

## COMMENTARY

## The Supreme court judgment on caste-based prescriptions in prison manuals — tip of the iceberg

SYLVIA KARPAGAM

**Abstract**

*The Supreme Court of India had, in a public interest litigation based on an article by journalist Sukanya Shantha in The Wire, sharply criticised existing prison manuals for several clauses reinforcing the age-old injustices of caste-based discrimination and segregation. The Court found ample evidence of this discrimination, both in prison manuals and in the administration of Indian prisons, and instructed the authorities to ensure corrections within three months.*

*While the Court's verdict is commendable and much needed, these violations only reflect the discrimination prevalent in the larger society, in spite of the Constitutional guarantee of equality before the law. This commentary argues that such discriminatory practices should not only be banned in prisons but actively prohibited and jointly addressed in society at large by the Courts, the Legislature, the Executive, as well as the media.*

**Keywords:** discrimination, prison manuals, caste, communalism, judiciary

**Background**

On October 3, 2024, a three-judge bench of the Supreme Court of India passed a landmark judgment in *Sukanya Shantha v Union of India and Ors*, against caste-based practices, segregation and untouchability embedded within prison manuals, including state manuals [1]. This was in response to a public interest litigation (PIL) filed by journalist, Sukanya Shantha, based on her investigative article titled "From segregation to labour, Manu's caste law governs the Indian prison system" in The Wire, in December 2020 [2]. The article drew attention to the inherently casteist attitudes and practices embedded within prison manuals and in prison administration, including several states, which the Court held to be violative of Articles 14, 15, 17, 21 and 23 of the Indian Constitution, which guarantee equality before the law, equal protection of the laws, abolition of discrimination based on religion, caste, sex, etc, and of forced labour [3]. The Court said that "when Prison Manuals restrict the reformation of prisoners from marginalized communities, they violate their right to life...(and) their inherent dignity..." [1: para 188].

This is especially important considering the disproportionate incarceration of Muslim, *dalit* and *adivasi* individuals in Indian prisons. The *Prison Statistics 2022* [4: pp 63-64] shows that three out of four prisoners are undertrials, with a majority belonging to the oppressed caste groups, including the

Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC). Undertrials from these three groups have constituted more than 60% of undertrials in the official data since 1998. Muslims account for 19.3% of undertrials, whereas their population in the country is 14.2%. Most of these individuals are poor, unaware of their legal rights, and without access to adequate legal advice. Hence, they are not only more vulnerable to being incarcerated, but also to unduly harsh and discriminatory treatment in prisons.

**The judgment in *Sukanya Shantha v Union of India and Ors***

The Supreme Court noted that caste discrimination is practised through actual caste-wise segregation in prison accommodation in several states, and through the kind of tasks assigned to prisoners, both undertrials and convicts. Discrimination is most blatant in three specific areas, food preparation, sanitation duties, and categorisation of individuals/communities [2].

**Food and casteism in prisons**

Caste has traditionally played a role in deciding who is allowed to handle and cook food and what constitutes "pure/impure" foods. The Supreme Court highlighted multiple clauses in the prison manuals which violate the dignity of prisoners from marginalised communities across states. To list a few: Rule 741 of the West Bengal Jail Code states that food shall be cooked by prisoner-cooks of "suitable caste" empowering jail officers to take away the right of the marginalised castes to cook [1: para 191]. Rule 1117 says "Any prisoner in a jail who is of so high a caste that he cannot eat food cooked by the existing cooks shall be appointed a cook and be made to cook for the full complement of men" [1: para 177]. These provisions are repeated in several other state manuals. The Andhra Pradesh Prison Rules, 1979, say convicted prisoners can be treated as "A" Class if they "by social status, education and habit of life have been accustomed to a superior mode of living" (emphasis added) [1: para 182].

**Sanitation and casteism**

The Court also exposed how caste is used to coerce prisoners into performing manual sanitation tasks. The Uttar Pradesh Jail Manual 2022 refers to "convicts of the scavenger class" and according to Rule 289 (g), a convict sentenced to simple imprisonment shall not be called upon to perform

duties of a degrading or menial character “*unless he belongs to a class or community accustomed to perform such duties*.” The Andhra Pradesh, West Bengal, Madhya Pradesh (1987) and Bihar prison manuals, among others, also formalise caste hierarchies in labour and sanitation, although on January 26, 1950, the Constitution had eliminated the legality of caste-based discrimination, thereby upholding the human dignity of marginalised communities [1: para 174].

The Court held that the imposition of cleaning latrines and sweeping work on only *Mehtar, Hari*, Chandal or similar castes, “without providing them any choice in the matter and based purely on their caste is forcing a type of work considered low grade, and amounts to forced labour under Article 23” [1: para 191]. Further, assigning cleaning and sweeping to individuals of marginalised castes, while allowing those of higher castes to do cooking, is discriminatory under Articles 14 and 15(1), which forbid discrimination against any citizen based on religion, race, caste, sex, or place of birth [3]. It said assigning “customary jobs based on caste perpetuate the stereotype that these communities are unfit for more skilled, dignified or intellectual work and constitutes a form of coercion” [1: para 193].

### **On criminalising communities and castes**

The Bench has also called out the discrimination and stigmatisation perpetuated by applying terminology such as “habitual offender” in prison manuals to specific communities and individuals, being presumed to be “naturally prone to crimes”, irrespective of whether these have been committed or not. The Kerala Prison Rules 1958 (Rule 201) allows discretionary powers to the government to label someone as a “habitual criminal” [1: para 182], while in the Odisha manual, Rule 784 suggests that “Prisoners who have shown, or are likely to have, a strong inclination to escape or are members of a wandering or criminal tribe, even though eligible, shall not be employed on extramural work.” [1: para 182]

The Bench criticised these definitions as stereotypes that not only criminalise entire communities but also reinforce caste-based prejudices, resembling untouchability and assigning negative traits to specific groups based on identity, perpetuating their marginalisation and exclusion [1: para 183]. These definitions can also impact how people are treated in prison — the language used, the facilities provided and denied — and have an impact on their physical and mental health. Further, this goes against the stated aims of *Model Prison Manual 2003* which declared that “*the reformation and rehabilitation of offenders* was the ultimate objective of prison administration” and that “the prison system should not be allowed to aggravate the suffering already inherent in the process of incarceration.” (emphasis added) [5: Perspective]

The Court pointed out that even the revised national level *Model Prison Manual* of 2016 refers to “habitual offenders”; a term it uses to stigmatise “people from denotified or wandering tribes” [1: para 201]. The 2016 Manual explicitly

prohibits caste-based segregation in prisons for women, but should have specified this for all prisons, as the Bench noted [1: para 203].

### **Corrective steps ordered by the Court**

The Court declared the impugned provisions to be unconstitutional under Articles 14, 15, 17, 21 and 23 of the Constitution [1: para 231] and directed the Union government, all States and Union territories to address caste-based discrimination by revising Prison Manuals/Rules and Laws within three months, along with filing compliance reports of action taken. References to “habitual offenders” in the prison manuals are to be in accordance with the definition provided in the habitual offender legislation enacted by the respective State legislatures, subject to any constitutional challenge against such legislation in the future [1: para 231] and not based on caste. All other references to or definitions of “habitual offenders” in the prison manuals/rules were declared unconstitutional by the SC. The “caste” column and any references to caste in undertrial and/or convicts’ prisoners’ registers inside the prisons were ordered to be deleted [1: para 231]. Besides changes in the manuals, the SC also ordered more actions, such as instructing the police to ensure that members of Denotified Tribes are not subjected to arbitrary arrest; that the District Legal Services Authorities and Boards of Visitors to prisons are to regularly inspect prisons to identify whether caste-based discrimination or similar discriminatory practices are still being practised and to file regular joint reports of their inspection to the National Legal Services Authority (NALSA) which it is to forward them to the Court [1: para 231].

### **Actual practice of caste-based discrimination in prisons**

Sukanya Shantha has documented at length in her article [2] some caste-based practices within prisons. She writes about how almost the first thing that people are asked when they enter prison is their caste and sub-caste, with prison wards being “mapped by caste” in some states. While “those at the bottom of the caste pyramid” are forced to clean toilets, do sweeping and other menial work; those of a higher caste handle the kitchen or legal documentation department. Again, these assignments have nothing to do with the nature of the crime or one’s conduct or skills. She describes how caste-based discrimination is practised in prisons, with people who have never worked in caste-based occupations outside prison being forced to do so behind bars [2].

One undertrial prisoner, who identified as “lower caste” was made to strip and enter a choked septic tank — in gross violation of the Manual Scavenging Act, 2013. She noted that, if any prison faces scarcity of prisoners of a certain caste to carry out the requisite labour, prisoners are to be brought in from nearby prisons [2].

## Beyond prison walls

While this judgment, decreeing revision of the prison manuals and steps for the management of prisons to remove caste-based discrimination is welcome, one can hardly claim that prisons and manuals are the last remaining bastions of casteist oppression. Casteism and increasingly, communalism, have been and are actively practised in Indian society to discriminate against the so-called “lower castes” and minorities, and suppress their rights. Prisons only reflect this larger reality.

In our society, food-based discrimination has long been normalised and institutionalised in many parts of the country. Meat shops are regularly and arbitrarily shut down, houses for rent or sale are denied to “meat-eaters” while public institutions proudly promote food-based segregation [6,7]. When students at the Indian Institute of Technology Bombay (IITB) objected to “vegetarian only” posters on mess tables, the management and mess council not only reinforced the segregation, but penalised students who protested against these diktats [8]. Separate plates, counters, kitchens, sinks and cutlery are all proof that untouchability and segregation are alive and well [9]. Innumerable protests against *dalit* cooks in pre-schools and government schools are further proof that food continues to be a tool of discrimination [10].

The criminalisation of possession or cooking of beef which is a nutrient-dense and economical animal food source, essentially targets all those communities whose lives, livelihoods, culture and tradition are linked to beef and related products. Cattle slaughter bans have led to adverse physical, social and psychological consequences, including death, for farmers, transporters, slaughterhouse workers, tannery workers, loaders/unloaders, cleaners, butchers, eateries and street vendors, among others. The fear and shame imposed through a caste-based and hierarchical narrative are a barrier to modernising these crucial trades and further stigmatise whole communities [11, 12, 13].

Manual scavenging which involves manually handling excreta before it is fully decomposed is banned under The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act since 1993, but continues to exist, with even public sector corporations breaking this law, the Delhi Jal Board being a case in point [14]. Ninety-seven percent of those engaged in manual scavenging are *dalits* [14, 15].

In the quest for open defecation free status, very little attention has been paid to how waste will be disposed of/ treated, how pits will be cleaned, maintenance of septic tanks and sewage treatment plants, etc. The construction of toilets solves the problem of open defecation, but raises the question of who will clean the pits [16]. Further, occupations such as sanitation, handling dead bodies, hospital waste disposal etc have been overwhelmingly “reserved” for the poor and marginalised [16, 17, 18].

Viewed from the lens of caste, it becomes clear that those engaged in certain occupations, especially those that involve contact with excreta, waste, dead bodies, menstrual blood, etc, are assigned a permanent polluted/polluting and inferior status, often intergenerational, and apparently outside the purview of basic human rights and labour laws [18,19].

## The way forward

Although law making in India is the exclusive domain of Parliament (Article 12), Indian laws are also expected to adhere to broad Constitutional principles and rights (Article 13). In spite of laws in place to prohibit different manifestations of casteism, untouchability and caste-based exploitation, these practices persist or are manifested in newer forms.

The SC judgment vis-à-vis prison manuals and the management of prisons is a step forward, insofar as it recognises and condemns formalised discrimination and segregation. The bigger challenge is to root these out in practice, not just within prisons, but in the larger society.

Considering that the prison is an enclosed space, discrimination here can and should be addressed by the judiciary, especially as those incarcerated are a vulnerable group. Changes in society are slower, whereas specific interventions within prisons can ensure they are less discriminatory and casteist.

The courts also need to take suo moto cognisance of the different ways in which casteism and discrimination, overt and covert, in newer and older forms, are playing out in the country and whether existing laws against these are being implemented in spirit and principle or being used against these very same vulnerable communities. It is important for the judiciary, as indeed the larger society, to think about why Constitutional frameworks get sidelined, while repressive socio-cultural norms prevail.

Responding to the PIL about prison manuals, the Supreme Court has stated that “*refusal to check caste practices or prejudices amounts to cementing of such practices*” and “*if such practices are based on the oppression of the marginalized castes, then such practices cannot be left untouched*”. Further that: “Discrimination against the Scheduled Castes, Scheduled Tribes, and Denotified Tribes has continued in a systemic manner. *Remedying systemic discrimination requires concrete multi-faceted efforts by all institutions* (emphasis added). In discharge of their role, courts have to ensure that while there should be proper implementation of the protective legislation... there should not be unfair targeting of members from marginalized castes under various colonial-era or modern laws.” [1: para 144]

The four pillars of democracy — the legislature, executive, judiciary and the media need to pull their weight to make

those “concrete multi-faceted efforts” and challenge these hierarchies. The judiciary has to exert its powers to uphold a moral framework for the Executive. Calling out the authorities for discrimination in prison manuals is a good step, but the judiciary also has to use its powers to demand regular reports of implementation from the Executive. There is a need for oversight and more access by human rights groups to prisons so that the human rights principles and laws applicable to the larger society are not denied simply because the individuals have been incarcerated. Issues that need urgent attention, that put individuals and communities at risk of losing homes, lives, livelihoods cannot be ignored by the judiciary [20, 21]. The Judiciary must play a moral role in ensuring that constitutional mandates are implemented by holding the Executive to account.

**Author:** Sylvia Karpagam (sakie339@gmail.com), Public health doctor and Researcher, Bengaluru, Karnataka, INDIA

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