Gender Justice & Anti-Carceral Politics – Framing of Feminist Critique of Carcerality in India

In India, two out of every three under-trials are persons from marginalised caste backgrounds, and one in five are Muslims.¹ Over-policing and prejudiced criminalisation have led to a disproportionate representation of marginalised communities amongst people incarcerated by the Indian state.² The carceral state’s replication and perpetuation of inequalities further inhibits social reform efforts to address intersectional gendered violence.³ Such replication and perpetuation of inequalities is beginning to be critiqued by feminists.⁴ The feminist critique of carceral politics has not been limited to incarceration or detention in prisons or camps, but also includes a critique of the carceral politics of non-state law, such as customary panchayats or the family, which authorise custodial violence in the domains of sexuality and choice.⁵

The term carceral feminism was coined by Elizabeth Bernstein who defined it as an approach which allies itself with law and order narratives, conflating social justice and criminal justice.⁶ Feminist activism coupled with a demand for stricter sentencing of perpetrators is a form of reactionary politics that leads to the consolidation of power of the carceral state, viewing policing and imprisonment as the most suitable means of addressing gender-based violence.⁷ At its core, the criminal justice system is founded on a power dynamic that works to uphold existing social hierarchies and maintain inequalities due to a colonial and casteist inheritance that is entrenched in the law. In the Indian context, intersecting social hierarchies of caste, indigeneity and gender produce complex and unequal distributions of power that govern arrangements of social relations.⁸

The intersection of caste and gender under Brahminical patriarchy is demonstrative of the way gender-based oppression and discrimination is experienced in a society where caste is a powerful social institution occupying a central place in regulating gendered relations.⁹ The historic criminalisation of certain communities through laws such as the Criminal Tribes’ Act (CTA) served to exacerbate social inequalities and further embed the disenfranchisement of marginalised communities.¹⁰ The postcolonial state repealed the CTA and replaced it with the Habitual Offenders Act of 1952, that has been said to mimic the CTA’s rationale of criminalising entire communities.¹¹ Further in 2011, Karnataka included ‘Section 39A Power to Regulate Eunuchs’ under its Police Act, which Jessica Hinchy argues is derived from the 1919 Hyderabad

² Devash Kapur, ‘By mostly jailing Dalits, Muslims and tribals, India is making the same mistakes as the US (The Print, 5 January 2018).  
⁵ Upendra Baxi, ‘Discipline, Repression and Legal Pluralism’, in Peter Sack and Elizabeth Minchin. eds, Legal Pluralism Proceedings of the Canberra Law, Pink Panther: Law Department, ANU.  
⁷ Harris (n 4).  
⁹ Srijana Bej, Nikita Sonavane and Ameya Bokil, ‘Construction(s) of Female Criminality: Gender, Caste and State Violence’ (Economic and Political Weekly, 04 September 2021) <https://www.epw.in/engage/article/constructions-female-criminality-gender-caste-and>  
¹⁰ ibid  
Eunuchs Act, which was itself based on the CTA. Therefore, instead of addressing structural inequalities, the postcolonial state’s criminal justice system serves the Brahmanical patriarchal project of social stratification, evident from the incarceration and abuse of people of marginalised communities through the use of illegal arrests and detentions, fake encounters, extortion, torture, false cases and custodial violence (murder, rape, sexual abuses).

Given the demonstrated role of the criminal justice system in maintaining and perpetuating unequal power relations along the lines of caste, gender, and indigeneity, the dominant Indian feminist movement’s increasing focus on situating claims of equality solely through the framework of criminal justice reform is the subject of contentious debate. The Delhi gang rape and murder of a woman in 2012 triggered protests and widespread public mobilisation around sexual violence. Feminist mobilisation successfully led to state response and the State-appointed Verma Committee’s recommendations for legal reform were enacted through the Criminal Law (Amendment) Act, 2013 (CLA 2013), the Criminal Law (Amendment) Act, 2018 (CLA 2018), and the Protection of Children from Sexual Offences (Amendment) Act, 2019 (POCSO Amendment Act). Criminal justice reform was therefore heralded as a feminist victory, even though it expanded the scope of surveillance, criminalisation, and incarceration that accompanied such reform.

Scholars have argued that the carceral approaches to gender justice tend to presuppose a homogenous trajectory of common oppression, overlooking factors complicating and distinguishing these experiences, including caste and class. When feminists advocate for and embrace carceral solutions, there is a shift in emphasis from the deepest causal factors of crime itself, poverty and caste based hierarchies. It is then imperative to investigate the role of the law in defining the contours of crime and punishment and to also analyse the limitations of the law in adequately responding to the needs of a society so deeply divided along lines of caste hierarchies that are further entrenched by the carceral state.

Anti-carceral feminism that imagines alternative justice emphasises the need to look for alternatives to the carceral method of dealing with what is considered “criminal behaviour”, instead of calling for retributive and punitive measures. Anti-carceral feminists reimagine justice outside the confines of the criminal and punitive institutions of the state, which helps to analyse and organise carceral feminism through intersectional approaches. The focus must be on devising better socio-economic conditions, educational facilities, housing provisions, and healthcare. Yet, it is important to recognise that critiques of carceral...

---

12 ibid.
20 ibid.
feminism do not operate on a “binary opposition between carceral and non-carcaeral feminism.”22 Rather, the goal is to devise community-led understandings of justice, accountability, and harm reduction while remaining cognizant of the limits of transformative justice and the benefits of state intervention for enforcement purposes.23 This webinar aims to explore the critique to understand the emergent restorative and transformative justice feminist framework.

This webinar will seek to engage with the feminist movement in India and its reliance on, and opposition to, the carceral State in its attempt to frame a critique of carceral politics from a feminist lens, which transcends the binary of carceral and anti-carcaeral feminism. It will explore the relationship that the feminist movement in India has forged with the criminal justice system and the debates that have emerged in the interrogation of this relationship. Although one strand of anti-caste feminism rejects the myopic privileged feminist approach of criminalising men from marginalised communities, this webinar aims to explore the co-existence of different, seemingly contradictory feminist approaches. We hope to reflect on the following questions:

1) What is the link between the feminist movement and the carceral state?
2) What is the link between cis heteropatriarchy, caste-based violence and a carceral state? What is the Feminist critique of the carceral state?
3) What is anti-carcaeral feminism? What are its main goals and strategies?
4) Why do we need to think beyond the criminal justice system? What is the alternative to a carceral framework?
5) What are the limitations of an anti-carcaeral feminist framework?
6) What is transformative justice? How can we find ways to retain the legitimacy of state intervention while mitigating the harms of state institutions?

22Bose (n 1)
23 ibid.