officials.
- 4) **Systematic violence by Police against Dalits and Adivasis-** Other broader issues related to Dalits and Adivasis is systematic violence committed by Police against a particular community in the name of habitual offenders. A study report¹¹ conducted by the Committee formed by the National Commission for Scheduled Castes based on the rising number of complaints by the Kuruvan community on Police atrocities found that even after 6 decades of political independence in India, the community is subjected to physical torture by the Tamil Nadu police in the name of convicting the “habitual offenders”. The members of the Kuruvan community, including women, men, and children, are subjected to systematic ruthless treatment at the hands of the police. It has become convenient for the police to catch hold of the “Kuravans” and foist false cases against them; Kuravans are kept under illegal detention, and are subjected to brutal forms of torture to extract “false confessional statements” regarding crimes, which they had not committed. For these reasons the entire community lives in fear of detention and arrest. The “Kuravan” men are more than regularly taken from their houses and illegally kept for long time in police custody and are subjected to third degree tortures and are forced to confess statements for various criminal cases. With respect to the “Kuravan” women, they are verbally, physically and sexually abused at anytime at the discretion of the police. The Kuravans in the following districts like Thanjavur, Ariyalur, Thiruvavur, Salem, Trichy and Villupuram experience high levels of false criminal charges, illegal detention torture in custody, sexual abuse and custodial deaths. This section seeks to identify those communities and their experiences as a pilot and to further pave a way for a broader study.

11. A Study Report on Alleged cases of Police Atrocities against Kuruvan Community in the state of Tamil Nadu – 15 December 2014 to 13 January 2015.

Study Scope:

The study covered 21 out of Jail prisoners (Either after conviction or acquittals or on bail) and have experienced discrimination and impediments in accessing justice right from their entry inside Jails. Victims of six jails in the 3 states of Rajasthan (Alwar and Dausa Jails), Tamil Nadu (Cuddalore and Villupuram Jail) and Maharashtra (Washim and Yerawada Jail). They were also chosen due to the presence of a civil society organisation that is actively monitoring the police excesses and access to justice to Dalit and adivasi victims of atrocities and implementation of the PoA Act.

Within each state, districts were chosen where the civil society organisation had a strong presence and network in place, which is engaged in access to justice program in the district, had strong relations with the local SC/ST communities as well as strong networks with other SC/ST/human rights organisations in the district, and some working relations with district police and government officials.

Research Methodology for Study:

The study was undertaken in collaboration with civil society organisations in each of the three chosen states: Centre for Dalit Rights in Rajasthan; Social Awareness Society for Youth in Tamil Nadu; and National Dalit Movement for Justice-NDMJ. Each organisation appointed DHRDs and advocates to identify and interview the victims in their state. These DHRDs and advocates were chosen on the basis of the following criteria: (i) knowledge of the Criminal Justice Administrative System; (ii) experience of working with police and court; (iii) existing or potential linkage to the civil society organisation.

The study is quantitative and qualitative research aimed at developing an in-depth understanding of proportion of Dalits and Adivasis inside the jails, factors behind high occupancy of Dalits and Adivasis inside the jails, challenges in accessing due rights and impact on the family members. Hence, several methods followed and data was collected through primary and secondary sources.

1. Information and secondary Data on situation of undertrials and convicts: Basic information was collected on the prison population from Crime in India, Prison Statistics. The above secondary data was supplemented by Right to Information applications filed in the states, which sought to obtain overall data on the prison population across the three states in terms of the number of under trials and convicts. Apart from this the study also looked at different research being done on situation of Jails.

2. Short Survey of Victims and Witnesses' Perceptions: In each state, Dalit and Adivasi victims out of jails in the six chosen Jails were interviewed to discuss the discrimination, harassment, delay and other tactics they were encountering from different actors inside the Jails, right from their entry in jails. The cases that had ended in acquittals or convictions, where the victims were out of Jail and willing to share their experiences were interviewed.
3. Case Studies of Victims' Experiences of police excesses: Based on the cases which came for a Public hearing held at Jaipur, Rajasthan for the states of Rajasthan and Tamil Nadu were also taken for this study of to understand the kind of police torture and problems that they were facing with the police. Recommendations for each case has been brought out in this study.

Data Analysis and Report Writing

Data collation, interviews and analysis occurred throughout the study period as information was obtained. Various research reports were also referred and likewise collated, in order to develop categories for the analysis. Tables were also developed based on the overall list of undertrials and convicts and accordingly the demographics (Caste wise and Religion wise) of the undertrials and convicts were tabulated to highlight the prevalent trends in terms of overcrowding of Jails and high number of Dalits and Adivasis in Jails. Similarly, the short survey data was tabulated and then groups together under different themes. All the data was then grouped under different categories for analysis, such as Indiscriminate arrest and detentions in custody, access to legal aid, access to medical treatment, accommodation and bedding, food, work and wages, parole treat by authorities inside the jails etc.

Framework of the Report

This report consists of an introduction and five chapters.

The Introduction Chapter develops a rights-based framework for analysing access to justice in the criminal justice administration system in specific the Police and Jails. It then presents the background context for this study, before detailing out the study objectives and methodology.

Section 1 lays down the overview of the prison population in India with demographic of inmates in prisons, periods of undertrials, under trials released, disproportionate sections under death row, caste and religious profile of prisoners sentenced to death.

Section 2 presents an analysis of the reasons of high number of Scheduled Castes

and Schedule Tribes inside the prisons. For example the entrenched prejudices in the system, Structural and Procedural blockages in CJAS, low police and judges ratio, delayed investigations, deficient prosecution system, dysfunctional prison system, inadequate funding to judiciary and policing, poverty and illiteracy.

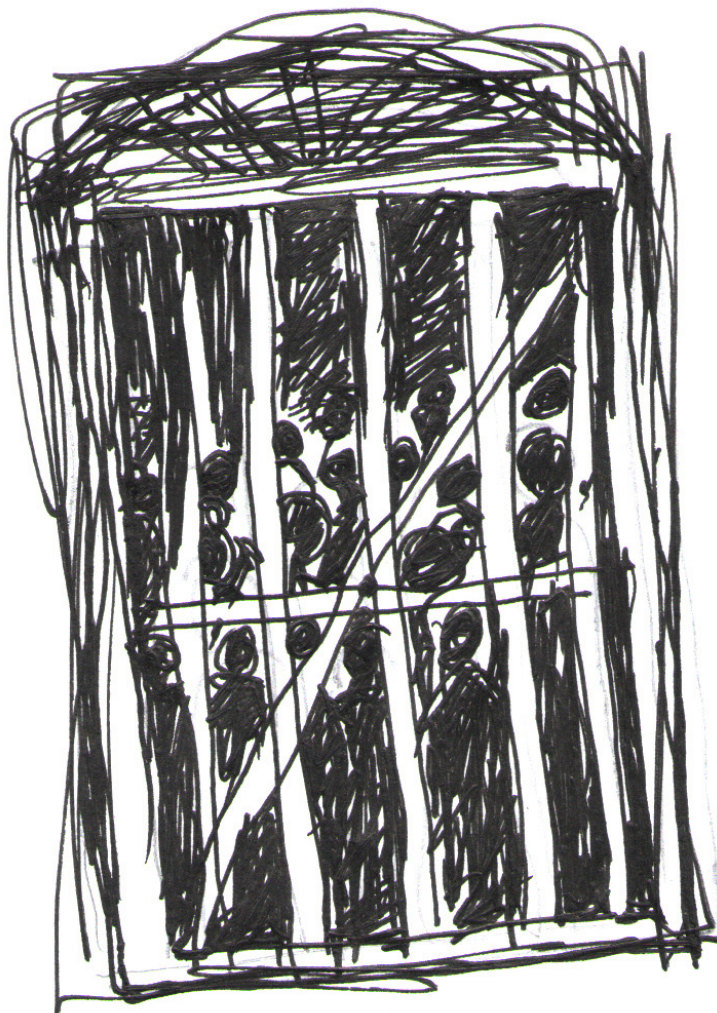
Section 3 lays down the legal standards and guidelines that apply for the under trials and prisoners and the obstructive and facilitative factors related to undertrials and convicts inside the Jails. Based on the prevalent trends revealed regarding the types of discrimination and harassment inside the Jails. An analysis is made of the implications for the dysfunctional prison system vis-à-vis Dalits and Adivasis and specifically the equal right to a legal remedy.

Section 4 presents an analysis of Police excesses and forms of police brutality. Crimes like filing false cases against Dalit and Adivasis and extorting illegal confessions followed by torture, molestation, rape of women in custody, custodial death, brutal and inhuman treatment meted out to the helpless suspects including children etc. are brought in this section. Degrading and brutal treatment given to the helpless and defenseless persons in police custody is a constant recurrence, stirring the conscience of every sensitized individual. A framework of analysis is developed to understand the types of torture that victims facing and how the law is developing in this regard.

Section 5 This section then lays down a series of legal and policy recommendations aimed at bringing the victims of false incarceration and police atrocities to the centre of the criminal justice system and ensuring more effective, speedy and just outcomes for scheduled caste and scheduled tribes.

CHAPTER 1

BACKGROUND

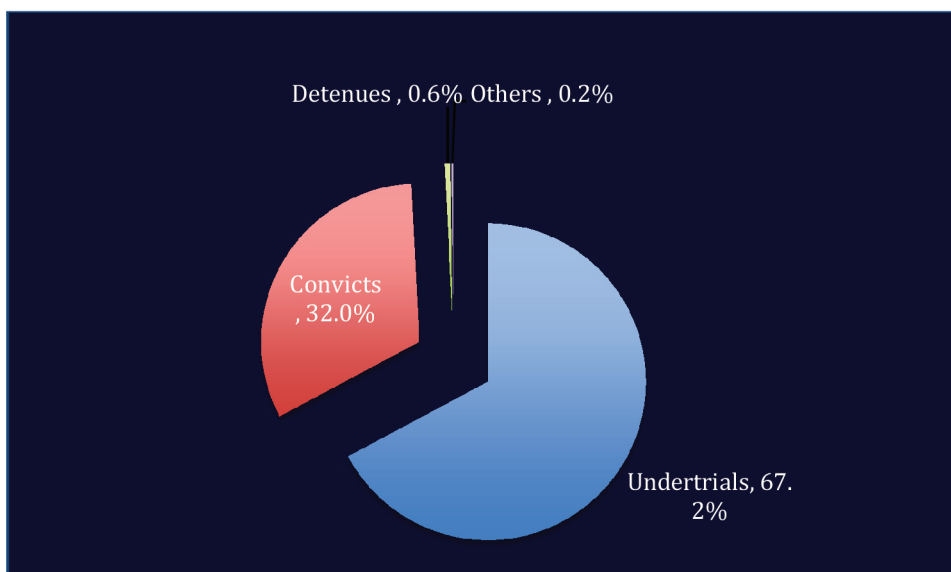


OVERVIEW OF THE PRISON POPULATION

Undertrial prisoners are those persons who are facing trials in the competent courts. They are technically under judicial custody but for all practical purposes are kept in the same prison especially in India. In many countries there are separate institutions for undertrials. Delay in trial of cases is the main human rights issue of undertrials. The purpose of keeping undertrials in the custody is to ensure fair trial so that they cannot be in a position to influence or induce the witnesses.

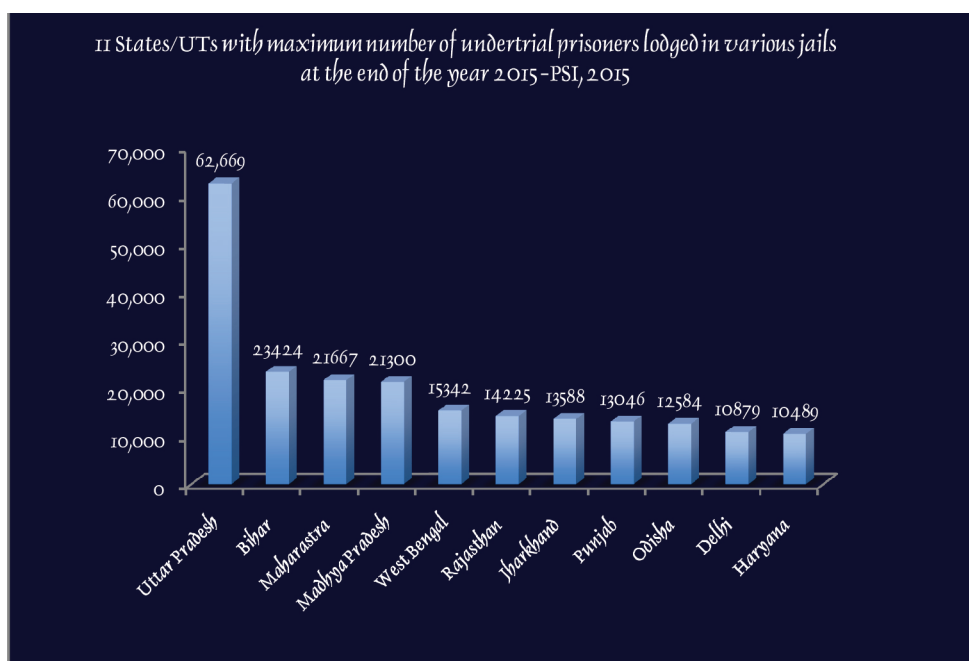
In the Indian Prisons, undertrials constitute 67.2% percent of the prison population. In other words this shows that the undertrials constitute about 2/3 of the prison population in as on 2015. As per reports of National Crime Record Bureau, the percentage of undertrials in the Indian Prisons varies from 44% to 98%percent, which is a major indicator of gross violation of human rights.

Chart -1 - Percentage Distribution of various types of Prison Inmates at the end of year 2015



Justice K. Ramaswamy, Member of National Human Rights Commission of India has commented upon the plight of undertrial prisoners in a letter to Chief Justices of High Courts. It is common knowledge that it is the poor, the disadvantaged and the neglected segments of the society who are unable to either furnish the bonds for release or are not aware of the provisions to avail of judicial remedy of seeking a bail and its grant by the court. Needless or prolonged detention not only violates the right to liberty guaranteed to every citizen, but also amounts to blatant denial of human right of freedom of movement to these vulnerable segments of the society who need the protection, care and consideration of law and criminal justice dispensation system¹². Table 1 below shows the state-wise population of under trials and prison occupancy rates.

Chart -2 - States and UTs-wise detailed information on undertrial inmates lodged in different Jails¹³.



Smaller States/UTs which have reported least number of undertrials in their jails are Goa (263), Daman & Diu (166), Sikkim (140), Arunachal Pradesh (136), Puducherry (107), A & N Islands (81), D&N Haveli (31) and Lakshadweep (23). Majority of undertrial inmates i.e. 50.9%(1,43,495 out of 2,82,076) were lodged in district jails as

12. National Human Rights Commission of India, Copy of letter, 22 December 1999 <<http://nhrc.nic.in/documents/HR%20In%20Prisons.pdf>>

13. PSI, 2015

compared to 33.6%(94,675 out of 2,82,076) in central jails and 13.1%(37,051 out of 2,82,076) in sub-jails at the end of the year 2015. The States / UTs in which majority of undertrials lodged in central jails were Manipur (533) and Chandigarh (339) (100.0% each), Puducherry (85.0%) (91 out of 107), Delhi (81.6%) (8,876 out of 10,879), Punjab (76.8%) (10,015 out of 13,046), Maharashtra (63.5%) (13,756 out of 21,667), Tamil Nadu (53.3%).

Overcrowding of Undertrials

In the landmark 1979 case of *Hussainara Khatoon v. State of Bihar*, a petition brought before the Supreme Court revealed that an alarmingly large number of people were in prison for years awaiting trial. The Court observed that several undertrials accused of minor offences were being detained for periods even longer than their formal convictions. It ruled that every undertrial had a right to a fair and speedy trial, and recommended that states build a comprehensive legal aid framework to tackle the issue of excessive undertrial detention¹⁴.

In 2005, the CrPC was amended to insert section 436A, which states that if an undertrial has served half the maximum sentence of the offence for which he has been charged, he can be released on a personal bond, as long as the offence is not punishable with a death sentence. In the same year, a public interest litigation was filed before the Supreme Court in the *Bhim Singh v. Union of India* case, seeking effective implementation of section 436A. In 2012, the Ministry of Home Affairs issued a set of directives to reduce overcrowding of prisons by ensuring that states conduct periodic monitoring to identify undertrials eligible for release under section 436A¹⁵.

In 2013, R. C Lahoti, a former Chief Justice of India, wrote to the then Chief Justice Altamas Kabir, about what he described as the inhuman condition of prisoners in 1382 prisons across the country. The letter was taken up by the Supreme Court as a public interest writ petition. The social justice bench of the Supreme Court directed the relevant authorities to procure information pertaining to overcrowding of prisons and living conditions of prisoners. The Court reiterated the Home Ministry's directives¹⁶.

In an interim order passed in 2016, the Court stated, "Unfortunately, even though Article 21 of the Constitution requires a life of dignity for all persons, little appears to have changed on the ground as far as prisoners are concerned and we are once again required to deal with issues relating to prisons in the country and their reform."¹⁷

14. AIR 1979 SC 1369.

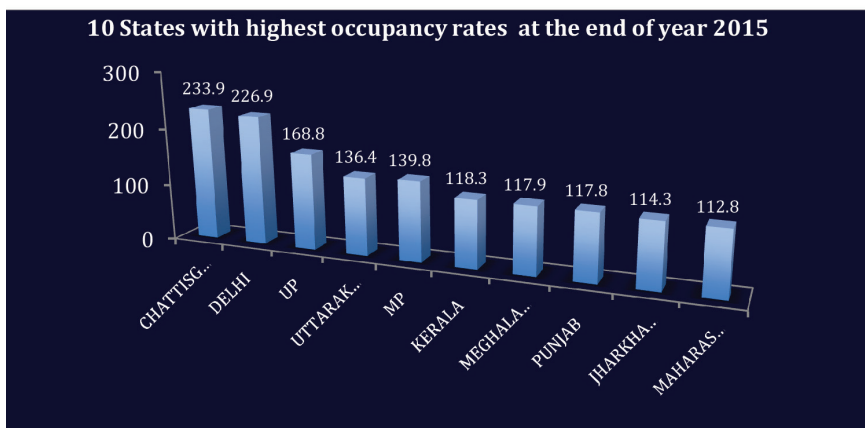
15. Ministry of Home Affairs, Use of section 436A of the Cr.P.C to reduce overcrowding of prisons (No. V-13013/70/2012 IS(VI), 2013, Available at http://mha1.nic.in/PrisonReforms/pdf/AdvSec436APrison-060213_0.pdf

16. Inhuman Conditions in 1382 Prisons, WPC 406 of 2013.

17. Inhuman Conditions in 1382 Prisons, WPC 406 of 2013.

In February 2017, the Union Minister for Law wrote to Chief Justices of all High Courts stating that all stakeholders “need to take collective responsibility for ensuring that institutional mechanisms work seamlessly to ensure access to justice for the undertrial population”¹⁸. In April 2017, the Law Ministry launched three new programmes aimed at extending legal aid to marginalized people. In May 2017, the Law Commission of India recommended in a report that provisions on bail in the CrPC be amended to facilitate a reduction in the number of undertrials in prison.¹⁹

Chart -3- Position of occupancy rates at the end of the year 2014 and 2015²⁰



- Highest occupancy rate or overcrowding in prison reported in Chhattisgarh with 233.9%.
- The occupancy rate at All India level at the end of 2014 was 117.4% which declined slightly to 114.4% at the end of the year 2015.
- 8 States/UTs reporting further overcrowding in their prisons in 2015 in comparison to 2014, these States/UTs were Delhi (from 221.6% in 2014 to 226.9% in 2015), Uttar Pradesh (from 167.1% in 2014 to 168.8% in 2015), Meghalaya (from 153.4% in 2014 to 177.9% in 2015), Madhya Pradesh (from 133.7% in 2014 to 139.8% in 2015), Uttarakhand (from 127.2% in 2014 to 136.4% in 2015), Kerala (from 114.3% in 2014 to 118.3% in 2015), Maharashtra (from 110.7% in 2014 to 112.8% in 2015) and Assam (from 101.9% in 2014 to 109.7% in 2015).

18. U.Anand, 'Law Minister to HCs: Act on your own to free undertrials', Indian Express, 13 February, 2017, Available at <http://indianexpress.com/article/india/ravishankar-prasad-cross-border-undertrials-free-high-courts-justice-chief-4521489/>

19. Law Commission of India, Report No. 268: Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail, 2017, Available at <http://lawcommissionofindia.nic.in/reports/Report268.pdf> (Hereinafter: Law Commission Report)

20. PSI, 2015

- In 8 States where the inmate population was still more than the available capacity, although the overcrowding declined in 2015 over 2014, these States & UT were D & N Haveli (from 331.7% in 2014 to 276.7% in 2015), Punjab (from 139.2% in 2014 to 117.8% in 2015), Rajasthan (from 118.4% in 2014 to 102.4% in 2015), Himachal Pradesh (from 122.4% in 2014 to 110.7% in 2015), Chhattisgarh (from 258.9% in 2014 to 233.9% in 2015), Haryana (from 112.0% in 2014 to 109.3% in 2015) and Jharkhand (from 123.1% in 2014 to 114.3% in 2015).
- Maximum overcrowding were reported in district jails (131.1%) followed by central jails (116.4%) in 2015.

Table -1- State/UT-wise distribution of under trial prisoners in different Jails at the end of 2015²¹

S.No.	State/UT	Central - Jail	District - Jail	Sub Jail	Women - Jail	Borstal School	Open Jail	Special Jail	Others	Total	Occupancy Rate
1	ANDHRA PRADESH	1604	1133	2132	36	0	0	0	0	4905	88.9
2	ARUNACHAL PRADESH	0	136	0	0	0	0	0	0	136	86.8
3	ASSAM	2162	3314	56	0	0	0	164	0	5696	109.7
4	BIHAR	6597	13775	2632	23	0	0	397	0	23424	75.2
5	CHHATTISGARH	4333	3405	2132	0	0	0	0	0	9870	233.9
6	GOA	88	0	175	0	0	0	0	0	263	38.6
7	GUJARAT	3726	1679	1701	33	0	0	479	0	7618	95.5
8	HARYANA	1778	8711	0	0	0	0	0	0	10489	109.3
9	HIMACHAL PRADESH	344	235	607	0	0	0	0	0	1186	110.7
10	JAMMU & KASHMIR	428	1355	123	0	0	0	0	0	1906	77.9
11	JHARKHAND	4195	7876	1477	0	29	11	0	0	13588	114.3
12	KARNATAKA	4686	3143	1250	0	0	0	235	0	9314	95.9
13	KERALA	830	1558	770	92	38	0	1279	0	4567	118.3
14	MADHYA PRADESH	6843	9278	5179	0	0	0	0	0	21300	139.8
15	MAHARASHTRA	13756	7471	127	194	0	0	119	0	21667	112.8
16	MANIPUR	533	0	0	0	0	0	0	0	533	67.1
17	MEGHALAYA	0	862	0	0	0	0	0	0	862	117.9
18	MIZORAM	277	331	0	0	0	0	0	0	608	94.9
19	NAGALAND	83	307	0	0	0	0	0	0	390	33.8
20	ODISHA	2458	2686	6447	15	0	0	978	0	12584	88.6
21	PUNJAB	10015	2001	683	95	252	0	0	0	13046	117.8
22	RAJASTHAN	6196	4675	3147	179	0	0	28	0	14225	102.4
23	SIKKIM	69	71	0	0	0	0	0	0	140	99.2
24	TAMIL NADU	4185	835	2031	215	510	0	74	0	7850	63.6
25	TELANGANA	1489	1243	523	107	0	0	160	0	3522	87.8
26	TRIPURA	202	54	202	0	0	0	0	0	458	47.8
27	UTTAR PRADESH	2052	60151	438	0	0	0	28	0	62669	168.8
28	UTTARAKHAND	0	1316	976	0	0	0	0	0	2292	136.4
29	WEST BENGAL	6440	4233	4010	237	0	0	422	0	15342	102.9
TOTAL	TOTAL (STATES)	85369	141834	36818	1226	829	11	4363	0	270450	113.0
30	A & N ISLANDS	0	72	9	0	0	0	0	0	81	40.0
31	CHANDIGARH	339	0	0	0	0	0	0	0	339	61.4
32	D & N HAVELI	0	0	166	0	0	0	0	0	166	276.7
33	DAMAN & DIU	0	0	31	0	0	0	0	0	31	28.8
34	DELHI	8876	1589	0	414	0	0	0	0	10879	226.9
35	LAKSHADWEEP	0	0	23	0	0	0	0	0	23	37.5
36	PUDUCHERRY	91	0	4	0	0	0	12	0	107	45.9
TOTAL	TOTAL (UTs)	9306	1661	233	414	0	0	12	0	11626	169.5
TOTAL	TOTAL (ALL-INDIA)	94675	143495	37051	1640	829	11	4375	0	282076	114.4

21. Ministry of Home Affairs, National Crime Records Bureau 2015, 2016, Available at <http://ncrb.nic.in/StatPublications/PSI/Prison2015/PrisonStat2015.htm> (hereinafter: PSI 2015).

DEMOGRAPHIC OF THE INMATES IN PRISONS

Data on caste background of arrested and convicted persons also points to a disparity. According to National Crime Records Bureau (NCRB) the proportion of Schedule Caste (SC)/ Scheduled Tribes (ST) population in Prisons is much higher than their proportionate population in the country as a whole. An analysis of the caste-based classification of under trials from NCRB Report 2015 reveals that:

Dalit's and Adivasis -two of the most vulnerable sections of Indian society- make up a considerable number of India's prison population. Although the proportion of these two communities in India adds up to about 24.2%, their share amongst prisoners is considerably higher at 34%.

- While 34.4% of the undertrials (97129 out of 2,82,076) belong to the General Category, 21.6% (61139 out of 2,82,076) belong to Scheduled Castes, 12.4% (34999 out of 2,82,076) belong to Scheduled Tribes and 31.5% (88,809 out of 2,82,076) belong to the Other Backward Classes category. Dalit's make up 21.6% of prisoners, almost one in four. On the other hand, the 2011 Census indicates that 16.2% of the overall population belongs to Scheduled Caste and 8.2% of the overall population belongs to Scheduled Tribes, suggesting an over-representation of 33.33% by Scheduled Castes and of 51.22% by Scheduled Tribes in the prison population²².

Table -2

Category	% of under-trials (1)	% of people according to the 2011 Census (2)	% of Overrepresentation [(1)-(2) = () / (2)*100]
Scheduled Caste	21.6%	16.2%	33.33%
Scheduled Tribe	12.4%	8.2%	51.22%

22. PSI 2015

- Caste-wise analysis of convict's shows that 31.2% (41,931 out of 1,34,168) of convicts belonged to OBC category and 34.1% (45,801 out of 1,34,168) of convicts belong to General category. 20.9% (28,033 out of 1,34,168) convicts belonged to Scheduled Castes while 13.7% (18,403 out of 1,34,168) belonged to Scheduled Tribes.

Chart 4

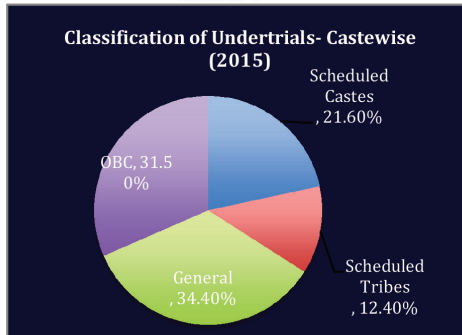


Chart 5

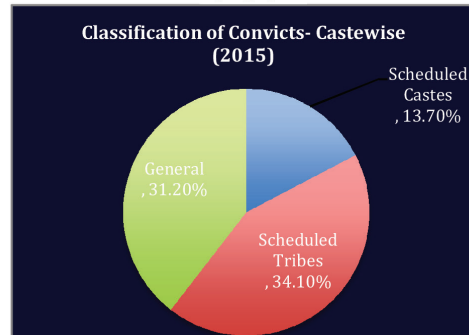


Chart 6

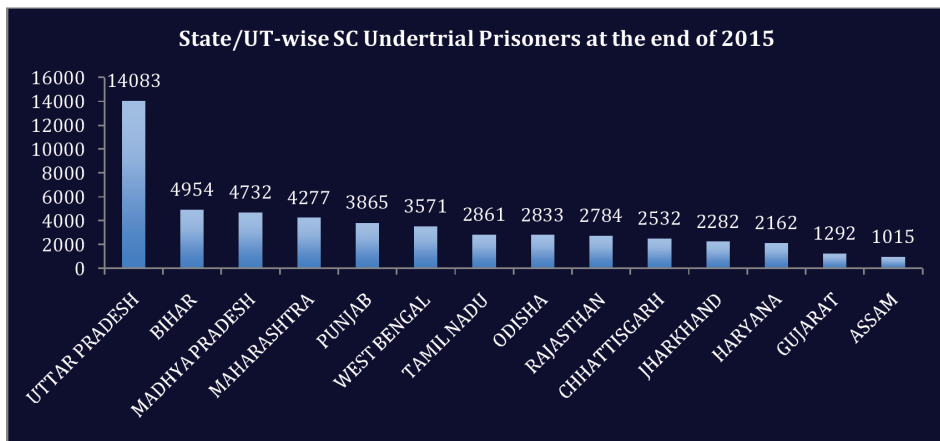
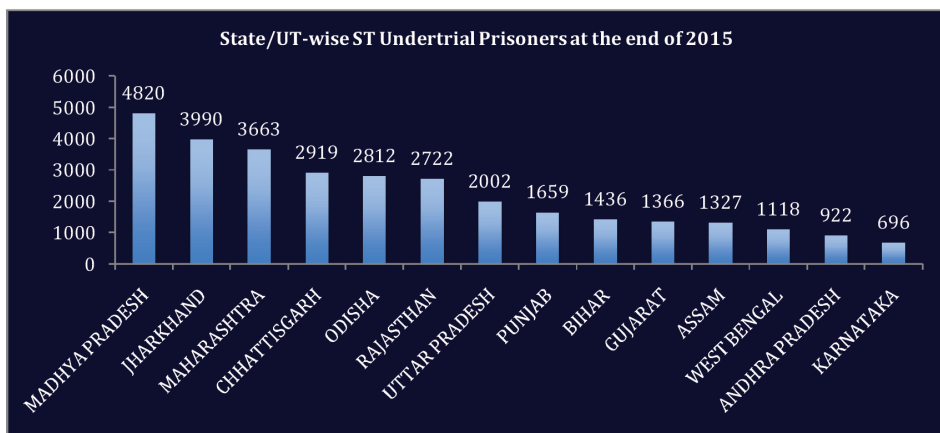


Chart 7



**Table-3 State/UT-wise Distribution of SCs and STs Undertrial Prisoners
at the end of 2015²³**

S.No	State/UT	Caste - SC	Caste - ST	Caste - OBC	Caste - Others *	Caste - Total	% of Population to the total number of under trials in prison			
							SC	ST	OBC	Others
1	A.P	932	922	1819	1232	4905	19.0	18.8	37.1	25.1
2	ARUNACHAL	0	63	0	73	136	0.0	46.3	0.0	53.7
3	ASSAM	1015	1327	1397	1957	5696	17.8	23.3	24.5	34.4
4	BIHAR	4954	1436	10311	6723	23424	21.1	6.1	44.0	28.7
5	CHHATTISGARH	2532	2919	3048	1371	9870	25.7	29.6	30.9	13.9
6	GOA	46	44	112	61	263	17.5	16.7	42.6	23.2
7	GUJARAT	1292	1366	2672	2288	7618	17.0	17.9	35.1	30.0
8	HARYANA	2162	249	2639	5439	10489	20.6	2.4	25.2	51.9
9	HIMACHAL	372	60	167	587	1186	31.4	5.1	14.1	49.5
10	JAMMU & KASHMIR	233	219	64	1390	1906	12.2	11.5	3.4	72.9
11	JHARKHAND	2282	3990	4310	3006	13588	16.8	29.4	31.7	22.1
12	KARNATAKA	933	696	344	7341	9314	10.0	7.5	3.7	78.8
13	KERALA	885	33	2126	1523	4567	19.4	0.7	46.6	33.3
14	MADHYA PRADESH	4732	4820	6334	5414	21300	22.2	22.6	29.7	25.4
15	MAHARASHTRA	4277	3663	4667	9060	21667	19.7	16.9	21.5	41.8
16	MANIPUR	11	151	331	40	533	2.1	28.3	62.1	7.5
17	MEGHALAYA	60	627	109	66	862	7.0	72.7	12.6	7.7
18	MIZORAM	16	567	25	0	608	2.6	93.3	4.1	0.0
19	NAGALAND	100	266	9	15	390	25.6	68.2	2.3	3.8
20	ODISHA	2833	2812	4146	2793	12584	22.5	22.3	32.9	22.2
21	PUNJAB	3865	1659	1844	5678	13046	29.6	12.7	14.1	43.5
22	RAJASTHAN	2784	2722	5506	3213	14225	19.6	19.1	38.7	22.6
23	SIKKIM	10	27	96	7	140	7.1	19.3	68.6	5.0
24	TAMIL NADU	2861	169	4320	500	7850	36.4	2.2	55.0	6.4
25	TELANGANA	963	448	1376	735	3522	27.3	12.7	39.1	20.9
26	TRIPURA	110	119	71	158	458	24.0	26.0	15.5	34.5
27	UTTAR PRADESH	14083	2002	25911	20673	62669	22.5	3.2	41.3	33.0
28	UTTARAKHAND	564	292	501	935	2292	24.6	12.7	21.9	40.8
29	WEST BENGAL	3571	1118	1799	8854	15342	23.3	7.3	11.7	57.7
Total	TOTAL (STATES)	58478	34786	86054	91132	270450		12.9	31.8	33.7
30	A & N ISLANDS	0	2	0	79	81	0.0	2.5	0.0	97.5
31	CHANDIGARH	44	0	76	219	339	13.0	0.0	22.4	64.6
32	D & N HAVELI	3	44	7	112	166	1.8	26.5	4.2	67.5
33	DAMAN & DIU	4	6	9	12	31	12.9	19.4	29.0	38.7
34	DELHI	2587	137	2585	5570	10879	23.8	1.3	23.8	51.2
35	LAKSHADWEEP	0	23	0	0	23	0.0	100.0	0.0	0.0
36	PUDUCHERRY	23	1	78	5	107	21.5	0.9	72.9	4.7
Total	TOTAL (UTs)	2661	213	2755	5997	11626	22.9	1.8	23.7	51.6
Total	TOTAL (ALL-INDIA)	61139	34999	88809	97129	282076	21.7	12.4	31.5	34.4

23. PSI 2015.

- Classification of undertrial prisoners professing different faiths reveals that 69.8% (1,96,814 out of 2,82,076) of them adhered to Hindu religion while 20.9% (59,053 out of 2,82,076) were from the Muslim community and the rest belonged to other religions²⁴.
- Classification of convicts professing different faiths revealed that 72.6% (97,471 out of 1,34,168) of convicts lodged in jails profess Hindu religion while 15.8% (21,220) were from the Muslim community and the remaining convicts professing other religions. The table below shows the representation of people belonging to different religions in prison and in the 2011 Census.

Table 4: Religion of under-trial prisoners compared to that of the general population

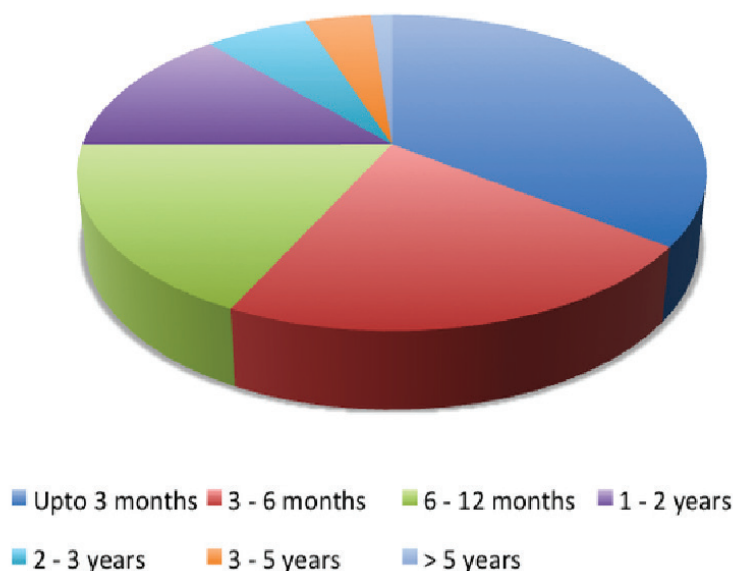
Religion	% of under-trials belonging to the religion	% of people belonging to the religion according to the 2011 Census
Hindu	69.7%	80%
Muslim	20.9%	14%
Christian	3.66%	2%
Sikh	3.86%	1.72%

PERIODS OF UNDER-TRIAL DETENTION

- Of the 282076 under-trials, 35.2% (99398) had been detained up to three months by the end of 2015.
- On the other end of the spectrum 1.27% (3599) of them had been detained for longer than five years by this time. Chart 8 below indicates the periods of detention of the under-trial population by the end of 2015 and indicates that a quarter of the under-trial prison population has been incarcerated pending trial for more than a year.

24. PSI 2015

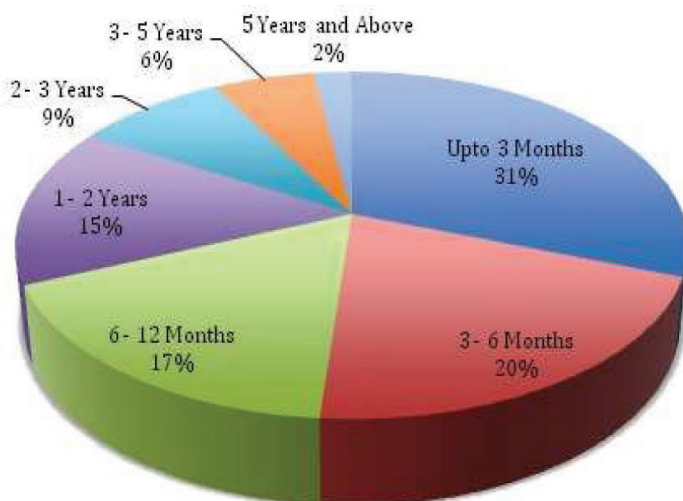
Chart 8: Period of Detention undergone by under-trials at the end of 2015



These numbers are silent on the sentences of the offences these under-trials are charged with. Therefore, we cannot analyze the proportion of the sentence served as under-trials. We also cannot predict for how long the under-trials will continue to be in prison since the chart only depicts period of detention undergone by the under-trials at the end of 2015.

- It is interesting to note that all the under-trials in Kerala (4567) and Sikkim (140) have spent not more than three years in prison and all the under-trials in Mizoram (608) and Telangana (3522) have spent not more than two years at the end of 2015.
- Incidentally, numerically speaking, Uttar Pradesh reported the highest number of under-trials detained for i) up to three months, ii) for 3 to 6 months, iii) for 6 months to 1 year and iv) for 1 year-2 year detention.
- Uttar Pradesh has also reported the highest number of under-trial prisoners lodged in jail for over 5 years, accounting for 37.9% of such prisoners (1364) at the national level. The chart below illustrates the periods of detention for the 62,669 under-trials in Uttar Pradesh. As opposed to the national average of 25.1%, in Uttar Pradesh, 32% of the under-trial prison population has been in prison for over a year.

Chart 9: Period of Detention undergone by all under-trials in Uttar Pradesh.



UNDER-TRIALS RELEASED IN 2015

If such a large number of people are spending long durations in prisons as under-trials, it is important to understand how many of them finally get acquitted.

- An analysis of the Prison Statistics of 2014 and of 2015 indicates that a total of 1574433 undertrials passed through the prison system in 2015. This includes 282879 who were in prison pending trial at the end of 2014 and 1291554 who came into the system in 2015. Of these 1574433 individuals, 1292357 were released from prison during the course of the year. 282076 undertrials remained in the system at the end of 2015.

- Of the 1574433 undertrials who passed through the prison system in 2015, 73.52% (1157581) were released on bail. We do not know how many of them had their cases decided, and what percentage of such persons were finally convicted. Of the remaining 416852 under-trials, 12.5% (52,191) undertrials have either been released on appeal or for other reasons. That leaves 364661 undertrials who were not released on bail or otherwise. Of this group 22.64% (82585) were acquitted and the remaining under-trials continue to be in the system. This implies that of the people who are not released on bail or otherwise, 1 in 5 will end up being acquitted.

The above facts and figures of 2015 paints a grim picture of the state of the Indian criminal justice system. The jails are filled beyond capacity, largely due to very high rates of under-trial incarceration. This under-trial population is drawn mainly from socio-economically and educationally marginalized groups i.e, Scheduled Castes and Scheduled Tribes. Scheduled Castes and Scheduled Tribes, in particular, are vulnerable to being wrongly incarcerated as under-trials. A quarter of the all the under-trials from spend more than a year in prison. However, one in five of those who are not released on bail or otherwise, will finally be acquitted by the Court.

DISPROPORTIONATE SECTION UNDER DEATH ROW ARE DALIT, ADIVASIS & RELIGIOUS MINORITIES

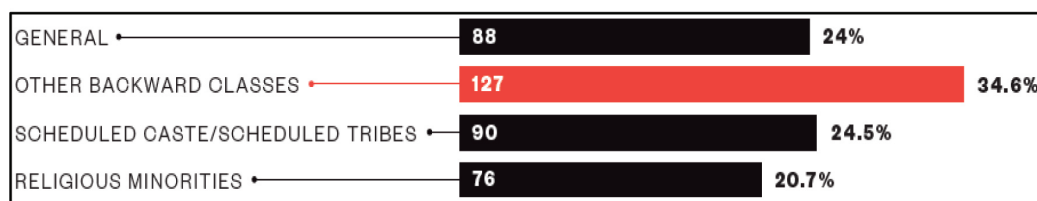
The caste and religious profile of individuals whose death sentences have been confirmed shows that a disproportionate section come from Dalit community and religious minority families. India's systemic reality is that the criminal justice system works differently for different people. The experience of the activists, civil society organizations over the years and several studies and research on the behav-

ior of police says that police behaves inversely in its dealings with persons belonging to Scheduled Castes or a Scheduled Tribes as opposed to the dominant caste community primarily due to the caste mindset. And it is not just our police, our entire criminal justice system operates with class, caste and religion further victimizing themarginalized sections. There are cases where counter and false cases are being filed against Dalits. The cases are tried under different legislations but the end result is Dalits are convicted and Dominant caste perpetrators of crime are acquitted. One of the examples to quote here is of Bara Massacre (1992). Many Dalit's were arrested in connection with the Bara massacre, for the offences similar to which dominant caste were arrested, but Dalit's were convicted are continue to be on death row after confirmation by the apex court. On the other hand in Laxmanpur-Bathe massacre all the accused have been acquitted by the Patna High Court.

CASTE AND RELIGIOUS PROFILE OF PRISONERS SENTENCED TO DEATH

- According to the Death Penalty India Report²⁵, NLS, 76% (279 prisoners) of prisoners sentenced to death in India belong to backward classes and religious minorities, with all 12 female prisoners belonging to backward classes and religious minorities.

Chart 10: Social Profile of Prisoners sentenced to death



25. Death Penalty India Report, NLS

- While the proportion of Scheduled Castes/Scheduled Tribes (SC/ STs) amongst all prisoners sentenced to death in India was 24.5%, that proportion was significantly higher in Maharashtra (50%), Karnataka (36.4%), Madhya Pradesh (36%), Bihar (31.4%) and Jharkhand (30.8%), amongst states with 10 or more prisoners sentenced to death.
- Of the SC/ST prisoners, 85.4% were also economically vulnerable. For religious minorities, this proportion was 76%, compared to 64.4% for the general category. This intersectionality mirrors contemporary society, and meant that the experiences of certain categories of death row prisoners and their families were also different.
- Religious minorities, for whom the all-India proportion is 20.7%, saw a disproportionate share of convicts in Gujarat, where 15 out of the 19 (79%) prisoners sentenced to death were Muslim. According to the 2011 census, 9.67% of the state is Muslim. In Kerala, 60% of death row prisoners were from religious minorities (relative to 42.25% of the population, according to the 2011 Census) – five Muslims and four Christians amongst 15 death row prisoners. Karnataka too saw a large proportion of religious minorities on death row, 31.8% of the total. This is relative to 16.01% of the state being from religious minorities.
- At the lowest rung, i.e. High Court pending cases, the social profile of prisoners sentenced to death more or less reflects the overall national figures. However, as we move up the hierarchy of the legal process, we see the proportion of general category prisoners falling and the proportion of SC/ STs and religious minorities increasing

Table 5: Stage-wise variations in social profile of prisoners sentenced to death

Caste	High Court pending	Supreme Court pending	Mercy pending & Mercy reject
General	71 (26.7%)	8 (15.7%)	9 (18%)
OBC	98 (36.8%)	17 (33.3%)	12 (24%)
Religious Minorities	52 (19.6%)	15 (29.4%)	9 (18%)
SC/ST	55 (20.7%)	14 (27.5%)	21 (42%)

CHAPTER 2

WHY DO DALITS AND ADIVASIS MAKE UP LARGE NUMBER IN JAILS



Despite numerous programs and judicial directives to reduce the overcrowding and correct the situation, little has changed on the ground and lakhs of undertrials still languish in various jails. When it comes to identity of undertrials and convicts, as evident from the data the underprivileged communities make up a large number over the years. Their numbers have only increased in recent years, notwithstanding frequent directives from the Ministry of Home Affairs to jail authorities and the Supreme Court's judgment in 2014.

Deeply- entrenched prejudices – Deeply entrenched prejudices against Dalit and Adivasis play an important role in their harassment and incarceration. There are allegations that police officers have their own caste and gender biases and often behave towards Dalits and adivasis in a discriminatory way²⁶. Usually the victims of police torture are mainly Dalits and adivasis. They are often picked up and jailed on concocted charges. A study Report on alleged cases of police atrocities against Kuravan Community (SC) in the state of Tamil Nadu submitted by 3 members study committee to National Commission for Scheduled Caste revealed the of treatment of people belonging to Scheduled Castes by the police and their discriminatory behaviors. They are subjected to illegal arrests and detention and physical torture, by the police in the name of nabbing the “habitual offenders”. The members of the community, including men, women and children, are subjected to systematic, continuing, ruthless treatment in the hands of the police. It has become handy for the police to catch hold of the Dalits and Adivasi communities and foist false cases on them for crimes which they had not committed. Dalits and other indigent people too poor to seek legal counsel obviously spend too long a time behind bars, unable to seek justice even when they might be innocent.

Structural and Procedural blockages in Criminal Justice System: The overcrowding of the Jails with huge population of Dalits and Adivasis waiting for justice has to be seen in the larger context of a criminal justice system afflicted by serious biased structural and procedural bottlenecks and as said above linked with the deep entrenched caste prejudices. Dalits and Adivasi undertrials are one of the victims of India’s centralized justice system, which has a very low ratio of SC and ST judges, a dysfunctional and biased prison system, and alarmingly low police-population ratio with less representation of SC and ST police personals. Little priority is given to improve on effective and discrimination free police institution and prosecution which is friendly towards marginalized. There is also lack of strong commitment to use information and communication tools in carrying out justice delivery functions for the poor.

- **Low population-judge ratio:** The foremost challenge to the criminal justice system impacting the fate of most undertrials is India’s low population-judge ratio. The SC has had difficulties filling up the vacancies in the past, with a reportedly 300 positions remaining vacant against a sanctioned strength of 906 judges in 21 HC’s across the country. The working strength of the HC’s at present is only around 611 judges, which include additional as well as permanent judges. The current scenario is even worse in the lower courts, with more than 3,300 posts remaining vacant against a sanctioned strength of

26. Amnesty International, "India: The impact of violence against women ", Mirneo (2001), p. 7.

17,715 judges. The SC has set up an ambitious program of making the combined strength of the judiciary to 30,000 in five years, which going by the present circumstances seems to be an increasingly difficult target to attain²⁷.

On the other hand ever since former Chief Justice of India K G Balakrishnan retired on May 11, 2010, no judge belonging to the Scheduled Caste has been elevated to the Supreme Court. Also, none of the current high court chief justices belong to the Scheduled Caste, which comprises over 16 per cent of the country's population. It is a similar story in the case of Scheduled Tribes as well. Moreover, in the last 10 years, the Supreme Court collegium, which is tasked with recommending names for elevation to the apex court, has picked only three women candidates. Of these, two — Justice GyanSudhaMisra and Justice RanjanaPrakash Desai — have since retired, while Justice R Banumathi remains in the Supreme Court. The Supreme Court collegium comprises the Chief Justice of India and four senior-most judges. Data maintained by the Union Ministry of Law and Justice shows that the collegium has not followed any strict rule while elevating judges to the Supreme Court. All this has clear bearing on the languishing of undertrials for want of bails. With backlog of litigations stretching over three crore, pre-trial detention is being used a punitive measure, resulting in denial of bail.

- **Low police-population ratios:** India has one of the lowest police-population ratios. Data from the United Nations Office on Drugs and Crime (UNODC) shows that in 2013, India's ratio of 138 police personnel per lakh of population was the fifth lowest among the 71 countries for which the agency collated these figures. Experts argue that the Indian police system designed in 1861 doesn't meet the requirements of a modern welfare state. The already understaffed system is also hit by many vacancies²⁸. The answer to a recent question in the Parliament reveals that as on January 2014, there was short fall of 5.6 lakh police personnel against the sanctioned strength of 22.8 lakh or about 25 per cent vacancy. Drawing a parallel between imprisonment of people from various communities and their representation in the police, the report said only two out of the 22 selected states for this study had met the reserved quota for SCs and these were Punjab and Uttarakhand. Likewise, only six states fulfilled the reservation quota for STs. These were Bihar, Himachal Pradesh, Karnataka, Nagaland, Telangana and Uttarakhand²⁹.

27. <https://www.vakilno1.com/supreme-court/government-appoint-50-more-judges-at-allahabad-high-court.html>

28. <https://economictimes.indiatimes.com/news/defence/indias-ratio-of-138-police-personnel-per-lakh-of-population-fifth-lowest-among-71-countries/articleshow/48264737.cms>

29. A report brought out by Common Cause and the Lokniti-Programme for Comparative Democracy at the Centre for the Study of Developing Societies (CSDS)

Delayed Investigation: Many prisoners languish in prisons because the police do not finish investigation, and file the chargesheet in time. This is a very serious matter because such people remain in prisons without any clue of a police case against them. However, low bench strength seems pale in comparison to the role played by police and prosecution functionaries in delaying investigation and trial processes. While one reason is the low police-population ratio, what compounds this is endemic caste bias in police that has been found to be often the leading reason for delay in prosecution, as well as unnecessary arrests. There are also issues of ‘unjustified or unnecessary’ arrests that police officials often resort to demonstrate the progress of investigation in counter cases filed by the dominant castes. Section 167 Cr.P.C. lays down the maximum period within which the police investigation must be completed and a chargesheet filed before the court. This period is 90 days for offences punishable with death, life imprisonment or imprisonment for a term of not less than ten years, and 60 days for all other offences. Where the investigation has not been completed within the stipulated timeframe, it is mandatory upon the Magistrate to release the accused on bail, provided he is ready to furnish bail. One of the primary reasons for overcrowding of prisons is pendency of court cases. As on March 31, 2016, more than three crore cases are pending in various courts, and two of every three prison inmates in the country are under trials. The 4,19,623 prisoners of 2015, for example, included 2,82,076 under trials, or 67%, according to the NCRB data³⁰.

Deficient Prosecution System: Prosecutors lack basic facilities, such as access to legal databases, research and administrative assistants. The Delhi High Court, in a March 2014 order, noted that prosecutors’ laptop allowances exclude payment for internet facilities and legal databases; they do not have exclusive office space in courts and lose files because of insufficient file space. As the court observed, “one of the predominant cause(s) for delay in disposal of criminal case is due to shortage of public prosecutors.”

India has around 15 judges per million population, despite the 2002 Supreme Court order, in *All India Judges’ Association*, directing an increase to 50 judges per million by 2007. But the bigger problem is the backlog of more than three crore cases, with the SC itself currently hearing 64,000 cases. Delays in the conclusion of trials often result in pre-trial detention being used as a punitive measure, causing denial of bail. They also spawn informal justice measures, such as plea-bargaining or jail *adalats*, where fewer procedural safeguards nudge the accused to plead guilty to escape detention in lieu of the time already served. The inability to post bail arises

30. <https://indianexpress.com/article/explained/overcrowding-in-jails-prisons-reforms-tihar-jails-police-ncrb-5130869/>

partly due to the profile of undertrials. Some two-thirds are SCs/ STs/ OBCs and three-fourths are illiterate or have studied till below Class X. Low education levels and economic activity mean lower incomes, making it harder to afford bail. Third, the ineffectiveness of the existing legal aid system prevents these undertrials from being able to access statutory and constitutionally guaranteed legal aid. Poverty and low legal literacy makes many undertrials ignorant about the benefits afforded by Section 436A and their right to legal aid. Further, inadequate coordination among the legal services authorities and prison officials results in a failure to identify those requiring legal aid.

Dysfunctional Prison system: Prison officials are one of the most important, and often the most neglected, part of the criminal justice system. They regularly review the legal status of undertrials to determine whether they have spent enough time in custody to warrant release under Section 436A. Unfortunately, on average, only 66.3 per cent of the sanctioned posts are filled, with Bihar having only 21.1 per cent of the sanctioned prison official strength. Prison officials and staff includes officers, cadre staff, correctional staff, medical staff, ministerial staff and others. Jail cadre forms more than 70 percent of the force. The Model Jail Manual 2016 recommends there should be one guarding staff for every six inmates. In reality it is almost half the standard with 10 prisoners per guarding staff. Without the augmentation of guarding staff and correctional staff, prisons will stay fixed in adversarial staff-inmate relations, in a culture of punishment with extra lock-up hours to serve 'effective' management. PSI figures indicate the obvious huge short staffing of prisons. But even this tells just half the story of the sorry state of prison services. Many staff are on suspension or absent on leave or on ancillary and administrative work. Prisons too often rely on convict warders who prison staff must rely on heavily to control the prison. Prison service staff are ill-trained, poorly paid, badly accommodated and often remain without promotion or any career advancement for years together. Senior positions of responsibility are inevitably filled by higher ranking personnel from the police who have neither the training nor experience to run prisons as anything more than holding cells with no thought of them possibly being correctional facilities as the policies on paper seem to suggest they should be³¹.

Inadequate funding to Judiciary and Policing: Budget allocation for the judiciary and Policing is a serious concern. The government is not providing sufficient budget and, time and again, the Judges of Supreme Court and High Courts have to intervene to seek sufficient allocation of Budget. The low budgetary allocation is grossly inadequate to improve infrastructure, set up new courts and appoint judicial offi-

31. Based on the 'Prison Statistics Report 2015' (PSI) released by the NCRB, compilation of ten important things about Indian Prisons by 'The Commonwealth Human Rights Initiative' (CHRI),

cers, all of which are imperative to bring down the massive pendency rate of cases, from the apex court all the way down the ladder. There are more than 3.3 crore cases pending in courts across the country, many of them for over 10 years. Of these, around 60,000 are in the Supreme Court, a little over four lakh in various high courts and about 2.9 crore in the district and subordinate courts. Simple logic suggests that with more courts and more judges, the problem could be tackled easily. But for that, you need money and the judiciary has scarce resources. For decades now, the judiciary in India has survived on a negligible allocation that has ranged between 0.2 percent and 0.4 percent of the annual budget.

The problem of meagre allocation of funds is compounded by under-utilisation of the available funds. The Union Budget for 2017-18 had earmarked Rs 1,174.13 crore for the judiciary. The Supreme Court was allocated a sum of Rs 247.06 crore, a marginal increase of Rs 4 crore from last year and included ad-ministrative expenditure, salaries and travel expenses for the chief justice and other judges, security personnel and related needs like stationery, office equipment, security equipment, maintenance of CCTV and printing of the annual report of the Court. The apex court's budget is prepared by its registrar general, which is forwarded by the law ministry to the finance ministry. The same process is followed by high courts who forward it to the state governments. However, high courts also have the additional responsibility of preparing budgets for lower courts within their jurisdiction.

The primary responsibility of infrastructure development for the subordinate judiciary lies with the state government. The central government also releases additional funds under the Centrally Sponsored Scheme (CSS) for development of judicial infrastructure. The law department sanctions establishment of new courts and the home department releases funds for creation and maintenance of judicial infrastructure.

According to latest statistics gathered by the Supreme Court, the total pending cases in the subordinate courts across the country has risen from 2.68 crore in 2013 to 2.71 crore in 2015. But for dispensation of these cases, there is not sufficient infrastructure—judges, staff supporting them, lawyers, courtrooms, and so on—due to which this pendency increases every year. There is a shortage of 5,018 courtrooms in the subordinate judiciary. As of January 2016, there are 15,540 court halls to cater to the sanctioned strength of 20,558 judicial officers. There is a shortage of 8,538 residential quarters for accommodation of judges in the subordinate courts. Also, there are currently 41,775 vacancies of judges, magistrates and judicial officers.

To solve this, the Budget had proposed an outlay of Rs 630 crore under the CSS for constructing 600 additional court halls and 350 residential units in the coming year.

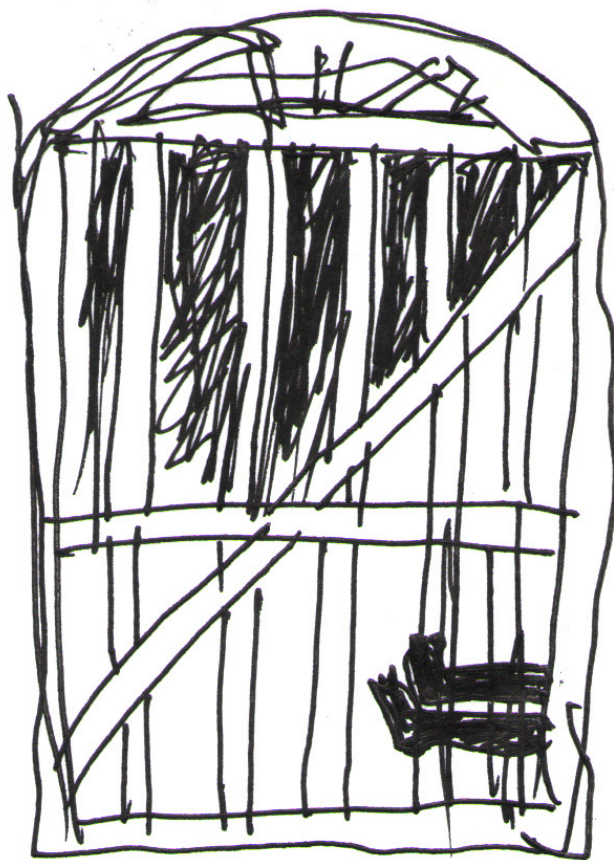
But will this work? The answer can very well be guessed by analysing the performance under the 13th Finance Commission Grant. In 2010, the Commission had given a special grant of Rs 5,000 crore spread over five years to both the Union and state governments to be utilised for the following purposes—operation of morning/evening/special shift courts, establishing alternative dispute resolution centres and training of mediators/conciliators, LokAdalats, legal aid, training of judicial officers, state judicial academies, training of public prosecutors, creation of posts of court managers and maintenance of heritage court buildings. Data gathered from the ministry of law and justice shows that at the end of the five-year period, funds of Rs 1,010 crore, a mere 20 percent, were ultimately utilized.

The resource commitment on policing, a critical aspect impacting the state of undertrials, is even more worrisome. State governments spend a minuscule share of their allocation (3-5 percent) on policing. In the state of Maharashtra Budget outlays for the police only meet the establishment cost. Salary is the main component of budget, consuming almost 90% of the total allocation. The residual amount covers costs of domestic travel, maintenance of motor vehicles and petrol cost. Budgets, as they stand, barely allocate funds for operational expenses of running police stations, or maintenance costs for computer systems, arms and ammunition. Police budgets have focused solely on manpower. In the current form, budgets only fund salaries, and thus are not fully aligned to create conditions conducive for the protection and security of citizens. First and foremost, aligning budgets to these outcomes will require outlays to fully cover the office or operating expenses of the police station. It is estimated that office or operation costs for running a police station in an urban area are around Rs5–6 lakh per year, while the figure for rural areas is between Rs4–5 lakh per year. This cost estimate covers expenses on any item of miscellaneous nature, such as stationery, translations, etc., while performing police duty

Poverty and illiteracy: Apart from the various structural and procedural issues, Dalit and Adivasi undertrials are poor and illiterate. Most of them are either unaware of the provisions or unable to access these provisions such as bails or sureties or are too poor to arrange personal bond or even sureties from someone to secure bails. On the other hand India lacks competent and adequate legal representation for those incarcerated. Even the legal service authorities at the National and State level have failed to comprehensively identify the undertrials in need of bail or sureties. Thus, in the absence of committed legal structure and system lakhs of undertrials spend years behind the bars despite the quasi judicial mandates issued by the apex courts on their release.

CHAPTER 3

CHALLENGES FACED BY DALIT AND ADIVASI PRISONERS IN ACCESSING THEIR LEGAL RIGHTS: OBSTRUCTIVE FACTORS



India is a party to the International covenant on civil and political rights and the International covenant on economic, social and cultural rights adopted by the General Assembly of the United Nation on

16.12.1966. Though the Human Rights embodied in the covenants were substantially protected by the Constitution there was growing concern in the country and abroad about issues relating to human rights. Therefore, the Government reviewed the existing laws, procedures, system of administration etc., and enacted the Protection of Human Rights Act, 1993 as an act to provide for the Constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith and incidental thereto. Under Section 30 of the Act, the Human Rights Courts are established for providing speedy trial of offences arising out of violation of human rights. Section 2(d) defines “Human Rights” to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Court in India. The General Assembly of the United Nations proclaimed the universal declaration of Human Rights as a common standard of achievement for all people and all nations to promote the rights and freedoms and by progressive measures.

Unfortunately, India has not codified the rights of the prisoners. However, the Indian Judiciary has given several directions and orders on the rights of prisoners. The authorities have to follow these directions in the absence of any codified law. However, even in the absence of any codified law it is found that precedent is much more powerful law than legislation since, binding on all the courts in India. But, practically, in the absence of legislation these rights find place only on the paper with, hardly any prison’s authority following them.

It is felt that, all rights of the prisoners should be codified for the awareness in the State. Moreover, prisoners are not aware of these rights, or not aware of procedure thereof. The recommendations of the Jails Committee of 1919-20 paved the way for the abolition of inhuman punishments for indiscipline. This resulted in the enforcement of the discipline in a positive manner. All India Jail Reform Committee 1980-83 has also recommended various rights of prisoners and prison discipline. Thus, a gradual trend developed in the form of enforcement of discipline motivated and encouraged by inducements like remission of punishment due to good conduct, payment of wages for labour rendered, creation of facilities like canteen and granting the privilege of writing letters and allowing interviews with friends and relatives.

It must be noted that judiciary now recognizes most of these “benefits” as part of the basic rights of the prisoners. While on the subject it would be necessary to acquaint ourselves with certain international and National safeguards concerning prisoners and their rights.

This part of the study examines the rights of the accused of crime, undertrials and convicts, in detail and the experiences of undertrials and those who have come out of the prisons through interviewing them. These experiences give a broader picture of the various factors, including systemic factors inside and outside jails, which either obstruct or facilitate access to justice for the undertrials /inmates from the day they are arrested.

First, the various obstructive factors have been discussed while accessing their rights. Second, the discrimination, harassment and other obstructions that victims and witnesses experience inside the prisons are examined. The analysis shows that these two factors are interlinked, and feed into the process of denial of justice to the victims-survivors. Moreover, the structural cause for these obstructions, caste, manifests in the discrimination that is rampant in the system.

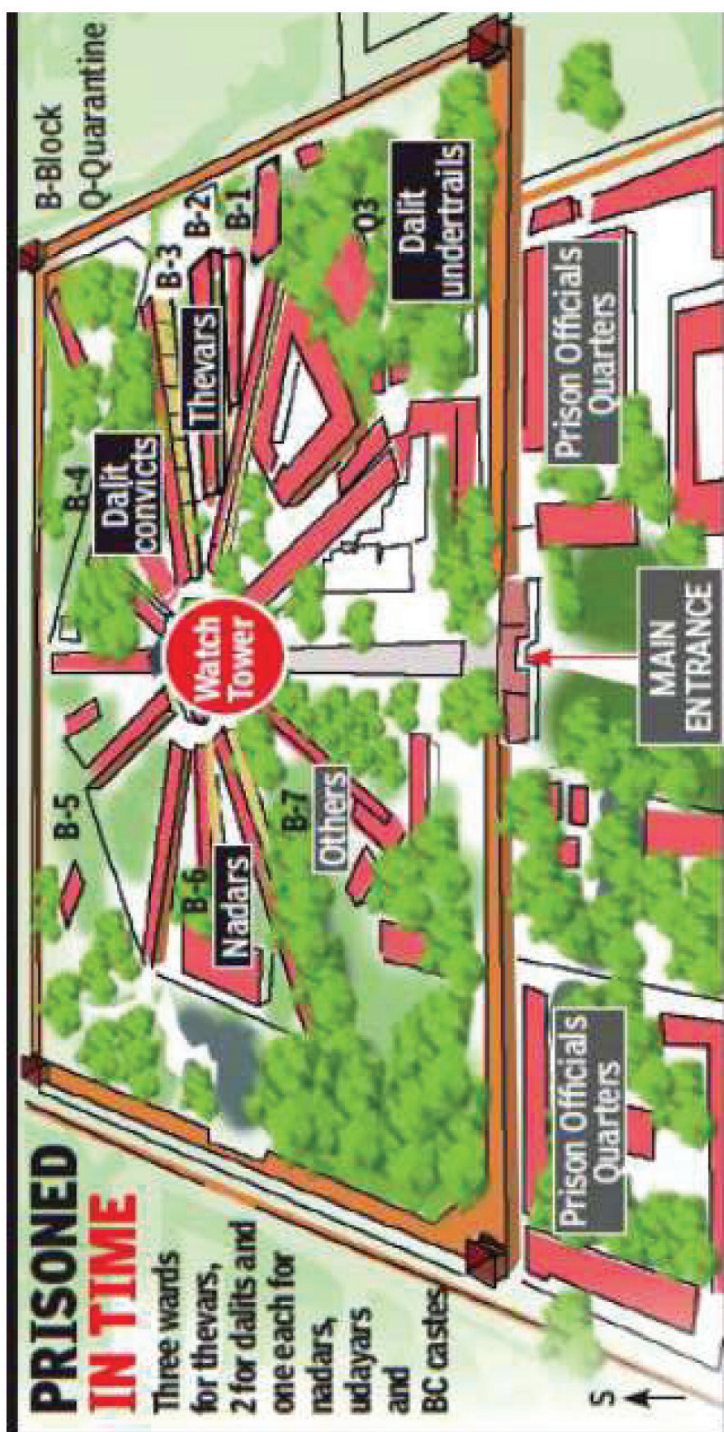
IN TAMIL NADU’S SOUTHERN DISTRICTS, PRISONERS ARE SEGREGATED BY CASTE IN JAILS³²

One of the Dalit who was incarcerated at the Palayamkottai Central Jail in Thirunelveli, in 2006, one of the districts worst hit by caste violence reveled how caste followed him inside the prisons.

- Beaten up for no reason by members of the jail staff who were Thevars.
- The food served in his Dalit block was scarcely edible and hardly enough to quell his hunger.
- His access to books and newspapers was restricted.
- His visiting time for friends and relatives who came calling was curtailed.

32. <<<http://www.openthemagazine.com/article/india/caste-in-prison-stone>>>Chandrashekar, chief of the Pallar Cultural Development Forum, which ran a campaign against anti-Dalit atrocities, was incarcerated at the Palayamkottai Central Jail in Thirunelveli, one of the districts worst hit by caste violence.

- He had to work, but was not paid. And he was deprived of medical attention.
- There are eight blocks with 30-35 cells each. The fourth block, far from the main building, is for Dalits; Thevars, Nadars and Muslims are all in different blocks. If prisoners get unruly, one form of punishment is to place a guard of a 'rival caste' in the block. So, if knuckles need to be rapped (so to speak) in a Dalit cell/block, Thevar constables are deployed there. Serious misbehavior attracts a punishment that can make the hardest break into a cold sweat: being put into the cell of an antagonistic community. The jail authorities only try to widen the gap between communities and aggravate the abhorrence they feel for each other. They exploit the volatility thus created.
- At the film screened twice every week, the first show is always reserved for Thevars.
- While Thevar prisoners are free to use mobile phones, Dalits are not. While Thevars do not have too many restrictions on visitors, Dalits are given a separate place where officers often interfere with warnings that 'the meeting time is up.
- Dalit women visitors have to endure long waits, even gross insults.
- Dalits don't even get letters in jail—the authorities either tear them up or open them.
- The exclusion of Dalits is painfully evident in matters medical. Dalits have no access to the prison hospital. If a Dalit prisoner is sick, he is only provided some pain killers.
- If a Dalit prisoner is seriously ill, he is taken to the nearby government hospital, but not the prison hospital. Doctors visit inmates every week, but they hardly step into the blocks reserved for Dalits.



Picture source: <https://timesofindia.indiatimes.com/city/chennai/within-palayamkottai-jail-caste-walls-divide-convicts/articleshow/65941644.cms>

INDISCRIMINATE ARREST & DETENTION IN CUSTODY DURING INVESTIGATION

The causes of long periods spent in pre-trial detention are manifold and manifest. The power of the police to arrest people is very wide and they arrest marginalized Dalits and Adivasis even when they cooperate with the investigation agencies and are not likely to evade or run the investigation or trial. This is due to institutional caste mindset of the establishments.

Human Rights Standards of under trial detainees at the time of arrest

Police officers have wide range of powers to arrest a person including arrest without a warrant if he is suspected of having committed a cognizable offence. Person has the right to enquire about the reason for their arrest and also the law pertaining to the same. The arrested person has the right to inform a family member, a relative or friend of his arrest³³. If a person is arrested for a non-cognizable offence, i.e. if a warrant arrest is made he has the right to view the contents of the warrant³⁴. The police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest³⁵.

Police officer arresting a person without warrant shall produce him before a magistrate within twenty-four hours to the magistrate's court³⁶. One of the objects of this provision is to ensure that certain checks exist in the law to prevent abuse of power of arrest and detention and protect a person from police excesses³⁷. When an accused is detained in the custody of the police after arrest beyond 24 hours, such detention beyond the said period is surely illegal³⁸.

33. Section 50 of the Cr.P.C

34. Section 70 of the Cr.P.C

35. D.K.Basu vs. State of W.B. AIR 1997 SC 619

36. Section 56 & 57 Cr.P.C

37. Art 22, Constitution of India

38. Poovan v. The S.I. of Police, Aroor, 1993 Cr. L.J. 2183 (Ker.), p. 2186.

However, once he is produced, the magistrate may authorize the detention of the arrested person for more than 24 hours of the investigation, which cannot be completed within that period. In no circumstances can the accused be detained in custody for a moment more than twenty four hours without a special order of a Magistrate who can order his detention for a term exceeding 15 days on the whole. At the end of the 15 days he must be produced before the Magistrate. If there are adequate grounds for further detention in judicial custody (jail), he can pass an order to that effect, for a period not exceeding 15 days. But the total period of detention cannot exceed 60 days, whether the investigation of offence against him has been completed or not. If the accused is not able to furnish bail during the stage of investigation he may be detained in judicial custody beyond 60 days. In case of a non-bailable offence the arrested person may be kept in jail until the trial is over³⁹.

Bail, not jail, is a dominant principle of criminal law practiced by every mature democracy and in India often in its breach. Supreme Court of India has time to time held that the basic rule is bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court⁴⁰.

Article 39A of the Constitution of India states that free legal aid must be provided to ensure that access to justice is not denied because of economic or other disabilities. The Supreme Court of India has stated that the right to free legal aid is part of the right to life and personal liberty under Article 21 of the Constitution⁴¹. The Constitution of India, declares that “no person who is arrested shall be detained in custody without having informed, as soon as maybe, on the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice⁴². The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation⁴³.

National Human Rights Commission characterized law enforcement machinery as the greatest violator of Dalits’ human rights. Police subject entire Dalit communities to violent search and seizure operations. Dalits, are often held in custody for long periods of time, frequently deprived of food and water, subjected to verbal abuse and humiliation, severe beatings, sexual abuses, and demeaning acts. Often the in-

39. Section 167 Cr.P.C

40. State of Rajasthan vs. Balchand, 1977 AIR 2447, 1978 SCR (1) 535

41. M.H Hoskot v. State Of Maharashtra, AIR 1978 SC 1548.

42. Article 22(1) of Constitution of India

43. D.K.Basu vs. State of W.B. AIR 1997 SC 619

juries inflicted. Custodial torture and killing of Dalits, rape and sexual assault of Dalit women, and looting of Dalit property by the police “are condoned, or at best ignored. Dalit are accused of being “terrorists,” “threats to national security,” and “habitual offenders,” and frequently charged under the National Security Act, 1980, the Terrorist and Disruptive Activities (Prevention) Act, 1985 (“TADA”), and even older counter insurgency laws such as the Indian Explosives Act, 1884. Dalit activists are often subjected to falsified charges, and physical abuse and torture following arrest⁴⁴.

This results in unnecessary detentions of Dalits and Adivasis and further infringement of their legal rights due to caste mindset. The Constitution of India and the Code of Criminal Procedure, 1973 contain several provisions to protect from police excesses, but these proved to be ineffective in preventing investigating agencies from resorting to torture.

Article 22 of the Constitution and Section 57 of the Code of Criminal Procedure, 1973 mandate the production of an accused before a Magistrate within 24 hours of her arrest. Given the exalted status of a fundamental right, such protection is envisaged as an important check on police investigation by the Magistrate. However, in many cases they were not produced before a Magistrate within 24 hours. In a study on undertrials conducted by CHRI, the findings reveal a picture, which is completely in contrast to the legal norms. Only 35.5% of the undertrials admitted to being produced within the statutory limit of 24 hours. The rest 64.5% had horrifying stories to narrate. About 32% were produced within 2-4 days, 11% were produced within 5-6 days and the most startling fact is that 59 undertrials were produced after more than a week of their arrest which is a serious infringement of their right to liberty⁴⁵.

Several other hurdles explain why number of Dalit and Adivasis piled up in unnecessary detentions and how their basic legal rights at the time of arrest are being infringed. Six major points emerged from the discussions. At the time of the arrest, police officials are not informing the reasons of arrest. Detenués are even not allowed to inform their family members, relative or friends about their arrest. The police officials are not showing memo of arrest at the time of arrest. They were not given information about the free legal aid including right to meet an advocate of their choice during interrogation. Police officials failed to produce them before the magistrate within 24 hours of their arrest. They have faced police torture inside the police station and even their family members faced harassment/humiliation/torture while the victims were inside the police station.

44. NHRC Report, 2004

45. A MICROSTUDY OF PERCEPTIONS OF UNDERTRIALS IN ALWAR PRISON OF RAJAS-

A short survey of 21 undertrials and inmates found the following

- Only 12 undertrials /prisoners were informed of the reasons of arrest.
- 8 were not allowed to inform their family member, relative or friend about their arrest.
- Only in 9 cases police officials showed memo of arrest at the time of arrest.
- In 11 cases they were given information about the free legal aid including right to meet an advocate of their choice during interrogation?
- In 4 cases respondents were not produced before the magistrate within 24 hours of your arrest as per the law.
- 5 of the respondents faced police torture inside the Police Station?
- Similarly 5 of the respondents shared their family members facing harassment/humiliation/torture while they were inside the police station.

RIGHT TO LEGAL AID AND REPRESENTATION

Despite the existence of the right to legal remedies, however, because of their weak socio-economic position and relative lack of information on their legal rights, Dalits and Adivasis often find it difficult to access judicial remedies. Further, where they try to access such remedies, pathways like legal aid are not made easily available to them. They also find that even when they take recourse to the law, the proceedings are protracted, witnesses are reluctant to testify in their favour against more powerful persons, and the potential for manipulation of the legal process is large. In addition, even though victims, they cannot afford to forego their daily wages for days on end in order to attend the courts. The result is that legal provisions become ineffective in the delivery of justice.

- At the time of the admission 11 respondents shared that they were not informed of their right to get legal aid at the Government cost as per the provisions of law neither their application sent to the Legal Aid Services Authorities for free legal aid or to engage a lawyer for defending case.
- 11 of the respondents shared that their family members/ relatives/ were not informed of their admission to prisons immediately.
- In 10 cases respondents were not allowed to give the details of persons they likely to meet or interviews.
- 19 of the respondents shared that they were not provided with any mechanism such as postcard to inform their family or legal representative about their admission to the prison.
- 12 of the respondents shared that they were not given any sort of orientation or kept in orientation ward at the time of admission.

Article 22 of the Constitution of India guarantees the right of every arrested person to consult or be defended by a legal practitioner of his/her choice. The presence of a lawyer in the pre-trial phase, while an accused is in police custody, has been given due consideration by the Supreme Court of India to act as a check on intimidatory tactics or incriminations attempted by the police during interrogation. The right to consult an advocate of this choice shall not be denied to any person who is arrested. The spirit and sense of Article 22(1) is that it is fundamental to the rule of law that the service of a lawyer shall be available for consultation to any accused person under circumstances of near-custodial interrogation⁴⁶. Moreover, the observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice. Yet, the survey revealed that such provisions failed to provide meaningful protection to the defendants in our study.

It is a pity that the obligation of the State to provide legal aid to an accused has not been extended during police custody and their admission to prisons, especially in light of the horrific torture and violation of foundational principles experienced in this phase.

The Supreme Court has, however, held that the State is obligated to provide a lawyer free of charge to an indigent accused from the time he/she is first presented before the Magistrate.

A research study regarding legal aid to the prisoners on death row reveals that 44.5 % of the prisoners on the death row⁴⁷ are from Dalit, Adivasi and minorities. Out of the total prisoners from all categories 64 % of prisoners had private lawyers at the trial stage but the trend shifted at the Supreme Court — only 30 % had private lawyers, the rest depended on legal aid lawyers or lawyers who had agreed to fight their cases pro bono. 70 % of the 258 prisoners about their interaction with trial court lawyers said they did not discuss case details. Prisoners and families seemed to harbour a fear of legal aid lawyers. Many sold their assets to engage private lawyers to represent them in trial courts. At the high court, 68.4 % of prisoners never interacted with or even met their lawyers. 44 % of prisoners whose cases reached Supreme Court did not know the names of the lawyers who were representing them. 90 % of 189 prisoners who spoke to the team said they did not have a lawyer when they were first produced before the magistrate.

Information about the number of legal aid lawyers and the frequency of their visits

46. Section 50 of the Cr.P.C

46. Section 70 of the Cr.P.C

46. D.K.Basu vs. State of W.B. AIR 1997

47. Death Penalty Research Project, National Law University in Delhi,

to the prisons, every month between March 2014 and March 2015 varies significantly between states. Among the states with the largest undertrial populations, Haryana has the highest number of legal aid lawyers but each lawyer visits prison on an average 0.22 times a month, while West Bengal has the least number of legal aid lawyers but each lawyer visits prison on an average 1.44 times a month. The frequency of visits by lawyers is low in many states – in most states, legal aid lawyers visit prisons less than once a month. Significantly, 23 prisons reported having no legal aid lawyers. It is therefore not only the number of lawyers but frequency of visits that must also be improved⁴⁸.

Yet, prisoners who spoke about whether they were represented at the time of first production before the Magistrate, 9 cases they were not informed of the right to legal aid. In 11 of the cases legal aid lawyers represented defendants. Five major points emerged from the Study. Firstly, at the time of admission prisoners not informed of their right to get legal aid as per the provisions of law neither any applications were sent on their behalf to the Legal Aid Services Authorities for free legal aid to engage a lawyer for defending case. Their family members or relatives or legal representatives were not informed of their admission. They were even not provided with any mechanisms such as postcards to inform their family or legal representatives about their admission to the prison. They were even not allowed to give the names of the persons they likely to seek interviews. They were not kept in orientation ward at the time of their admission.

Human Rights Standards for Legal Aid

Effective access to Justice requires that there is a systematized mechanism of legal aid in place. Constitution of India entitles arrested persons to be represented by a legal practitioner⁴⁹. The provision of legal aid is enshrined in Article 39A and comes within the broad interpretation of Article 21. Pursuant to the directive under Article 39A of the Constitution, the Legal Services Authorities Act, has been enacted. Every person who has to file or defend a case shall be entitled to legal services under Legal Services Authorities Act, if that person is a scheduled caste. Such services include the payment of all court fee and charges incurred in connection with legal proceedings; the provision of advocates in legal proceedings, and the obtaining of certified copies of all documents and orders in legal proceedings⁵⁰.

A nationwide network has been envisaged for providing legal aid and assistance. Under Sec. 3 Legal Services Act, the National Legal Services Authority (NALSA) is constituted as the apex body to lay down the policies, principles and schemes for legal services. It disburses funds and grants to State Legal Services Authori-

48. Justice Under Trial, A study of pre trial detention in India, Amnesty International

49. Article 22 (1) of the Constitution

50. Sec. 12(a) Legal Services Authorities Act 1987

ties for implementing legal aid schemes and programmes. In every state a State Legal Services Authority is constituted to give effect to the policies and directions of NALSA, to provide legal services to the people and to conduct LokAdalats. District and Taluk Legal Services Authorities are also constituted for the same purpose at the local levels, including to and to organize legal awareness camps in rural areas.

A Supreme Court Legal Services Committee is constituted by NALSA for the purpose of exercising such powers and performing such functions as may be determined by regulations made by NALSA. Similarly, High Court Legal Services Committees for every High Court and Taluk Legal Services Committees for every taluk/mandal or group of taluks/mandals are envisaged under the Legal Services Act. These Legal Services Committees have been constituted to administer and implement the legal services programme in so far as it relates to their respective court jurisdictions.

In 1980, in the case of *Hussainara Khatoon v. State of Bihar*, the Supreme Court ruled that the right to free legal services is implicit in the right to life and personal liberty guaranteed under Article 21 of the Constitution, as an “essential ingredient of ‘reasonable, fair and just’ procedure for a person accused of an offence”⁵¹. The Court said that states should work towards building an effective legal aid system which could be easily accessed by the poor. The same year, in *Katri v. State of Bihar*, the Supreme Court directed Magistrates and Sessions Judges to inform accused persons about their right to free legal representation⁵². The Supreme Court has also set aside convictions on the ground that the accused did not have access to free legal representation. The Supreme Court has also detailed guidelines that would allow NGOs and other organizations to avail government support for their legal aid initiatives⁵³.

More recently, in a 2016 order passed by the Supreme Court in the *Re: Inhuman Conditions in 1382 Prisons* case, the Court directed legal aid lawyers to engage with the system in order to release undertrials. The Court remarked that the state and District Legal Service Authorities should empanel competent lawyers, in order to prevent ‘legal aid for the poor’ from becoming ‘poor legal aid’. Despite this elaborate structure for the provision of legal aid, few people accused of criminal offences are represented by legal aid lawyers. Legal aid is not always provided at the time of arrest, or when the accused person is brought before a magistrate.

India’s Law Commission noted in a 2017 report that in practice, legal aid was provided only after charge-sheets were filed. This practice limits the access of poor detainees - who cannot afford private lawyers - to legal assistance in the crucial precharge stage⁵⁴.

51. AIR 1979 SC 1369.

52. 1981 SCC (1) 627.

53. Center For Legal Research v. State Of Kerala, AIR 1986 SC 1322.

54. Law Commission Report, 2017

RIGHT TO MEDICAL EXAMINATION

Right to Health is an important human right of the prisoners, in view of their custodial status and the limited medical facilities available in the prison. Hence, the State has the responsibility to provide adequate manpower and equipment's for effective medical treatment of the prisoners. The Hon'ble Supreme Court in series of cases held "right to health care" as an essential ingredient under Article 21 of the Constitution. Article 21 casts an obligation on the State to preserve life. Similarly, under Cr.P.C, the Magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has right under Section 54 of the Code of Criminal Procedure, 1973 to be medically examined.

Minimum Standards for Rights to adequate health facilities

Section 54 of the Code of Criminal Procedure, 1973 undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well⁵⁵.

In another historic judgment The Supreme Court of India⁵⁶ has laid down principles to implement the recommendations of the Mulla Committee⁵⁷ on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions and to take required steps. Every central and district prison should have two or more medical officers. Such medical officers, each serving a term of three to five years, should be deputed from the State Medical Service to prisons⁵⁸. All central prisons with prisoner population of more than 1000 prisoners should have three medical officers. A prison should have a part-time lady medical officer and if the

55. D.K.Basu vs. State of W.B. AIR 1997 SC 619

56. Rama Murthy Vs State of Karnataka (1997) 2SCC 642

57. All India Committee on Prison Reforms (1980-83)

58. Rec 121 & 123, All India Committee on Prison Reforms (1980-83)

female prisoner population is more than 25, it should have a full-time lady medical officer⁵⁹. Adequate incentives should be provided to medical officers, psychiatrists and paramedical personnel deputed to prisons⁶⁰. All central and district prisons should provide hospital accommodation for 5% of the daily average inmate population⁶¹. Each state should have a fully equipped prison hospital manned by specialists for the treatment of prisoners requiring specialized treatment from all over the state⁶². Required supply of drugs for three months should be stocked in the prison hospital⁶³. Proper medical facilities should be provided in sub-jails as well⁶⁴.

Model Prison Manual (BPR&D, 2003)⁶⁵ has given detailed specifications for the requirement of medical facilities in the prisons. It says “Medical administration is one of the most important concerns of prison management. The Medical Officer of a prison has to give careful attention not only to the treatment of sick prisoners but also to every matter connected with the health of prisoners and overall hygiene of the prison.” Model Prison Manual specifies minimum standards with regard to adequate health. Institutional staff shall comprise medical personnel including medical-officers, psychiatrist, nursing staff and pharmacist⁶⁶. The government shall appoint a chief medical officer/medical officer (in charge) for every prison⁶⁷. The medical personnel are directly responsible for every matter connected with the health of the prisoners, their treatment when ill, as well as the sanitation and hygiene of the prison⁶⁸. Medical personnel are to provide both preventive and curative services⁶⁹. One ambulance should be provided to each prison hospital⁷⁰. Hospital accommodation should be provided on the scale of 5% of the daily average of the inmate population in all central and district prisons⁷¹.

Kerala High Court⁷² in a significant judgment has stressed upon the Prisoner’s Right to Basic Human Needs and advocated that basic items for healthcare and hygiene should be provided to both male and female prisoners.

But, very often the arrested person is not aware of this right and on account of his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock-up. It is for this reason that specific direc-

59. Rec 123 & 124) All India Committee on Prison Reforms (1980-83)

60. Rec 130, All India Committee on Prison Reforms (1980-83)

61. Rec 133, All India Committee on Prison Reforms (1980-83)

62. Rec 136, All India Committee on Prison Reforms (1980-83)

63. Rec 148, All India Committee on Prison Reforms (1980-83)

64. Rec 146 & 511, All India Committee on Prison Reforms (1980-83)

65. All India Committee on Jail Reforms and Model Prison Manual (2003)

66. Ch. 4.03.2, All India Committee on Jail Reforms and Model Prison Manual (2003)

67. Ch. 7.04, All India Committee on Jail Reforms and Model Prison Manual (2003)

68. Ch. 7.09, All India Committee on Jail Reforms and Model Prison Manual (2003)

69. Ch. 4.07.4, All India Committee on Jail Reforms and Model Prison Manual (2003)

70. Ch. 7.03, All India Committee on Jail Reforms and Model Prison Manual (2003)

71. Ch. 7.02, 2.16.1, All India Committee on Jail Reforms and Model Prison Manual (2003)

72. Kerala High Court, A Convict Prisoner in the Central Prison, Thiruvananthapuram Vs State of Kerala (1993 Cr. L.J. 3242).

tion requiring the Magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or maltreatment in police custody was given by the Supreme Court of India. In *ParmanandKatara v. Union of India* (1989)⁷³, the Supreme Court ruled that the government has an obligation to preserve all life, including those criminally liable to punishment. Medical care in Indian prisons, however, is inadequate. Some of the problems stem from over crowding, as of 2007 the prison system was operating at 135.7% capacity⁷⁴. Other problems are caused by the lack of medical staff. For example, in Karnataka, the government has officially created 83 medical staff positions to care for 12,000 prisoners. As of 2008, however, only 42% of those positions have been filled⁷⁵.

- In 13 cases the respondents shared that they were not medically examined immediately after the admission. Neither any medical officer nor his representative was present at this stage. 7 respondents were though medically examined as per the law.
- In 9 of the cases Medical Officer never visited the undertrials on regular basis.
- 19 respondents in the study shared that as under-trial prisoner they never faced difficulty while they were sick and needed shifting to a hospital.
- 8 of the respondents shared that the supply of the medicine was not regular when needed inside the prisons
- 8 of the respondents said that they faced discrimination from the authorities in terms of receiving medical diet as prescribed.
- 7 of the respondents shared that the distribution of diet such as milk, egg, butter etc. was not fare and discriminated.

Additionally, prisoners are often unable to visit a hospital because there are not enough prison guards available to provide medical escorts. In some prisons medical escorts are only available on the weekends when the guards that are typically used for court escorts are available⁷⁶.

A part from the above the study reveals that even after the availability of these rights such provisions failed to provide meaningful right to health to the defendants. Following major issues emerged from the study. Dalits and Adivasis inmates are medically not examined immediately after the admission. Neither any medical officer nor his representative was present at this stage. Visits of the Medical Officer inside the jails were found to be irregular. Some of the interviewees reveled that authorities also discriminated in terms of disbursing medical diet to them. Supply of medicines was irregular when needed. Some also felt discriminated in terms of distribution of diet such as milk, egg, butter etc to them when needed.

73. AIR 1989 SC 2039

74. D.K.Basu vs. State of W.B. AIR 1997 SC 619

75. Conditions of Detention in the Prisons of Karnataka 2007-08 (Commonwealth Human Rights Imitative), 2010, at 12.

76. Conditions of Detention in the Prisons of Karnataka 2007-08 (Commonwealth Human Rights Imitative), 2010, at 13-14.

ACCOMMODATION & BEDDING

General living conditions include basic human needs like accommodation, food, drinking water, sanitation and medical facilities. A person in any kind of detention cannot be deprived of basic human needs based on religion or caste. 'Standard Minimum Rules for the Treatment of Prisoners' adopted by the United Nations laid down certain guidelines for accommodation, food, water, sanitation and medical facilities. Similar criteria have been mentioned in the Model Prison Manual (2003) in detail: "Living conditions in every prison and allied institution meant for the custody, care, treatment and rehabilitation of offenders shall be compatible with human dignity in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical facilities, etc. All factors responsible for vitiating the atmosphere of these institutions shall be identified and dealt with effectively⁷⁷."

Minimum Standards for adequate living conditions - Accommodation and Bedding

The Supreme Court of India⁷⁸ has laid down principles to implement the recommendations of the Mulla Committee on the subject of living conditions, sanitary conditions and maintaining appropriate hygienic conditions and to take required steps. All old prison buildings having outlived their utility should be demolished⁷⁹. There should be four types of living accommodation: barracks (for not more than 20 prisoners), dormitory (for not more than four to six prisoners), single seated accommodation and cells for segregation⁸⁰. All cells are to be fitted with flush type latrines. The ratio of latrines to prisoners should be 1:6, and the system of open basket type latrines should be discontinued⁸¹. Every prison must provide cubicles for bathing at the rate of one for ten prisoners, with proper arrangements to secure privacy⁸². Properly equipped laundries for periodic washing, disinfection and fumigation of clothing and bedding should be set up at each central and district prison⁸³. Clothing and bedding supplied to prisoners should be proper and adequate⁸⁴.

77. Bureau of Police Research and Development of India, Model Prison Manual, 2003

78. Rama Murthy vs. State of Karnataka (1997) 2 SCC 642

79. Rec 31, All India Committee on Prison Reforms (1980-83)

80. Rec 36, All India Committee on Prison Reforms (1980-83)

81. Rec 73, 74 & 37, All India Committee on Prison Reforms (1980-83)

82. Rec 78, All India Committee on Prison Reforms (1980-83)

83. Rec 80, All India Committee on Prison Reforms (1980-83)

84. Rec 83, 88, All India Committee on Prison Reforms (1980-83)

Model Prison Manual, 2003 says that there should be three types of living accommodation viz., barracks (for not more than 20 prisoners), single rooms, and cells for segregation⁸⁵. Scale for the minimum accommodation capacity of barracks, cells, and hospitals (per prisoner) has been mentioned⁸⁶.

Near the door of every ward, the size of the room and the number of prisoners it is capable of accommodating, shall be recorded on a plaque embedded in the outer wall of the ward. No ward shall accommodate prisoners beyond its prescribed capacity⁸⁷. Each barrack used for sleeping will have sufficient number of attached WCs, urinals and wash places. The ratio of such WCs will be 1:10 prisoners⁸⁸. The ratio of the WCs, which can be used during the daytime will be 1:6 prisoners. Every prison will provide covered cubicles for bathing, at the rate of one for every ten prisoner, with proper arrangements to ensure privacy⁸⁹. Taking into consideration that the daily requirement of water of an individual is about 135 ltrs., there will be an arrangement for the adequate supply of water in every prison⁹⁰. Areas where prisoner's work will have a minimum space of 500 cubic feet per prisoner in structures that will be constructed as workshops or factory buildings⁹¹. Every prisoner shall be required to wash their clothing once a week for which they shall be supplied in case of ⁹²: Male Prisoners - Half a bar of washing soap weighing approximately 500gms. each per month and 50 gms of washing powder every week for washing their clothes; and Female Prisoners - A bar of washing soap weighing approximately 1Kg. per month and 50 gms of washing powder per week.

The Supreme Court of India in Rama Murthy vs. State of Karnataka⁹³ has laid down certain conditions for general living including accommodation and other basic conditions of prisonization and basic amenities of prisoners. Model Prison Manual (BPRD, 2003) has also recommended various measures to provide adequate and hygienic accommodation for the prisoners. Bureau of Police Research and Development of India has also suggested a layout plan of a model barrack. 'Draft National Policy on Prison Reforms' has stressed upon the need of accommodation having basic human amenities. It says that all accommodation provided for use of prisoners, particularly for sleeping, will meet basic requirements of healthy living⁹⁴. Ma-

85. Ch. 2.08, Model Prison Manual (2003)

86. Ch. 2.09, Model Prison Manual (2003)

87. Ch. 6.64, Model Prison Manual (2003)

88. Ch. 2.13.1, Model Prison Manual (2003)

89. Ch. 2.14.1, Model Prison Manual (2003)

90. Ch. 2.14.2, Model Prison Manual (2003)

91. Ch. 2.17, Model Prison Manual (2003)

92. Ch. 6.57, Model Prison Manual (2003)

93. (1997) 2 SCC 642

94. Bureau of Police Research and Development of India, Draft National Policy on Prison Reforms and Correctional Administration, 2007, p.137

majority of the respondents in the study expressed discrimination and dissatisfaction with the accommodation provided to them. From these responses, it is easy to assess the plight of Dalit and Adivasi prisoners in the jails. More or less similar condition is prevalent in almost all the jails of India, where discrimination persists in terms of providing accommodation facilities to the Dalit and Adivasi inmates. They are being discriminated at par with the other under trials in terms of the standardized accommodation. Segregated from fellow prisoners and kept in separately based on caste. Forced to clean the clothes and beddings of other fellow prisoners or forced to clean the toilets. They are not allowed to get private clothing's to meet reasonable requirements.

- 10 of the respondents shared that the accommodation provided was not same as provided to other inmates. Even the standard of the accommodation was not at par with the other under trials.
- 3 of the respondents shared that they were segregated from fellow prisoners and kept in separately.
- 6 of the respondents were forced to clean the clothes and beddings of other fellow prisoners and forced to clean the toilets.
- 11 of the respondents were allowed to get private clothing's to meet reasonable requirement as prescribes government rate and 9 of the respondents were denied this right inside the jails.

FOOD

Food is a basic requirement of human life. A prisoner is entitled to get adequate food of reasonable quality to maintain his health. An average man is required to be provided at least 2000 calories a day to keep him fit. For preparation and distribution of food inside the prisons, sufficient guidelines have been given in the Prison Manuals. Model Prison Manual (2003) deals with preparation, distribution and quality of food provided to the prisoners. An average man requires approximately 2,000 to 2,400 calories a day. A person who does heavy work requires not less than 2,800 calories per day. The Model Prison Manual (2003) has also discussed about the nutrients required in a person's daily diet, their quantities and the common sources of nutrients. However many of the respondents under the study shared the type of discrimination they faced in terms of distribution of the food inside the prisons.

Dalit and Adivasi prisoners are not allowed to get food from outside even after giving an undertaking and receiving permission. They even faced problems in getting food from prison canteen. They felt discriminated and were made to sit separately while having meals at par with other fellow prisoners. Often they were asked to stand in a separate queue or asked to stand at the back of the queue while receiving their meals.

Minimum Standards for adequate and hygienic food

The Model Prison Manual (2003) has discussed about the nutrients required in a person's daily diet, their quantities and the common sources of nutrients. While prescribing the scale of diet for prisoners by the state government, due consideration is to be given to the classified needs, habits and modes of living of the prisoners and the climatic conditions of the place⁹⁵. The superintendent may introduce variety in the diet and also lay down a menu for different days of the week⁹⁶. In particular, it is stated that rice should be separated from husk, dust, or other particles, before issu-

95. Ch. 6.05, Model Prison Manual (2003)

96. Ch. 6.09, Model Prison Manual (2003)

ing it for cooking. The quality and seasoning of rice should be such that the weight of the cooked rice is about three times its weight in the uncooked state. This should be frequently tested by weighing⁹⁷. The minimum space requirement in the kitchen will be 150 square metres per 100 prisoners. It will facilitate sufficient space for storage of provisions, articles, containers and cooking utensils, vegetables, and preparing and cutting food, etc⁹⁸. Subject to certain conditions, under-trial prisoners may be allowed food from outside on a day-to-day basis⁹⁹.

The system of purchasing food articles through the contract system; and purchasing of cereals and pulses at the cheapest rate wherever in vogue should be discontinued¹⁰⁰. There should be provisions for different diets for non-labouring and labouring prisoners, nursing women, and children accompanying women prisoners. Also a provision for special diets on religious festivals and national days should be specified in the rules¹⁰¹. Norms for prison diet should be laid down in terms of calorific and nutritious value, quality and quantity. In order to break the monotony of the diet, menus should be prepared in advance, under the guidance of nutrition experts¹⁰². Each prison kitchen should cater to a maximum of 200 prisoners, and should be supervised by prison officials, who have been given special training in dietetics and management of kitchens¹⁰³. Prisoners shall be given food as is normally eaten in the region¹⁰⁴.

- 5 of the respondents shared that they were not allowed to get food from outside and faced problems even after giving an undertaking and receiving permission.
- 6 of the respondents shared facing problems in getting food from prison canteen.
- 3 of the respondents were asked to sit separately while having meals.
- 4 of the respondents were asked to stand in a separate queue or asked to stand at the back of the queue while getting meals.

97.Ch. 6.15, Model Prison Manual (2003)

98.Ch. 2.15.4, Model Prison Manual (2003)

99. Ch. 22.12, Model Prison Manual (2003)

100.Rec 49 & 50, All India Committee on Prison Reforms (1980-83)

101.Rec 51, 52 & 56, All India Committee on Prison Reforms (1980-83)

102.Rec 53 & 60, All India Committee on Prison Reforms (1980-83)

103.Rec 57 & 62, All India Committee on Prison Reforms (1980-83)

104. Rec 65, All India Committee on Prison Reforms (1980-83)

WORK AND WAGES

A prisoner is also entitled to get reasonable wages for the work done while undergoing the imprisonment. They are entitled to the enjoyment of 'their fundamental rights and the guarantee of such fundamental right is available to them except in so far as such rights may have to be curtailed or restricted by reason of imprisonment. Non—payment of remuneration after compelling the prisoner to do a work is 'forced labour' within the meaning of Article 23(1) of the Constitution¹⁰⁵. Holding so the court ordered adequate wages for the prisoners. So the prisoners have a fundamental right to get adequate remuneration for the work done by them. The High Courts and the Supreme Court of India have been gradually exercising jurisdiction in assuming prison justice, including payment of wages. However in reality the rights available to the inmates have failed to provide any justice to them. Some of the findings of the study show that even today Dalit and Adivasi inmates are being discriminated when it comes to adequate payment of wages. Following are the major observations of the study.

- a) No information given to the prisoners on how the work is being allotted inside the jails.
- b) Discrimination in terms of assigning the work or employment inside the jails.
- c) Discrimination in terms of payment of wages.
- d) Forced labour.
- e) Forced to do menial jobs inside the prisons.
- f) Forced to do work for more than the stipulated hours inside the prisons.

105. AIR 1983 Ker 261

- 13 of the respondents did not know or receive any information how the work are being allotted to prisoners.
- 3 of the prisoners shared that they faced discrimination in terms of assigning the type of work/employment.
- 3 of the prisoners faced discrimination in terms of the wages paid to them.
- 5 of the prisoners were subjected to forced labour or forced to do menial jobs.
- 5 of the prisoners were forced to do work for more than the stipulated hours.

Minimum Standards for adequate work and wages

For the first time in 1977, the Hon'ble Supreme Court held that the unpaid work is bonded labour and humiliating. The court expressed its displeasure on this issue. It was held that some wages must be paid as remuneration to the prisoner; such rate should be reasonable and not trivial at any cost¹⁰⁶. The court held that when prisoners are made to work, a small amount by way of wages could be paid and should be paid so that the healing effect on their mind is fully felt. Moreover, proper utilization of service of prisoners in some meaningful employment, whether a cultivators or as craftsmen or even in creative labour will be good from society's angle, as it would not be the burden on the public exchequer and the tension within¹⁰⁷.

The question relating to wages of prisoner was explained by Kerala High Court in 1983. It was suggested that wages given to the prisoners must be at par with the wages fixed under the Minimum Wages Act and the request to deduct the cost for providing food and clothes to the prisoners from such wages was spumed down¹⁰⁸. In the same year, the Hon'ble Supreme Court has held that labour taken from prisoners without paying proper remuneration was "forced labour" and violative of Article 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and the court is under duty to enforce their claim. The Court went one step ahead and said that there are three kinds of payment - 'fair wages', 'living wages' and 'reasonable wages'¹⁰⁹. The prisoners must be paid reasonable wages, which actually exceeded minimum wages. The Hon'ble Supreme Court held that no prisoner can be asked to do labour without wages. It is not only the legal right of a workman to have wages for the work but it is a social imperative and an

106. Mohammad Giasuddin v. State of AP, AIR 1977 SC 1926.

107. Dharambir v. State of UP, AIR 1979 SC 1595.

108. In Re Prison Reforms Enhancement of Wages of Prisoners", ADR. 1983 Kerala 261

109. Sanjit Roy v. State of Rajasthan, AIR 1983 SC 328

ethical compulsion. Extracting somebody's work without giving him anything in return is only reminiscent of the period of slavery and the system of begar. Like any other workman a prisoner is also entitled to wages for his work. It is imperative that the prisoners should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations. In 2007, MP High Court held that, if the twin objectives of rehabilitation of prisoners and compensation to victims are to be achieved, out of the earnings of the prisoners in the jail, then the income of the prisoner has to be equitable and reasonable and cannot be so meager that it can neither take care of rehabilitation of prisoner nor provide for compensation to the victim¹¹⁰.

The Model Prison Manual (2003) has discussed about the work and wages. If under-trial prisoners volunteer to work, suitable work, if possible, should be given to them¹¹¹. Wages may be paid to them according to schedules of standard tasks and wages, as fixed by the state government¹¹². In no case, should under-trial prisoners be employed outside their own enclosure or in workshops and areas where other convicted prisoners are working¹¹³.

110. SP Anand v State of MP, AIR 2007 MP 167 (Para 22)

111. Ch. 22.47, Model Prison Manual (2003)

112. Ch. 22.47, Model Prison Manual (2003)

113. Ch. 22.47, Model Prison Manual (2003)

PAROLE

All the prisoners have right to apply for the temporary release from the prison on the specified grounds mentioned in the local Act or Jail Manual, as the case may be. Jail administration is the State subject so there is not any Central Act or Guidelines prescribing the number of days for which a prisoner is eligible for parole. However some of the prisoners narrated that they were never informed of their right to parole and those who were aware of this right and applied felt discriminated against were not sanctioned parole.

- 17 of the prisoners shared that they were not informed of their right to parole.
- 5 of the prisoners shared that during their stay in prison they were discriminated against and were not sanctioned parole.

Minimum Standards for right to Parole

As per the Model Prison manual the provisions for grant of leave should be liberalised to help a prisoner maintain a harmonious relationship with his family. The privilege of leave should, of course, be allowed to selective prisoners on the basis of well defined norms of eligibility and propriety¹¹⁴. Head of the Prisons Department/ IG of Prisons will be the competent authority for granting release on leave¹¹⁵.

As per the Mulla Committee report, rules for eligibility of convicted prisoners for release on leave and special leave should be reviewed, rationalised and liberalised¹¹⁶. The IG of Prisons should be the authority competent for grant of release¹¹⁷.

114. Ch. 17.01, Model Prison Manual (2003)

115. Ch. 17.10, Model Prison Manual (2003)

116. Rec 554, All India Committee on Prison Reforms (1980-83)

117. Rec 555, All India Committee on Prison Reforms (1980-83)

TREATMENT BY AUTHORITIES AND INMATES INSIDE THE PRISONS

A part from physical violence and torture in the custody as we know in various studies and research, prisoners in the study also experienced different forms of discrimination and ostracisation at the hands of their fellow prisoners and jail authorities. It was also evident that the very personnel involved in the day-to-day administration of the prison view prisons as institutions to further inflict punishment on the persons being brought in. In light of such attitudes to prisoners, it becomes difficult to consider prisons as institutions working towards meaningful reformation or rehabilitation.

- 4 of the respondents shared that during the stay in the prison they were being treated unfairly by the jail authorities based upon their caste.
- 3 of the prisoners during their stay in the prison felt discriminated by their fellow prisoners based upon their caste and were treated unfairly.

Victimization of Dalit Prisoners inside the Prison¹¹⁸

Taking suo moto cognizance of media reports alleging victimisation of Dalit prisoners by upper caste inmates in Amreli district jail in Gujarat, the National Human Rights Commission has issued a notice to the IG (Prisons), Gujarat. The commission has issued a notice to the IG (Prisons), Gujarat. The commission has directed the IG to submit a report on the matter within six weeks. The commission stated that such instances undermined the spirit of the Constitution. It said the Constitution of India bars discrimination against anyone on the basis of caste, creed, gender and religion and jails are no exception to the fundamental right. The NHRC stated, 'The contents of the news report, if true, amount to violation of right to life, equality and dignity of the prisoners. The jail authorities being custodian of the prisoners are bound to ensure their safety and protection.'

118. <http://www.livelaw.in/nhrc-notice-gujarat-ig-prisons-reports-victimisation-dalit-prisoners/>

As per a media report, Dalit prisoners are subjected to grave discrimination and injustice by prisoners belonging to upper castes. It was alleged that the Jail Superintendent did not pay heed to such complaints. An undertrial, Navchetan Parmar, an advocate by profession, narrated his experience of spending 110 days in the jail. He was jailed post the Dalit protests after the Una flogging episode of July 2016, on charges of murder of a police constable during the protests. He alleged having faced harassment and demeaning comments about his caste by the 'upper caste' prisoners, known as 'Durbars'. He claimed that despite approaching several organisations, including the NHRC, no steps were taken to address his grievances. Parmar claimed that he was ostracised for belonging to a particular community and faced debilitating discrimination.

The Dalit prisoners, as per him, are forced to drink from the toilet tap and barred from drinking from the common earthen pitcher provided and access to purified water from the Reverse Osmosis plant installed in the Amreli district prison. Levelling serious allegations, he stated that Dalit inmates are made to wash clothes and utensils of their fellow prisoners and at times, the upper caste Durbars would wake up Dalit undertrials at 2 am and ask them to massage their legs. He also shed light on alleged apathy of the authorities towards their plight and claimed that complaints made to the Jail Superintendent are never heard by the authorities. In an instance, a Dalit inmate was severely beaten up for objecting to the harassment. The jail staff, however, refused to hospitalise him fearing medico-legal cases. He also stated that jail authorities collude with such upper caste inmates and enable access to facilities like mobile phones, which helps them operate their network from inside the jail.

TRIAL HEARINGS AND APPEAL

The Supreme Court held that right to speedy trial is a part of the fundamental right envisaged under Article 21 of the Constitution. Delay in disposal of cases is denial of justice, so the court is expected to adopt necessary steps for expeditious trial and quick disposal of cases. The Hon'ble Supreme Court has laid down detailed guidelines for speedy trial of an accused in a criminal case but it declined to fix any time limit for trial of offences. The burden lies on the prosecution to justify and explain the delay. The court held that the right to speedy trial flowing from Article 21, is available to accused at all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial.

The presence of the accused in court during trial is a fundamental requirement of the criminal justice system and is the first step in ensuring a fair trial. The foundational reason for such a requirement is to give the accused an opportunity to understand the case. Section 273 of the Code of Criminal Procedure, 1973 requires that all evidence led in trial proceedings must be taken in the presence of the accused, or her lawyer, if the accused's presence has been dispensed with.

Justice Krishna Iyer declared that "this is the State's duty and not Government's charity". If, a prisoner is unable to exercise his constitutional and statutory right of appeal including Special Leave to Appeal for want of legal assistance, the court will grant such right to him under Article 142, read with Articles 21 and 39A of the Constitution. The power to assign counsel to the prisoner provided that he does not object to the lawyer named by the court¹¹⁹. On the other hand, one implication of it he said that the State which sets the law in motion must pay the lawyer an amount fixed by the court. The Hon'ble Supreme Court has taken one more step forward in this regard and held that failure to provide free legal aid to an accused at the State cost, unless refused by the accused, would vitiate the trial. It is not necessary that the accused has to apply for the same. The Magistrate is under an obligation to inform the accused of this right and enquire that he wishes to be represented on the State's cost, unless he refused to take advantage of it¹²⁰. The denial of the right to speedy trial, is compounded by a number of rights violations that occur during the trial process. These violations have to be seen in terms of the various process's

119. *MH Hoskot v. State of Maharashtra*, (1978) 3 SCC 544 : AIR 1978 SC 1548

120. *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 25 SCC 401

involved, access to information on case inside the prisons and actions by different actors compounded by caste based mindset that adversely affect the speedy trial. In this situation the survey whose cases are pending trial before the Courts revealed a number of disturbing trends.

- 14 of the respondents shared that they were not given regular information on the progress of their case. Similarly, 14 of the respondents shared that they were not being informed in advance on the dates of hearings.
- 3 of the prisoners during their stay in the prison felt discriminated by their fellow prisoners based upon their caste and were treated unfairly.
- As an under-trial prisoner 3 of the prisoners narrated that they were not being produced before the Magistrate on every date of hearing. 17 were produced on every date of hearing.
- 6 of the prisoners were not allowed to discuss their case with their lawyer before the hearings.
- 10 of the respondents never received any briefing/advise from their private advocate before giving statement in the court.
- In 4 of the cases the inmates also faced threats or harassment once the trial started from the opposite party.
- 14 of the respondents shared that they were never asked for any sort of protection from anyone while within the court premises.
- 7 of the respondents shared that they were treated indifferently and not allowed to sit equally with others inside the courtroom.
- 5 of the respondents shared that during the trial they were made to feel humiliated or abused or discriminated against by the authorities and other actors involved.
- 16 of the respondents shared that they were never informed of their right to appeal to the higher court against the judgment delivered by the court.
- 3 of the convicts shared that even after the completion of the term of sentence they were inside the prisons beyond the period indicated by the terms of the warrant of commitment.

PRISON VISITORS SYSTEM & GRIEVANCE REDRESSAL SYSTEM

One of the key oversight mechanisms – the prison visiting system – had been envisaged as part of the prison reform programme to keep a check on unnecessary detention, prison overcrowding and prison morbidity. But in reality both the systems have failed to deliver desired results due to both political and administrative apathy and disinterest shown by a majority of state governments in the country.

Under the Prisons Act 1894 it is mandatory for the governments to constitute a board of visitors to oversee prison conditions and treatment of prisoners through a set of official visitors and non-official visitors drawn from civil society and from significant professions and services. Boards of visitors are required to carry out inspections and grievance redressal functions in the prisons and report to the government. A prison visitor is well placed to ensure that the directions issued by the courts, the government and the Human Rights Commissions are properly implemented within the prison. A prison visitor is able to enquire into the complaints of the prisoners and assist them in taking remedial action.

Similarly, The grievances and complaints of the prisoners are to be promptly looked into by the Prison Officers at every level. Prisoners are given full liberty to ventilate their grievances to the Institutional Officers, Inspecting Officers and visiting Judicial Officers. Complaint boxes have to be installed in all prisons which are opened once in a month by the Secretary, State Legal Aid Services. Besides, prisoners are free to send representations to State Human Rights Commission and National Human Rights Commission and other Courts. Senior Officers during their visit invariably give a patient hearing to the grievances of the prisoners.

How ever in reality the systems have failed and many of the prisoners in the study due to lack of awareness have not made any sort of complaints to these mechanisms. In one of the study of prison reform programme of Common Wealth Human Rights Initiative - CHRI, it was revealed that only 0.6% of the jails have these committees. In absolute numbers, only five of the 1,382 jails are monitored according to law and only four states have constituted such committees for all their jails.

Standards - Prison Visitors System & Grievance Redressal System:

Prison Visitors System - The state government shall by notification constitute a Board of Visitors comprising official and non-official members at district and sub-divisional levels¹²¹. The task of the Board of Visitors shall include¹²² : Monitoring the correctional work in the prison, with special attention to the degree and quality of training and the effectiveness of infrastructure/facilities in the prison; Suggesting new avenues leading to improvement in correctional work; and Investigating individual or collective grievances of the prisoners, and providing redressal in consultation with the prison authorities.

The Board of Visitors shall comprise the following official members¹²³ District Magistrate (or Sub-Divisional Officer at the sub-divisional level); District Judge (or the Sub-Divisional Judicial Magistrate); Chief Medical Officer of Health (or the Sub-Divisional Medical Officer); Executive Engineer (or Assistant Engineer); District Inspector of Schools; District Social Welfare Officer; and District Agricultural Officer. The non-official members of the Board of Visitors are members of the legislative assembly of the state, a nominee of the State Commission for Women, and social workers¹²⁴.

The Members of the Board of Visitors shall specially attend to the quality and quantity of prison diet, condition of the kitchen and hospital, availability of medicines, hospital management, medical treatment of the prisoners, sanitary arrangements, aspects of vocational trainings, literacy programme, and library facilities for the prisoners¹²⁵.

All visitors, official and non-official, at every visit shall: examine the cooked food; inspect the barracks, wards, work shed and other buildings of the prison generally; ascertain whether considerations of health, cleanliness and security are attended to;

121. Ch. 26.01, Model Prison Manual (2003)

122. Ch. 26.02, Model Prison Manual (2003)

123. Ch. 26.03, Model Prison Manual (2003)

124. Ch. 26.04, Model Prison Manual (2003)

125. Ch. 26.13, Model Prison Manual (2003)

whether proper management and discipline are maintained; whether any prisoner is illegally detained, or is detained for an undue length of time while awaiting trial; examine prison registers and records; hear, attend to all representations and petitions made by or on behalf of the prisoners; and direct, if deemed advisable, that any such representations or petitions be forwarded to the government¹²⁶.

Grievance Redressal System: The Model Prison Manual proposes the same standards for grievance redressal as the Mulla Committee. An active Grievance Redressal System (G.R.S) should be established in every prison¹²⁷. The key to the lock of the complaint boxes installed in prisons should remain with the deputy superintendent, who shall unlock the box twice a week on days fixed and approved by the superintendent¹²⁸. The superintendent should preside over a permanent committee of G.R.S, comprising himself, the deputy superintendent (the senior most deputy superintendent in case more than one is posted in the prison), the medical officer and the welfare officer. If the prison happens to have a female enclosure then one lady officer not below the rank of deputy superintendent shall be included in the committee¹²⁹. The committee shall meet at least twice a week to look into all the complaints. Complaints to the higher authorities shall be forwarded to them with the comments of the superintendent without delay¹³⁰.

- 10 of the respondents were only aware of the existence of such mechanism and shared that no one from such committee from the government appointed official visitors / non official visitors / board of visitors interacted with them on the issues of work, accommodation, health, medical, water facilities, sanitation, diet and education etc.
- 18 of the respondents shared that they never made any complaint to the Prisoners Visitors System in prisons due to lack of awareness on the process.
- 13 of the respondents shared that they were not informed of a Redressal System in place in prison?
- 19 of the respondents in the study shared that they were never allowed to approach the mechanism.

126. Ch. 26.22, Model Prison Manual (2003)

127. (Ch. 19.16)

128. (Ch. 19.16)

129. (Ch. 19.16)

130. (Ch. 19.16)

In conclusion, this chapter has established a number of instances and patterns of structural lapses and caste discrimination operational within the criminal justice administration system right from the day of arrest of a person and their admission to jails. This discrimination manifests in a number of ways with a number of actors whom SC/ST victims encounter during their stay in prisons and as they seek to access their rights and justice as undertrials. It has already been established how Dalit and Adivasi victims of atrocities face discrimination inside the Special Courts. Lack of information on the rights available to them at each and every level severely hampers the ability and confidence of inmates and those who are falsely implicated. The discrimination and humiliation placed on Dalit and Adivasi prisoners, most of whom are already poor, to pay for justice further exacerbates their situation. When combined with a number of obstructions arising from different actors within the jails and courts, it is clear that the right to a legal remedy and fair access to justice within the judicial system is severely compromised today.

One of the serious concerns for these undertrials is their family. In the absence of the main breadwinner, many families are forced into destitution. This combined with the social stigma and ostracism that they face, leads to circumstances propelling children towards delinquency and exploitation by others. The problems become acute when they belong to the socio-economically marginalized and exploited sections of the society. One of the horrible plights a person can undergo is spending years in a jail as undertrials and at the end he was found not guilty. In such a situation can anyone compensate them for the mental agony and torture they and their family have suffered or give back to them the lost years, the loss of honour and reputation. The undertrials should not be kept in the jails as far as possible. If unavoidable then they should be kept separately within the prison so that they are not allowed to mix with the convicts. Within the undertrials also a classification should be made so that the first and young offenders should be kept away from the hard core criminals thereby preventing contamination.

In order to mitigate the condition of undertrial prisoners, the first and foremost thing that has to do is to bring down their population drastically. This cannot happen unless all the branches of the criminal justice system work hand in hand. The presence of large number of Dalit and Adivasis coming from marginalized sections as undertrial prisoners is really shame to any criminal justice administration.

CHAPTER 4

POLICE EXCESSES



The Constitution and the Code of Criminal Procedure, 1973 contain essential safeguards to ensure that the police does not abuse its powers while investigating cases. However crimes like filing false cases against Dalit and Adivasis and extorting illegal confessions followed by torture, molestation, rape of women in custody, custodial death, brutal and inhuman treatment meted out to the helpless suspects including children etc. are coming under this realm. Degrading and brutal treatment given to the helpless and defenseless persons in police custody is a constant recurrence, stirring the conscience of every sensitized individual.

Police have no concern for the custodial victims and they sometimes behave with those in their custody as if they are responsible for their fate. Police are either ignorant of the discipline of human rights or they deliberately disregard it in the matter of arrest, interrogation and detention. Usually the victims of police torture are mainly the most vulnerable groups of people such as Dalits and Adivasis.

There are allegations that police officers have their own caste and gender biases and often behave towards dalits and adivasis in a discriminatory way. Police have failed to protect the weaker sections especially the scheduled castes and Scheduled Tribes. Police rape of dalit and adivasi women continues to be reported throughout India. In collusion with the local landlords and the ruling groups, police very usually raid the dwelling places of adivasi and dalit people, if they are campaigning for wages or land reforms. Landlords have often relied on violent and suppressive means to oppress those campaigns with the aid of police. The people, especially dalits and adivasis who are taken into custody are severely tortured by the police in the guise of extracting information about militants.

An examination of the experience of “kuruvan” community in Tamil Nadu at the time of their arrest and the manner in which they were treated by the police and investigative agencies while in custody painted a shocking picture of rampant custodial violence and violation of constitutional and statutory safeguards that seek to uphold the rule of law and protect the rights of an accused. The victims who spoke about their experience in police custody admitted to having suffered custodial torture. Not only was the number astonishing, the methods employed by the police while inflicting torture were inhuman, degrading and inflicted extreme forms of physical and mental suffering.

“Kuravan” Community¹³¹ is one of the sub-castes of the scheduled caste community, who lives in Tamil Nadu, state of India. According to an estimate, “Kuravan” population in the state is 10 lakhs. They have been notified as “Habitual Offenders” and as notified community by the British during the year 1871 and it is extended to British regime in the year 1911. These Acts gave sweeping powers to the local governments to recommend that certain “tribes, gangs, or classes” be declared as being “addicted to the systematic commission of non-bailable offences”. Although the Criminal Tribes Act was repealed across India in 1952, these communities continue to carry with them the stigma of criminality. They are mainly engaged in making bamboo baskets and coir products, pig rearing and other menial work. In search of their livelihood they also migrate from one place to the other.

They are subjected to physical torture, by the police in the name of nabbing the “habitual offenders”. The members of the community, including men, women and children, are subjected to systematic, continuing, ruthless treatment in the hands of the police. It has become handy for the police to catch hold of the “Kuravans” and foist false cases on them and kept under illegal detention and they undergone inhuman treatment and brutal forms of torture to extract “false confession statements” from the innocent Kuravan regarding crimes which they had not committed. The entire

131. Study Report on alleged cases of police atrocities against Kuravan Community (SC) in the state of Tamil Nadu submitted by 3 members study committee to National Commission for Scheduled Caste.

community lives in the fear of detention and arrest and they flee and hide in forest areas and lead an absconding life without dignity when they apprehend as detention or arrest.

The Tamil Nadu police allegedly exploit them in various ways ranging from torturing them. Some of the primary and most ridiculous reasons for police action would be to tally the pending cases at the year end, use them for unsolved theft cases which consequently benefit them by for rewards and promotions and the worst part is when the police use them to protect and defend certain other anti-social elements who are friendly to the police. The “Kuravan” men are just more than regularly taken from their houses and illegally kept for long time in police custody and are third degree tortures and are forced to give confession statements for various criminal cases. With respect to the “Kuravan” women, they are verbally, physically and sexually abused anytime on the discretion of the police.

It is also reported that in a bid to celebrate “Ayudhapooja” festival, the police collect money by threatening them and shut them behind bars to avoid empty lock ups during the festival. This inhuman phenomenon is predominant in the police stations of Thanjavur district. The men, women and children of the “Kuravan” community are allegedly forcibly taken and are implicated with in criminal cases and all their belongings are either destroyed or seized by the police during such times. Kuravan women are allegedly subjected to sexual abuse ranging from verbal abuse, molestation to being raped. In this manner Kuravan communities from districts like Thanjavur, Ariyalur, Thiruvavur, Salem, Trichy and Villupuram are subjected to various sufferings like implicating in false criminal charges, illegal detention torture in custody, sexual abuse and custodial deaths.

The Kuravans are taken into police custody on false criminal charges such as theft and robbery. If they realize that they could not be implicated in theft or attempt to robbery or robbery cases, they implicate and booked in pick pocket cases of meagre sum of Rs.50 to Rs.300. The Kuravans are implicated in cases of theft from 1 sovereign to 300 sovereigns. Under robbery they booked for some lakhs to cores and even bank robbery. There is a custom in certain police stations that during the time of AyudhaPooja festivals after cleaning and performing rituals in the police station, they have allegedly asked some Kuravan person to enter in to the lock up first considered that will bring them criminals inside the lockup for the entire year. Most of the time the Kuravan people are being abducted from their homes (at early morning from 2 am to 4.30am) and in few cases from their work places but in FIR police never mentioned that they have been caught from their home rather they will mention they have been caught from public places on the basis of suspicious from bus stand and market places. As soon as the police arrest them they do not file cases immediately and remand them, rather Kuravan men and women are kept in 2 to 80 days of illegal detention before judicial remand. They will undergo brutal form of torture during the detention.

The Kuravan communities are living under extreme poverty and their socio, economic and political status is significantly vulnerable and marginalized. The Criminal Tribes Act (CTA) 1871 was repealed after the independence of India. But still this “Stigma” is continuing on this community and they are branded as “thieves”. The innocent Kuravan persons including men, women and children are arbitrarily arrested by the police and kept in illegal detention for more than 90 days and undergone several forms of police torture and filed many of false cases against them in different police stations in different districts in the state of Tamil Nadu.

The women were allegedly sexually harassed by the police and some of them were even attempted to commit suicide due to the police sexual harassment and ill-treatment. The children have undergone brutal forms of police torture and they were arrested under false theft cases and many of them dropped out of school due to the police torture and intimidation.

Several innocent victims spent more than 5 to 7 years in prisons and spent up to Rs.10,00,000 for their cases. Most of the families have got migrated to various other districts due to the frequent false cases filed against them by the police.

The innocent Kuravan victims never accessed to any of the human rights redressal institutions seeking justice and legal remedies due to their lack of awareness about the redressal mechanisms and due to poor literacy among them. The police only because of their caste identity implicates them in false cases. The innocent Kuravan victims should be provided with Justice (Fair trial), Compensation, Rehabilitation and Education to their Children.

In conclusion, it would be proper to state that the usage of criminology and methods of criminal determination in the cases of Criminal Tribes has gone horribly wrong. It is to be noted that the Common Law and the current Indian Legal System work in the direction of reformation and not retribution, but the effect of the said Act and its successor have been to the effect of the latter. In the attempts to recognise criminal behaviour, the effect of the Act has been to marginalize, discriminate and suppress the various social groups that have been listed in the said Act. The recognition as Criminal tribes can be seen to be much more stigmatic than the recognition of a certain group as an OBC, a SC or a ST, thus deepening the divide between the various social groups in the Country. There have been incidents of violence against the members of the de-notified tribes in the country which have led to the belief that these acts have arisen only because of the status that has been bestowed upon the said persons by the said Act. It should be taken into consideration by the Legislature before promulgating any act that there should not be any detriment to any section of the society as that would be in detriment to both the Constitutional Goals of the Country and shall lead to deeper divide just as the CTA, 1871 and the HOA, 1952 have in the recent past

FORMS OF POLICE TORTURE

Hands tied at the time of arrest.	Beaten with Lathi on spine, buttocks and thighs for long.
Stripped naked and half naked (both women and men).	Food not provided and keeping them starved.
Needles pierced on body.	Stretching and pulling legs to extreme and beating while standing on their legs.
Needles pierced in fingers, toes, foot, and private parts.	Finger nails pulled out with blade.
Kicked and beaten with the butt of the guns or Lathi.	Green chilly juice poured inside the eyes.
Bricks tied on men private part and kept hanging for long.	Forced oral sex with other man.
Needles pierced in men private part.	Legs tied across and forced to stand in pain.
Chilli powder poured in women private part.	Bending and beaten on buttocks with lathi.
Lathi penetrated in women private part.	Ransacking of household items during search of properties and beating & kicking women and childre
Tied with chains inside the police station.	

Stretching of hands on the table and beating by lathi shielded with steel at the bottom.	Fingers folded and twisted for long time.
Women police pulling women hairs, beaten them continuously on cheek, face, spinal and other parts of body.	Stretched the legs and rolled a wooden log on the thighs and legs continuously and two police men used to stand on the wooden long when placed on the thighs and legs.
Inserting hands inside women blouse in the name of search and sexually harassing.	Hung upside down and beaten continuously.
Removing sarees and forcing women to stand in front of male police officials in-skirt and blouse.	Forced to act as monkeys, forced to dance and sing after the cruel torture.
Beating half naked woman in police station.	Tied with chair and the rope tied with the windows, thereafter chair pulled from back.
Hung upside down while hands tied.	Not allowed to sleep for long and forced to stand for whole night till the victims give confessional statement.
Taken inside police van for rounds in the night and beaten inside the vehicle.	Children hanged upside down or their fingers twisted to the extreme.
Taken inside the forest area in the night, kept in the dark place and beaten.	Forced to give jewels and showing them as stolen property

A National Public Hearing on Police excesses and custodial violence against Dalits and Adivasis organized in Jaipur, Rajasthan on 27.11.2017 in collaboration with National Dalit Movement for Justice – NCDHR, Delhi; Centre for Dalit Rights, Jaipur, Rajasthan; Social Awareness Society for Youths, Tamil Nadu reveals a shocking picture of police excesses. About 40 cases of police excesses were first time monitored and documented with supportive documentary evidences. The hearing focussed on violence by state against Dalits and Adivasis. The depositions included -False cases booked against Dalit and Adivasis communities, Illegal arrest and Detentions, Custodial torture, Fake Encounters, Custodial deaths, etc... CDR and SASY monitored and documented the systemic issues and HR violence against socially marginalised communities.

Cases were presented before the following Jury members - (1) Justice Mr. Pana Chand Jain, Retd. Judge, Rajasthan High Court, Rajasthan; (2) Mr. Henry Tiphagne, Director of People's Watch, Tamil Nadu, (3) Ms. Sunita Satyarthi, Advocate & Former Member of State Women Commission, Rajasthan, (4) Mr. Sunny Sebastian, Senior Journalist and Former Vice Chancellor of Haridev Joshi University of Journalism, Jaipur, (5) Mr. R K Ankodia, Advocate, Former Member of State Human Right Commission, Rajasthan, (6) Mr. Ajay Kumar Jain, Senior Advocate & Rajasthan High Court, (7) Mr. B L Arya, IAS Retd. & former Principle Secretary (Revenue) Government of Rajasthan.

3 cases of State violence against Dalits from Tamil Nadu were heard who were tortured by police on the false pretext of theft. Similarly 8 cases of police excesses from Rajasthan were heard by the Jury members. The survivors (Minors and women) shared the brutal forms of torture they went through in the hands of police. The Jury observed that the states of Tamil Nadu and Rajasthan have failed on every count in protecting minors who were picked up police on pretext of theft leading to custodial death, encounter and torture. The lapses in the enquiry and charge sheets in cases where suspects were subjected to torture by the police is failure of all the officials involved and they should be booked under SCs and STs (PoA) Act 1989 for the wilful negligence of their duty. The Jury finally came out with immediate recommendations.

Nature of cases presented during the Public Hearing

- Fake encounter of an Adivasi.
- Custodial Death of a Minor boy.
- Brutal physical assault in judicial custody leading to death.
- Dalit woman illegally detained and tortured by male police officials.

- Dalit illegally detained and tortured for 4 days for working towards the rights of Kuravar community.
- Innocent Kuravan woman and her family harassed by the police officials; house property damaged
- Dalit minor and three other Dalits illegally detained on the false pretext of theft; brutally tortured.
- Dalit implicated in false criminal case illegally detained and tortured by police.
- Dalit illegally detained and tortured inside the police station; False case filed against victim in connivance with dominant caste perpetrators.
- Dalit crushed under a lorry on the issue of land and political rivalry;
- Counter case filed against the family in connivance with police officials.
- Dalit implicated in false case, attacked by dominant caste, illegally detained by police and tortured.

Custodial Death of a Dalit Minor Boy



The case was relating to the custodial death of a minor boy namely Master Ajay Kumar Raigar S/o Bhola Ram Raigar, aged 15 years R/o village ManpurMachedi, Police post ManpurMachedi, Police station Chandwaji, District Jaipur. Early in the morning at 7.30 am, some policemen picked up Ajay, a 10th grader, from his home despite his mother's repeated insistence to at least allow him to have his breakfast. Since last one month, Ajay was being tormented in the matter of the theft of a motorcycle. So disturbed was Ajay by this that he had stopped going to the school since last month. At around 9.30 – 9.45 in the morning, the mother of the victim went to the Jail to the Thana to meet her, only to find him screaming in pain as the policemen beat him ruthlessly. When she protested and demanded his release, the inspectors on duty shooed her away. Later in the day she learnt that her son had been admitted in a nearby hospital with fatal injuries, and that the chances of his survival were dim. When she reached there, she was told that her son had died as a result of injuries caused in an accident when he was being taken to another Thana. According to the policemen, they were taking him to some other Thana on a motorcycle. He was sitting in between two people when all of a sudden, in an attempt to save himself, he tried to jump out of the motorcycle, as a result of which he hit by a speeding truck. The Judicial enquiry has already been conducted.

The Jury unanimously believed that this was a case of custodial offense which is a very serious offense and must be dealt with carefully and stringently. Section 41 (amended) of CrPC is being badly violated in this present case. People are being arrested on no grounds. Memo of arrest is mandatory at the time of the arrest which is not being followed by the police at the time of arrest. The arrestee should be produced before the concerned Magistrate.



1. The accused should be arrested immediately by the investigation agency of CID-CB.
2. The State Govt. have to ensure the free, fair and impartial investigation and entire proceedings of investigation have to cover by videography as per section 15-A (10) of the PoA Act as well as in scientific manner i.e. CDR, finger prints, FSL reports etc.
3. The investigation has to complete within 60 days as per under Rule 7 of PoA Rules if delay than proceedings has to take on record by supervision authority.
4. The progress of the investigation has been submitted before ADG (CR) and High power Committee of Juvenile Justice.
5. The higher official of Police and SPP have to made scrutiny of charge sheet to see whether all evidences are to be correctly prepared, framed and documents or electronic records are translated; and all evidences have been taken on record so that the case may be solidly follow towards conviction as per the Rule.
6. The State Government and District Administration should provide additional relief within three months from the day atrocity took place like to provide employment to one member of the family of the deceased and utensils, rice, wheat, dals, pulses, etc. as per Rule 12(12)(46) of the PoA Rules.
7. Furthermore the District Administration should recommend victims to Dr. Ambedkar Foundation, New Delhi for providing additional monetary compensation to the dependents.
8. The State Government should provide information to atrocity victims or their dependents or associated organisations or individuals, in advance

about the dates and place of investigation and trial under Section 15-A (11) (I) of PoA Act.

9. The DM should appoint SPP on the choice of family members once charge sheet has been filed under Rule 4(5)(6) of PoA rules
10. A copy of Judicial Inquiry report has to serve to the family members of the deceased by the Chief Metropolitan Magistrate.
11. The District Administration make ensure to pay travelling allowances, daily allowance, maintenance expenses and transport facilities to the victim atrocity, his or her dependent and witnesses during, investigation, medical and trial under Rule 11 of PoA rules
12. Since the boy is less than 15, Juvenile Justice Act must also be involved.
13. A letter can be written to the Chief Minister, Home Minister and the DGP, asking the DGP to issue notices to the SP's on preventing such atrocities in the future. This notice must be made available to the common public as well for it to come to their knowledge.



Dalit implicated in false criminal case, illegally detained and tortured by police

The case related to one Mr. Maliram Raigar/Male/38 years resident of Village Tevdi Tehsil Viratnagar, District Jaipur. On 10/07/2016, about 4 PM, the fight between the children of both parties took place on some playing issue. On this they had hot talk. Next day, i.e. 11/7/2016, the perpetrators started throwing stones in victim's house. When the victim went to the police station, the police refused to file his complaint and registered the complaint of the perpetrators first. They file the complaint of attempt to rape against the victim. It is pertinent to mention here that on 10.07.2016, the accused applicant slept early around 8:30 p.m. on that day. He has falsely implicated by the complainant just to harass and humiliate the accused applicant and his family members. The investigation officer obtained the signature of the victim on blank papers and later on produced on behalf of victims that they do not want any medical examination. The victim and female members of the family were called to the police station and humiliated and harassed by the police officials. The ASI, Virat Nagar, Jaipur beaten him up brutally in his palm. He was spared when he said that his hand is broken.

The victim tried by the Civil Judge and Judicial Magistrate Viranagar, Jaipur acquitted Mr. Mali Ram on date 08.09.2017 as a result of legal fight by CDR in the Trial Court and High Court of Rajasthan in counter false and fabricated case. We are going to file protest petition before the Special Court, Jaipur on the next date 04.12.2017.



1. It was recommended to take the land matter to the civil suit before court for declaration and permanent Injunction with an affidavit and register the land in his name before the SDO, Virat Nagar.
2. The TLSA has to provide legal aid before the SDO, Virat Nagar
3. Recommended was made to file the protest petition against the closure report of the police.
4. File a case under section 4 of PoA Act against the police who has done willful negligence.
5. File a criminal complaint U/s 182, 211 and 500 IPC read with section 3(1)(p) of Amended PoA Act against complainants of dominant caste for malicious prosecution before the Exclusive Court, Jaipur along with IA for providing police protection
6. A civil suit also filed for monetary compensation against complainants of dominant caste for malicious prosecution.

Dalit woman illegally detained and tortured by male police officials



The brother-in-law Arvind and mother-in-law Prabhati Devi of the victim were beating her father-in-law Kalu Ram and father-in-law came to Sushila. Thereafter, Arvind, Prabhati Devi and one local resident Mukesh Balmiki called the police constable Prahlad to teach the lesson to the sons and daughters-in-laws. Prahlad called more police personnel to teach the strong lesson to the members of the petitioners' family. Seven male police personnel came there with sticks and attacked over the petitioners' family. They broke the doors and picked up motor bike and punctured another bike and the male policeman brutally beat Sushila and her younger sister Mamta. Due to fear and terror of police personnel, the Sushila's younger sister hide herself at neighbour's house and her husband Mani Prakas and sister's husband Ashok fled away from there. The police implicated false and fabricated case against Sushila and her family members. The police illegally detained Sushila in the Police custody and tortured during police custody and falsely arrested under section 151 Cr.P.C. The victim was being arrested by the male police persons and that too after sun set. The police totally ignored the judgment of Justice D K Basu.



1. The State Govt. should conduct further investigation Under section 173(8) Cr.P.C. for ensuring the free, fair and impartial investigation and entire proceedings of investigation have to cover by videography as per section 15-A (10) of the PoA Act as well as in scientific manner i.e. CDR, finger prints, FSL reports etc.
2. The pending application under section 156(3) for proper investigation should be taken up strongly before the Exclusive Court
3. Recommendation was made to file the protest petition against the closure report of the police before the Exclusive Court.
4. The prosecution has to submit the record of counter case to take on record of victims FIR against police cops before the ACJM Metro No. 20 Sanganer
5. The false charges have been file against the victims therefore the charges have challenged before the District & Session Judge along with stay application in the shape Criminal revision.

Dalit crushed under a lorry on the issue of land and political rivalry; counter case filed against the family in connivance with police officials



On the dispute of path way and election rivalry, the accused people conspired the murder of the victim Dalpat Ram Meghwal resident of village CharniBhandu, PS Shergarh, Jodhpur. On the occasion of festival “HolikaDehan” on 12/3/2017, the accused crashed the deceased under pick up. He was brought to the nearby hospital where he was declared brought dead. The FIR no. 44/2017 U/s 147, 148, 323, 302, 149 IPC & 3(1) (s) SC/ST (PoA) Amendment Act 2015 under police station Shergarh, Jodhpur was registered against the accused. The accused also lodged a concocted, false and baseless FIR no. 45/2017 U/s 147, 148, 323, 149, 308 IPC, Date 13/3/17 with a view to put pressure on Dalits and weaken the gravity of the case of the murder of Dalpat Ram Meghwal. Moreover, the accused also wanted to spoil the career of the Dalit students and harm the job of the victim who was only articulate and active among the Dalit victims. The main objective was to disturb the prosperity and financial status and to damage the Meghwals.

1. The DGP and Chief Justice of Rajasthan take special note on Section 41(b)(c) of CrPC which is widely violated in most of the cases.
2. The SPP has to file a application under section 156 CrPC for taking cognizance against the main accused persons and discharged accused Shra van Das u/s 3(2)(V) of SC/ST Act.
3. If the court takes cognizance, thereafter, an application shall be moved before the District Collector for appointment of SPP under Rule 4(5) of PoA Act to conduct the case in the court.
4. The victim/accused Dharma Ram Meghwal has to challenge his cognizance before the District and Session Judge for discharging his name from the charge sheet.
5. The prosecution or victim has to file an application for initiate the trial of both the cases in the same court.

Dalit illegally detained and tortured inside the police station; false case filed against victim in connivance with dominant caste perpetrators



Motivated with caste hatred and biased feelings, the dominant Rajput caste perpetrators organized attacked over the victim and his family members on 7/2/2017 and seriously injured them. When, the victim approached the local police station Bandikui on 8/2/2017, they were chased out of the police station. The victim sent the complaint letters of SP through registry. No action was taken against the accused people as they have very good links with the local police and political leaders. This boosted the confidence of the accused people. On 12/2/2017, the accused people came to the house of the victim and physically assaulted the brother and mother of the victim. This time, the victims were booked under 107, 116 CrPC by the police when approached for registering the FIR. The story does not end here. On 15/2/2017, the victim was standing out of his house when the accused came in number with sticks and lathis and started beating the accused and abusing him and his family with the caste based names. They took him with them. When mother of the victim came in between they also abused her and beat her. Mother followed her son. The accused people locked both of them in a cottage. They brutally beat the victim which caused the fracture in his left leg. The brother of the victim informed Bandikui police about the incident but police arrived of the spot and arrested the victim under section 151CrPC. The nexus between the Rajput and police & Administration was so strong that despite serious beating of Dalits with axes, lathis and other arms for hours together, the local police was informed about the incident but instead of taking any action against the all powerful Rajput perpetrator, the local police even detained the

injured complainants in the police custody under section 151 CrPC. The brother went to police station to lodge the FIR, the police chased away them and register the FIR of perpetrators first. The FIR against the attackers was not lodged and the local police harassed and terrorized the poor victims at the behest of Rajput attackers. Even the local hospital did not provide the medical aid as the poor complainant alleged that the attackers approached the concerned doctors before them to spoil their case. The local Civil Society Members gathered and protested against the partial attitude of the police, the police was forced to lodge the complaint against the perpetrators. Thereafter, the FIR against the accused was registered.



1. File application for arrest warrant under section 44 of CrPC
2. Compensation must be awarded to the victims under Rues 12(4) of the SC – ST PoA Rules.
3. The State Government has to register or File a case criminal case under section 4 of PoA read with 166 I.P.C. against the SHO and other police personals who has done willful negligence and initiate administrative enquiries against them.
4. The State Govt. have to conduct further investigation Under section 173(8) Cr.P.C. for ensure the free, fair and impartial investigation and entire proceedings of investigation have to cover by videography as per section 15-A (10) of the PoA Act as well as in scientific manner i.e. CDR, finger prints, FSL reports etc.
5. File a Misc. application for providing police protection under section 15-A (6) (8) of the PoA Act before the Exclusive Court, Dausa
6. State has to pay additional monetary compensation for illegal detention of Dalit victims.
7. The DM has to appoint SPP on the choice of family members once charge sheet has been filed under Rule 4(5)(6) of PoA rules
8. The higher official of Police and SPP have to made scrutiny of charge sheet for ensuring whether all evidences has to correctly prepare, frame and translate any document or electronic record; have been taken on record so that the case may be solid towards conviction as per the Rule.

Adivasi subjected to brutal physical assault in judicial custody leading to death



Motivated with the previous enmity, Lakshmi Narayan, Suresh, Virendra, Bona, Angad of village Garu, Police Station Kathumar, Alwar filed a FIR no. 360/2013 in year 2013 u/s 323, 341, 282, 34 IPC Police Station Kathumar, Alwar. The accused people have strong links with the local police, hence, they enjoy their favour. The police came in the village to arrest Raju but he was not there. On 20/1/2014, the family members of Raju produced Raju before the Head Constable Ishwar Singh and others. The local police showed him arrested in the FIR No. 360/2013 and locked in the police custody. When, next day, i.e. on 21/1/2014, the brothers of Raju went to police station to give him food. Raju asked them to meet Ishwar Singh constable. When they meet them, they were told to deposit Rs 10,000/- to the SHO if they want them not to beat Raju which they paid. Next day, i.e. 22/1/2014, when they again went to PS, the Head constable told them that they had been paid Rs 20,000/- to commit physical assault against Raju and if they save Raju, they have to pay Rs 10,000/- more. The police constables were beating Raju in front of his brothers. When, on 23/1/2014, the brother went to PS to deliver the food for Raju, they were told that Raju had been admitted to Jail Dispensary. When they visited him, he was lying in the floor with the hand cuffs. Raju told them that Suresh, Rajesh, Angad, Virendra, Bona, Satish and others had beaten him badly. He was not feeling well. He was hit in his head with the sticks. He was brought to Kathumar Hospital for the treatment. He was also produced before the Judicial Magistrate, Kathumar Court who cancelled the bail application of the deceased. He was shifted to Central Jail in judicial custody. Raju was not well so in the mid night of 23/1/2014, he was given medicine from mail nurse Yudhveer Singh but his mental condition was not well. He did not let the co-prisoners sleep in the night. Upon this, the jail staff (Satish and Ashok) hit him in the head with the broom. On 24/1/2014, his physical condition got worst and been referred to General Hospital, Alwar where he died during treatment on 25/1/2014 at 6 AM. The family member of Raju went to Police station Kathumar to register the complaint of his murder by the police and jail staff but the police did not register their complaint. Finally, the FIR No. 50/2014 dated 15/2/2014 was registered u/s 302, 120B, 166, 167, 34 IPC and 3SC/ST Act in the Police Station Kathumar, Alwar.



1. To sent the report to the medical expert.
2. Find out the present status and if the final report if given or not.

3. File complaint in the Bar Council, Jodhpur against the lawyer who is doing mischief in the case.
4. If FR is done, there is immediate need to challenge it. The facts are all clear that it is a custodial death. So FR cannot be filed.
5. The monetary compensation received needs to be checked in NHRC and If the amount of compensation is not fully paid in one transaction, than there is need to question for the same.
6. To file the protest petition and engage some good senior advocate in the present case.

Fake encounter of an Adivasi by police in Dausa, Rajasthan



The deceased Rajendra Meena 28 Years resident of village Santha, Police station Mahuwa, District Dausa was the strong supporter of Human Rights and used to raise his voice against the inhuman, illegal and biased behaviour and action of the local police. In the year 2017, a tussle between the Gurjar and Meena communities took place on the question of agent ship of private taxis in local areas. In the incidence, Janak Gurjar from Pawta village got serious injured. Though, the deceased Rajendra Meena was not involved in the fight but his name was deliberately included by the local police in the FIR u/s 147, 148, 149, 302, 452, 166 IPC under police station Mahuwa, Dausa. The injured Janak Gurjar died after 3-4 months. The local police was searching for Rajendra Meena. When, the local police being informed by someone about the availability of deceased in the village, the police arrived to the village in 40-50 numbers and that too with guns on 5/6/2017. It is stated by the eye witness that the police intended to eliminate Rajendra Gurjar and were firing. But Rajendra Gurjar was scared and hiding himself here and there. At last, he wanted to surrender himself but the police shot and he died on the spot. Thereafter, the police handed a private gun in the hand of the deceased to give it a shape of suicide. The post mortem of the deceased was done on 5/6/2017. The bullet with which, he was killed was from government gun and the gun which was handed in the hands of Rajendra was private gun. The local police came to the village with the object to kill Rajendra but not to arrest him. It is a clear cut case of murder but the police is trying to give it a shape of suicide. It is stated by the police that to escape himself from being arrested, the deceased killed himself with the gun he had. The father of the deceased went to the police station for registering the FIR of his son's murder but the police did not file it. The poor father went to the court for private complaint but it has not been registered yet.



1. The SP should be approached. DGP should also be informed.
2. A judicial enquiry will only waste time. It request will be made to complete the enquiry in front of the magistrate
3. The matter is pending in NHRC. An RTI should preferably be filed for the NHRC to speed up the process.
4. It should be requested to the victim to file a petition for free, fair and im partial further for de-navo or reinvestigation of the case before the High Court and same has to monitor by the High Court.

Dalit Illegally Detained And Tortured for 4 Days for working towards the Right of Kuravar Community: False Case Foisted



Mr. Veeraiyan is a resident of MuthuVeeraKandiyanpatti of Tanjore District is belonging to the Kuravan Community sub sects of scheduled caste. He is residing with his wife Selvarani along with his three children namely Dhanusha (14), Dharsini (12), Vishnu (9). He had many times taken into illegal custody and was foisted more than 14 false cases by Boothalur policemen. This illegal detention and police torture began after the release of Police Violence on Kuravan Community in Tehelka Magazine on 13.05.2015 and were circulated to the police stations in Tamil Nadu. Since then the policemen increased the number of foisting false cases on the Kuravan people. Due to his social activities and his contribution towards to the rights of the Kuravar community he was targeted by the policemen. On 01.04.2016 Mr. Veeraiyan along with his relative Anbalazhgan were taken for an investigation by the Boothalur Policemen, Tanjore District. They both were taken into illegal detention and were brutally tortured by the Boothalur policemen. They were taken to various police stations and was tortured and severely beaten up by the policemen for more than 4 days. Veeraiyan's wife Mrs. Selvarani rushed to the Boothalur Police station and enquired with three policemen who were present at the station. In return the policemen had verbally abused the woman with derogatory and filthy language referring to her caste and scolded her. She then came to her home and had consumed poison since she could not bear the verbal abuse, negligence and reluctant attitude of the Boothalur policemen. Since the policemen did not furnish any information about her husband Veeraiyan she consumed poison and was admitted in the Tanjore Government Hospital. Later the policemen had asked Veeraiyan and Anbalazhgan to produce the

recovery amount or the stolen jewels. But they both told the policemen that they did not steal anything and requested them to leave them. But the policemen threatened them that if they did not produce the recovery amount or the stolen jewels they have to show 2 men from Muthuveeraknadiyapatti and they will put false cases on them. But Veeraiyan and Anbalazhgan refused and pleaded to leave them. Finally the policemen foisted false cases on them and got their signatures and left them from the police station. The injured Veeraiyan and Anbalazhgan reached home and were taken to the Government hospital for medical treatment.



1. No action under section 4(2)(v) of the SC ST POA Act has been taken therefore, the amendment in sec 4(2)(v) needs to be put in action
2. The Tamilnadu High Court needs to be approached for direction otherwise the victim will not get justice

Innocent Kuravan Woman And Her Family Harrassed By The Police Officials; House Property Damaged



Selvarani (39) is a resident of Kulathumedu Street Maruvur Village of Veppur Taluk of Perambalur District is belonging to the Kuravan Community sub sects of scheduled caste. She is residing with her husband Vellikannu (47) along with their children Nagendran (22), Nagavalli (20), Gomathi (18) and Sivarasan (6). Selvarani and her husband are working as daily labourers and running their family with the meager income.

On 28.11.2016 Selvarani's father fell sick and was in a critical condition and so Selvarani along with her children went to see her father at Dhaalmiyapuram. The next day (i.e) on 29.11.2016 as Selvarani's husband Vellikannu was sleeping in his home and suddenly about 15 policemen entered their home and broke the doors, cot, TVS XL and threw the cooking utensils in the street. On hearing the incident Selvarani rushed to her home and came to know that was a Chennai policeman.

Again on 04.12.2016 at about 1 pm 5 policemen came to Selvarani's home and immediately Selvarani and her daughter Gomathi hid them into the sugar cane farm anticipating arrest (nearby to their residence). The policemen went inside the house and left the place within few minutes. Again on 23.12.2016 at 6: 30 pm 2 policemen came to the village and enquired about Selvarani and her husband Vellikannu.

The next day Selvarani and her relatives along with SASY made a representation with her children before the NCSC- Chennai on 26.12.2016. But again the policemen came to Selvarani's house on 16th & 19th of January 2017 in searching for Selvarani and Vellikannu for foisting false cases on them and for illegal detention. Complaints were sent to the concerned authorities regarding the continuous harassment by the Melmaruvathur Policemen, but no action has been taken.



1. High Court had not given any directions under section 4 of the SC/ST PoA Act. Mrs. Selvarani should go to the High Court again and get an order under it. This would form the basis of all the FIR's in the future.
2. File Online Complaints on the Police Website, this would give the victims an edge over the police itself. File this complaint repeatedly. "Morning – 1 complaint, Afternoon – 1 complaint, Evening – 1 Complaint". Keep doing it again and again.
3. Send the young girl (Mrs. Selvarani's younger unmarried daughter) to school, so that she is able to complete her education post Class 8th. If a good school is not available in the village, send her to a hostel, but make sure that she completes her education.

Dalit Minor And Three Other Dalits Illegally Detained On The False Pretext Of Theft; Brutally Tortured



Praveen (14 years), S/o Mr. Ganeshan residing in AnnaiSivagami Nagar, Rettipalayam Road belong to the Scheduled Caste – Kuravan community. He is studying 9th standard in Governement High School in Rettipalayam. He completed his final exams and had planned to go to his aunt's home for exam holidays located in Sivagangai District.

On 18.05.2017 Praveen went to his aunt Pichammal House which, is located in Kongarampalayam, Sivagangai for summer vacation. On 22.05.2017 around 12:30 P.M Praveen and his cousin Paramasivam from Kongarampalayam were watching TV at home and suddenly four policemen in un-uniform entered Pichammal's house. The policemen immediately pushed Paramasivam outside the house and they start-

ed questioning Praveen about his nativity who is he? Where he is from? Praveen answered them that he is from Tanjore District. The policemen slapped Praveen on his face.

The policemen falsely accused Praveen and his cousin Paramasivam stating that they had stolen something and the 2 unidentified policemen took them (Praveen and Paramasivam) in a two-wheeler to the Police Station. On their way they saw Ravichandran (elder brother of Paramasivam) and the policemen took Ravichandran too. The three boys were taken into police custody and were illegally detained in the Sivagangai Police Station.

The policemen locked Praveen in a separate cell and enquired him about that where he had kept the stolen things. Praveen replied that he did not steal anything and immediately the policemen brutally attacked, tortured Praveen. One of the policemen twisted Praveen's middle finger of the right hand. He stamped on Praveen's legs too, Praveen cried out of pain. Though he begged and pleaded not to beat him they did not listen to him. Later the policemen tied Praveen to a bench and stamped on his leg and severely beaten him with the lathi.

Later the policemen gave information to Pandiyan (Maternal Uncle of Praveen). Mr. Pandiyan arrived to the Sivagangai Taluk Police Station. They received signatures from the victims, captured images of them in Mobile phones and took them to Sivagangai Government Hospital for treatment. Around 8:30 pm they were taken to Madurai bus stand.

The next day 23.05.2017, Praveen alone was taken to Observation home at Tirunelveli. He was kept in Observation for 17 days. Later on 09.06.2017, he was released by Court through Bail.



1. A documentation of the torture should be conducted
2. Under the JJ act there are hundreds of entities to take care of child violence
3. The case should be taken up by the JJ court, which along with the observations home failed to record the torture.

Jury Recommendations from the National Public Hearing

1. Amendments to the SCs and STs (PoA) Act are not being followed and the violations result in significant discriminatory practices for the disadvantaged classes. There should be a separate special report, which should only and only comprise of the cases in which SC /ST (amended) Act is not being followed.
2. The NHRC & SHRC of Tamil Nadu along with the SC Commission of Rajasthan should all be written to, mentioning the cases that have been sent to them and yet no action has been taken. The NHRC should be monitored for its inaction. Send 1 person to the NHRC office every week for this.
3. Section 41(b) and 41(c) of CrPC have not been followed in any of the cases at all. This needs to be informed to the CJs of both the states. Provisions are conveniently made but no one talks about its implementation.
4. A special note must be sent to DGPs and CJs. The amended sections are not being followed in the DGP's office and control offices in every district.
5. Medical reports of the torture faced should be sent to the NHRC and the law commission with reference to the UN Convention against Torture that has just been ratified by India. While the laws per se are appreciated, we need to follow these cases as well.
6. The JJB should be monitored for violations of the JJ Act despite dozens of new people being employed and salaries being paid to them.
7. NCPCR should document all children's cases of state violence and demand action against Police.
8. Bar Council of India, Rajasthan and Tamil Nadu also need to be told to take strict action against the few lawyers maligning the reputation of the lawyers' fraternity.
9. DGP and CJ of each state also need to be informed of the atrocities being faced by minority communities in their states by sending them a report of these cases.
10. The CM should also be written to as the Chairman of State Vigilance & Monitoring Committee.
11. A very Navodaya school with residential facilities needs to be provided to make sure that the next generation of these communities is not lost.
12. National Legal Services Authority, State Legal Services Authority and District Legal Service Authority must look into providing legal service (advo

cates) to victims in the SC /ST cases.

13. Section 12 of Legal Services Authorities Act, NBA and ASAP needs to address the case.
14. It is crucial that rights of victims are protected under the SC ST Atrocities Act. This public hearing should be a wake – up call for the governments of each state.
15. States must ensure that torture and cruel, inhuman or degrading treatment or punishments are not employed before, during or after any interrogation inside or outside the Police Custody by police officials. Nor must these practices be employed to compel witnesses to give information about or evidence against another.
16. Interrogation should never take place at secret interrogation center's. If a person is detained for interrogation, relatives or a third person of the person's choice and, where applicable, consular authorities should be informed immediately of the fact and place of detention and/or that of interrogation.
17. Individuals should only be interrogated for a reasonable period, taking in to account the individual characteristics of the interrogated person and, if extending for a lengthy period, regular breaks should be provided.
18. Persons subject to interrogation must be given adequate food, sleep, exercise, changes of clothing, washing facilities and, if needed, medical treatment taking into account any particular characteristics of the individual including age, gender, religion, ethnicity, medical needs, mental illness and any disabilities or other vulnerabilities.
19. There should never be a threat of the removal of basic necessities such as hygiene provisions, food, exercise, rest, sleep, in exchange for information or cooperation. Neither should there be a threat of any reprisals against a third person (and in particular a relative).
20. No method of interrogation should be employed that impairs a person's capacity of decision -making or judgment. Save in exceptional circumstances, no interrogation should take place at night.
21. All interrogations should be conducted in an age and gender appropriate manner and take into account any other relevant characteristics of an interrogated person including, for example, religion, ethnicity, medical needs, intellectual disability, mental illness, personality disorder or any other vulnerability.
22. A person under the age of 18 who is suspected of involvement in any offence

should not be questioned without an adult of their choice present.

23. At the time of any arrest or detention (and before any interrogation) a person should be given the right to undergo a medical examination by a competent and impartial medical practitioner in order to provide a point of reference as to their condition before the commencement of any interrogation. The time and findings of the medical examination should be recorded.
24. If there are any issues about the person's understanding of his or her rights or of the interrogation process or of any questions asked, an interpreter should be provided, whether requested by the person being interrogated or not. Interpreters should also be available in detention facilities so that a person's basic needs can be communicated.
25. Before any interrogation commences, the interrogated person should be informed (in a manner that is understandable to him or her) of the reason for the interrogation and any charges against him or her.
26. Every interrogated person should, before any interrogation begins, be told (in a manner that is understandable to him or her) of his or her right to consult a lawyer of his or her choice without delay and in private.
27. The person should also be told of his or her right not to be compelled to testify against him or herself or to confess guilt. Where a person (or his or her lawyer) has indicated that the person intends to exercise the right to silence, no further questioning should take place.
28. Those who are arrested or detained should be told of their right to consult a lawyer at the time of arrest or detention. All detainees should also be given the right forthwith to challenge the lawfulness and conditions of their detention.
29. Officials have an obligation to facilitate contact with a lawyer of choice, for example by providing a list of available lawyers, access to a telephone and reasonable conditions of privacy for any consultation.
30. The provision of a lawyer should be free of charge if the person does not have the means to pay for his or her services and the person should be told (before any interrogation begins) that a lawyer can be provided at no cost in such circumstances.
31. Where a person has indicated a wish to consult a lawyer no further questioning should take place until the consultation has taken place.
32. The person's lawyer must be physically present and within earshot during any interrogation and have the right to intervene in the interview to ensure

that the law is complied with (but not otherwise to interfere with the interrogation). The interrogated person should also have the right, if requested during the course of the interview, to consult with his or her lawyer in private.

33. Where a lawyer is not available, or the interrogated person does not want to have a lawyer present, the person should be given the opportunity to have present at any interrogation a representative from a relevant non-governmental organization or a relative or friend of his or her choice. Except to ensure the law is complied with, those persons should not otherwise interfere with the interrogation.
34. The time of arrest or detention and/or the arrival at the place of interrogation should be recorded. The name of any arresting officer and all others who have any contact with the interrogated person should be recorded, as well as the nature and time of that contact.
35. Each interrogation should begin with the identification of all persons present and the recording of their names and any official position held as well as the place of interrogation. The time the interrogation began and finished and the timing of and reasons for any breaks should also be recorded.
36. All interrogation sessions should be recorded. This should be by way of video (or audio) recording unless, for reasons which should be recorded in writing, this is not possible or if the interrogated person does not wish to be recorded in that manner. In cases where there is no video or audio recording, a comprehensive contemporaneous written record should be kept.

CHAPTER 5

RECOMMENDATIONS

State Police Departments:

- Capacity Building trainings and sensitization programmes: The State Police Departments in conjunction with the State Legal Services Authority (SLSA), should conduct training and sensitization programmes on discrimination free atmosphere in Jails and police stations, rights of scheduled castes and scheduled tribes, and their duties and responsibilities as also the rights and duties of prisoners.
- Arbitrary arrest and detention: State authorities need to revamp and streamline undertrial review committees (URC) at their level. An important step that the URC can take is to discourage policemen from hasty/unnecessary arrests. In this regard, there is a clear guideline from the National Police Commission (1977) for police to avoid hasty arrests and the same has been reiterated by the Supreme Court in numerous cases.
- The police should refrain from vexatious arrests. The definition of cognizable offence should be delinked from police power of arrest. Police in all circumstances must strictly comply with the procedures and guidelines as laid down by the Courts, like D. K. Basu guidelines (AIR 1997 SC 610) on arrest and so on.
- Collaborate with SLSAs: Collaborate with state legal services authorities to ensure that legal aid is provided to Scheduled Castes and Scheduled Tribes at the time of arrest.

State Prison Departments:

- It was observed that many of the prisoners were not aware of “Grievance

Redressal System”.An effective Grievance Redressal System shall be put in place in every jail and the grievances related to the caste-based discrimination shall be periodically monitored by the Inspecting Judicial Officers. A “Complaint Box” shall be installed in every barrack and it shall be periodically opened only by the Inspecting Judge who shall take necessary action to redress the grievance.

- Regular visits by the Board of Visitors and the effective functioning of the Board can enhance the welfare of the prisoners and the protection of their human rights. However, prisoners are not aware of such mechanisms. Therefore it is recommended that a Board of Visitors shall periodically visit the prison to review and advise the prison authorities regarding infrastructure facilities, extent and quality of training and correctional work, and proper management of the prison in accordance with the Prison Rules / Manual.
- CCTV cameras should be installed in the jail and these devices should be properly monitored by setting up a control room. The data of the CCTV should be preserved for a specified period.
- A Poster of rights and duties of prisoners shall be prepared in multiple languages including the local language and shall be notified on the Notice Board. This poster shall also include the rights of SC and ST prisoners in case of harassment or discrimination based on caste inside the prisons. Copy of the same shall be made available to the prisoner at the time of his entering the prison.

Central and State Governments:

- Implementation of section 436 A: The State government shall direct Superintendent of the jail to promptly report to the police / public prosecutor / court cases covered by section 436A of Cr.P.C.
- Plea Bargaining: Justice delivery establishment needs to embrace innovative alternative dispute resolution tools to reduce unnecessary pendency especially in the cases of petty crimes. Although India had introduced plea-bargaining in its criminal justice system in 2006 (via Criminal Law Amendment Act, 2005), any serious traction on this has yet to be seen.
- Appointment of counselors for counseling prisoners: In W.P. (C) No. 406/2013, the State Governments are directed to appoint counselors and support persons for counseling prisoners, particularly who have come to the prisons for the first-time and are in trauma. Their services can be utilized to counsel and advise scheduled caste and scheduled tribe prisoners who might be facing some crisis situation or might have some suicidal tendencies.

cies. In this regard, the services of recognized NGOs can be taken and encouraged.

- Providing medical assistance, accommodation and beddings, adequate wages and employment, to inmates in prisons needs no reaffirmation and discrimination to basic minimum facilities based on caste is a violation of human rights. All State Governments should concentrate on making discrimination free atmosphere a reality, including prisoners. The experiences of discrimination in accessing these minimum rights are an indication that the aspect of discrimination and exclusion is not given adequate importance in prisons. The State Governments must study the discrimination and take remedial steps wherever necessary.
- Monitor the functioning of state legal service authorities and in specific the working of legal aid lawyers' appointed to ensure accountability and quality representation. Ensure that legal aid lawyers at the state, district and taluk levels are required to submit regular reports on the status of their cases, and hold lawyers failing to do so accountable.
- Oversight and review bodies, like the Prison Visiting System and Periodic Review Committees, must be well-built within the system to act as watch dogs of the public. There is a need to open up the agencies of the system to wards more transparency, scrutiny and community participation.
- While visits to prison by the family of a prisoner should be encouraged, it would be worthwhile to consider extending the time or frequency of meetings and also explore the possibility of using phones and video conferencing for communications not only between a prisoner and family members of that prisoner, but also between a prisoner and the lawyer, whether appointed through the State Legal Services Authority or otherwise.
- Prisons (Entry 4, State List II) are a state subject under the Constitution, which is one of the reasons why it is neglected by the States and are starved of funds. Thus, Prisons and allied institutions should be deleted from state list and inserted in the Concurrent List of the Seventh Schedule of the Constitution.

Legal Aid and Legal Service Authorities:

- Legal Aid System needs an urgent overhaul. Such useful state instrument which can prove vital for thousands of illiterate and poor undertrials needs the strong endorsement of the Union Government and states. In this regard,

the Law Commission's proposal for new lawyers to do a two-year compulsory stint with the legal aid system is still hanging in fire and needs to be enforced immediately.

- Study on the caste based discrimination: The State Legal Services Authorities (SLSAs) should urgently conduct a study on the caste based discrimination being practiced in Jails and in respect of the overall conditions in prisons in the State and the facilities available to the scheduled caste and scheduled tribe. The SLSAs should also assess the effect and impact of various schemes framed by NALSA relating to prisoners.
- Duty Counsel/Solicitor at Court and Prisons: Early access to lawyer and effective legal representation lays the foundation of the lawyer-client relationship and assures accused's best possible defense in the Court of law. The Legal Service Authorities with its bottom-up approach must well establish the office of Duty Counsel or Duty Solicitor at the Courts as well as in prisons to ensure access to non-custodial provisions like bail and release on probation at the earliest by the accused.
- Appoint Scheduled Castes and Scheduled Tribes legal aid lawyers as panel lawyers to support the prisoners at the early stages.
- Ensure that legal aid lawyers are paid on a monthly basis.
- Undertake regular awareness programs in prisons to ensure that all under trials are informed about their legal rights, including access to legal aid, procedural safeguards and bail.

Bar Councils:

- Bar Councils across India should strive to have well-trained and competent legal professionals to ensure obedience to code of ethics and professional standards laid down which would ultimately benefit the poor people availing their legal services and skills.

Judiciary:

- Lok Adalats, mediation, plea bargaining, and negotiated settlements can be pursued. Further, employing innovative tactics such as clubbing of similar kinds of cases, leaving administrative functions to Court Managers, introducing modern management tools and systems for docket and case management, can all help improve the plight of under trials. In this regard, the decision of the National Human Rights Commission (NHRC) to establish hu

man rights cells in state police headquarters is a move in the right direction. The Cells can be headed by officers of the rank of Additional Directors General/Inspectors General of Police, who act as links between the Commission and the State Police. Also the District Committee system as suggested by SC in Bhim Singh case can be of immense help.

- First production before the Magistrate is one of the most important right of an individual. When produced, it is the duty of the magistrate to see the accused in person to confirm any signs of custodial violence or any human rights violation at the hands of police. The mandate of first production before the Magistrate must be strictly followed as other rights of the accused accrues from that very stage.
- Bail should be granted in non-serious cases and poor people should be released on personal bond. Free legal aid should be provided to the needy person under detention and quality of the service should be improved. The concept of plea-bargaining should be applied in letter and spirit to dispose of cases coming under the purview of this provision.
- Ensure that the person remains behind bars for the barest minimum duration. Therefore, trials must be completed without any undue delay with the minimum extension of duration of further remands.

National and State Human Rights Commissions:

- Must look into the issue of pathetic conditions of Court lockups. Directives must be issued to all District and lower Courts for the maintenance of these lock-ups, which primarily comes under the control of the respective Court.
- The Prisons Act 1894, being very old, contains archaic provisions some of which are no longer relevant. Hence, it requires drastic changes and must include the aspect of Discrimination based on caste with SC and ST inmates. The NHRC shall constitute a Committee of Experts to suggest amendments to the Prisons Act 1894, to make it conform to human rights norms, Supreme Court judgments and International Conventions / Covenants binding on India.

Ministry of Home Affairs:

- There is need for uniformity in the Prison Manuals / Prison Rules followed in the States and Union Territories. The Government of India should take steps to suitably amend the Model Prison Manual which was drawn up in 2003, to ensure that it is in conformity with human rights norms, Supreme Court judgments and International Conventions / Covenants binding on India.

CONCLUSION

We will never have healthy and thriving communities as long as we have a criminal justice system focused on punishment entrenched with prejudices, that devastates our most vulnerable people. This prejudice running along with poorly structured criminal justice policies and practices have negatively impacted millions of individuals and their families in our country, affecting their economic stability, health and well-being, and potential for future opportunities. On top of the tremendous financial costs, individuals and their families face during and after incarceration, people struggle to repair family relationships, access housing and jobs, and address health challenges, while being denied benefits and critical supports.

Police torture, as one of the gravest crimes possible, is protected by a wall of silence and denial. Perpetrators do not admit it, and may take measures to avoid leaving evidence such as scars, or to dissuade victims from talking. Governments have reasons to downplay the scope of torture. Victims are left traumatized, ashamed and frightened; they are often reluctant to talk about their experience, or lay complaints against their torturers. Breaking this silence, and giving victims a voice, is a necessary first step towards reducing the use of torture.

The findings detailed in this report show the gravity of caste discrimination against Dalits and Adivasis by police institutions. Deeply entrenched prejudices against Dalits and Adivasis play an important role in their harassment and incarceration. There are allegations that police officers have their own caste and gender biases and often behave towards Dalits and adivasis in a discriminatory way. Usually the victims of police torture are mainly Dalits and adivasis. They are often picked up and jailed on concocted charges. The case studies and findings reveals the treatment of people belonging to Dalits and Adivasi by the police and their discriminatory behaviors. They are subjected to illegal arrests and detention and physical torture, by the police

in the name of nabbing the “habitual offenders”. The members of the community, including men, women and children, are subjected to systematic, continuing, ruthless treatment in the hands of the police. It reveals that it is handy for the police to catch hold of the Dalits and Adivasi communities and foist false cases on them for crimes, which they had not committed. Dalits and other indigent people too poor to seek legal counsel obviously spend too long a time behind bars, unable to seek justice even when they might be innocent.

The findings detailed in this report also showshow prison systems do not function at the level of theUnited Nations’ Standard Minimum Rules for the Treatment of Prisoners. The relevant international obligations and standards are deliberatelydisregarded.The deliberate physical, psychological, mistreatment of inmates by prison officials is a persistent and pervasive issue of concern.Dalits and Adivasis are particularly vulnerable to deliberate mistreatment.

The research shows how caste based prejudice lead to high number of vulnerable communities inside the prisons and how often the prisoners are denied the minimum legal protections and legal process guarantees during their arrest , detention or imprisonment. Findings reveals how barriers are imposed on incarcerated Dalit’sinside the jails, the infringements of their legitimate rights being Dalits in terms of their right to food, wage, employment, accommodation, medical, bail, parole and similar other important right to trial and appeals. All these together impede the future success of both families and of communities at large.

Some of the recommendations made in this study have been successfully implemented already and warrant serious consideration for replication across the nation. We can no longer afford to continue dealing as usual with criminal justice in India. If our nation truly wants to support all families and communities to thrive, we must

drastically work towards eliminating discrimination based on caste in criminal justice system and work towards changing the mindsets of those implementing the rule of law. There is also a need to reduce the financial impacts on incarcerated people and their loved ones. But for real change to take place we can't just alter a few policies—fundamental changes must occur at the local, state, and national levels. Society and implementing institutions and their functionaries too must learn to shift preconceived perceptions about caste and prejudice and provide fair opportunities for these individuals and their families to start over.

One thing is clear, police excesses and incarceration is touching more vulnerable families than ever before. Though our popular culture is telling stories on institutional structures and facilities inside the police stations and jails, but the reality of police torture, custody and incarceration through the lived experiences tell another, one of caste prejudice, financial instability, emotional devastation, and stifled opportunities for multiple generations. If equality, fairness, and second chances are values we hold, it is time to take new kinds of action toward policies that maintain stability and well-being.



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