



### 'CASTE AS CRIMINALITY'

The carceral state, encompassing incarceration as well as ‘a wide range of policies, practices, and institutions that scrutinize individuals and communities both before and after their contact with the criminal justice system,’<sup>1</sup> deserves to be examined within the context of Indian caste society - the role of caste in the creation of certain forms of criminality, and the ways in which institutions of policing work to maintain and promote the caste system. One of the earliest instances in the Indian sub-continent wherein tenets of criminal law were defined was within the Manusmriti- an ancient text that codified caste stratification on the basis of birth and notions of purity. The Manusmriti defined various criminal acts and classified the punishment to be received upon the commission of such acts on the basis of caste. The higher the caste of the victim, the greater the punishment. The higher the caste of the offender, the lesser the punishment.

The numerous ways in which the ideologies of a caste-based society were absorbed, formalised, and reproduced with the establishment of the criminal justice system under the British colonial rule are key to understanding contemporary modes of carcerality in the Indian nation-state, especially as the tenets of substantive criminal laws and policing remain fundamentally unchanged to this day. With the advent of colonial rule, the Manusmriti took on an “unprecedented status” as a legal document and became one of the most canonical texts through which the British government could interpret, control and govern Hindu society<sup>2</sup>. The caste system was imposed on many Nomadic and Semi-Nomadic Tribes, who do not traditionally fall under the varna system and comprise of clans or *jatis* as opposed to castes, leading to ill-defined administrative categorisations of these communities, a practice that has continued in post-independent India.

#### Caste as Criminality

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<sup>1</sup> Nora Krinitsky, “Control and the Carceral State” Panel, February 13, 2019.

<sup>2</sup> Nicholas B. Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton: Princeton University Press, 2001).

India's police were specifically modelled after the Irish colonial paramilitary police to be a centralised organisation only accountable to the government. The colonial state maintained 'public order' by policing populations whose behaviours it deemed 'unnatural' by using its vast surveillance powers. Nomadic tribal communities, a shifting population whose movements made their colonial control nearly impossible, were made objects of police surveillance by being branded as 'hereditary criminals' through the Criminal Tribes Act (CTA) of 1871.

The protection of colonial interests through the introduction of a penal regime was rationalised by the British government as a way of bringing a liberal and rational rule of law to a subcontinent they deemed savage and backward. However, this very premise allowed them to reproduce existing caste hierarchies and understandings by institutionalising classes of 'professional' and 'hereditary' criminals, and allocating an immense range of discretionary powers to police officers to deal with such communities. Therefore, the evolution of 'crime' as a category is co-terminus with the resultant criminality being ascribed to certain castes and communities through 'the accident of their birth'. This 'liberal despotism'<sup>3</sup> of the Colonial government did not cease with the end of Colonial rule but has transformed with the advent of an 'Independent India,' and the practice of creating classes of 'criminals' on the basis of caste and tribe-based biological determinism continues.

The systems of surveillance, policing and incarceration that sought to control the movement and mobility of said communities did not end with the repeal of the Criminal Tribes Act in 1952 but mutated and bled across several other laws which continue to be in force today, such as the Habitual Offenders Act, 1954; or various state "peacekeeping" laws that enable police authorities to order the externment of individuals engaged in "anti-social activities," or who are "goondas" and "dacoits".<sup>4</sup>

Part II of the Criminal Tribes Act, 1871 - which criminalized Transgender women for dressing up in feminine attire or performing in public, and contained provisions that mandated the registration and surveillance of these women - is in many ways the precursor to legislations, procedural rules, and policing practices that directly contribute to the criminalization of Transgender women even today.

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<sup>3</sup> Radhika Singha, *A Despotism of Law : Crime and Justice in Early Colonial India*. Oxford University Press, 1998

<sup>4</sup> Jayachandran N, 'What Is Externment? The Law That Telangana Cops Used to Ban Mahesh Kathi from Hyd' *The NewsMinute* (10 July 2018) <<https://www.thenewsminute.com/article/what-externment-law-telangana-cops-used-ban-mahesh-kathi-hyd-84500>>

Vimuktas are still seen as communities that are inherently ‘addicted to the systematic commission of non-bailable offences’.<sup>5</sup> Police manuals, which for example, allow local officers to maintain a database of persons belonging to these communities who are ‘addicted to crime’,<sup>6</sup> consequently enable the classification of persons from denotified tribal communities as ‘habitual offenders’.<sup>7</sup> Until 2018, the Karnataka Police Manual mandated the registration of transgender women.

### Policing and the Carceral State

Justifying the legitimacy of a fundamentally flawed criminal justice system allows the nation-state to create new classes of criminals and new forms of carcerality that serve the political and economical interests of the ruling elite, and condone the ‘organised abandonment of vulnerable communities’.<sup>8</sup> Whether it be the maintenance of ‘rowdy sheets’ in Muslim neighbourhoods,<sup>9</sup> crackdown on the livelihoods of transgender women<sup>10</sup>, or the targeting of Adivasi communities for brewing liquor, the point of entry for persons from oppressed communities into the never-ending vicious cycle of incarceration is the institution of policing. Police institutions, through their preventive and discretionary powers, are therefore able to continually surveil, harass and criminalise communities.

This discussion, organised by the Criminal Justice and Police Accountability Project, seeks to center the interactions of historically oppressed communities with systems of surveillance and policing. We seek to arrive at an understanding of how the institution of policing is central to the creation of casteist criminality, and demonstrate that the dismantling of the carceral state is an integral part of anti-caste vision(s).

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<sup>5</sup> The Criminal Tribes Act, 1871.

<sup>6</sup> For example, Rule 1054(3) of the Karnataka Police Manual, 1963 allows for the maintenance of History Sheets for ex-notified tribe members.

<sup>7</sup> The Habitual Offenders (Control and Reform) Act, 1956.

<sup>8</sup> Ruth Wilson Gilmore, “Ruth Wilson Gilmore Makes the Case for Abolition,” The Intercepted Podcast. June 10, 2020.

<sup>9</sup> “Hyderabad Police Launches ‘Rowdy Sheeters Module.’” *The Siasat Daily*, 9 May 2019, <https://www.siasat.com/hyderabad-police-launches-rowdy-sheeters-module-1495337/>.

<sup>10</sup> Jessica Hinchy, ‘The long history of criminalising Hijras’ *Himal Mag*, 2 July 2019 <https://www.himalmag.com/long-history-criminalising-hijras-india-jessica-hinchy-2019/>