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# **“UNEQUAL BEFORE THE LAW: MARGINALISATION AND STRUCTURAL DISPARITIES IN CRIMINAL JUSTICE”**

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## **Introduction: Justice as Promise and Practice**

The criminal justice system is often described as the guardian of constitutional morality, equality, and liberty. In theory, it is designed to ensure fairness, protect rights, and punish wrongdoing in accordance with due process. Yet, for marginalized communities—whether defined by caste, class, religion, gender, ethnicity, disability, or economic vulnerability—access to justice is neither equal nor assured. The experience of criminal law for the marginalized is not merely one of delayed justice; it is frequently one of exclusion, discrimination, and structural disadvantage.

The promise of equal justice before the law rests on the constitutional principle of equality. However, constitutional guarantees often confront systemic realities: biased policing, inability to secure bail due to poverty, prolonged pre-trial detention, lack of effective legal representation, and sentencing outcomes that disproportionately affect disadvantaged groups. These are not isolated failures but structural patterns embedded in institutions.

Unequal access to justice in India operates through various systemic barriers. These barriers reinforce social marginalization and convert structural inequality into legal disadvantage. This essay argues that the criminal justice system tends to maintain social inequality rather than correct it.

## **Understanding Marginalization in Criminal Justice**

Marginalization in criminal justice means that certain groups are systematically kept from fully and equally participating in legal processes. It is not just about being vulnerable; it means being placed outside the main centers of power and representation.

In India, marginalization occurs across several overlapping factors, some of them are:

### **1. Economic poverty**

The justice crisis being discussed today is largely a crisis for the middle class. A key difference between India and OECD countries is that while the middle class in those nations generally has

reasonable access to justice, in India such access remains limited. Since 1991, a more vocal and influential middle class has emerged in India, and it increasingly demands fair and timely justice. Many current judicial reform efforts are aimed at responding to this demand.

However, the issue of justice for the poor presents a far deeper and more complex challenge. No country has fully succeeded in ensuring justice for its poorest citizens. Even in the wealthiest nations, prisons are disproportionately occupied by the poor. The masses are often more likely to suffer at the hands of the criminal justice system than to be protected by it. In India too, prisons are overwhelmingly populated by those from economically weaker sections. For the poor, the civil justice system is largely out of reach. They frequently face exploitation by lawyers, middlemen, and court staff, which further discourages them from seeking legal remedies. They experience a form of exclusion from the legal process — a kind of modern untouchability — where procedural barriers prevent meaningful participation. The language, logic, and lingering colonial and feudal culture of the judicial system feel distant and inaccessible to them, making it difficult to understand or navigate. As a result, their needs and interests are rarely fully recognized or addressed.<sup>1</sup>

This economic marginalization reinforces broader social inequalities, ensuring that access to justice often depends not only on rights in principle but on resources in practice. Without structural reforms that reduce costs, simplify procedures, and improve legal awareness, the gap between formal justice and lived reality will continue to widen.

## 2. Caste hierarchies

Caste-based discrimination is still present within law enforcement and judicial procedures and sentencing, often affecting Scheduled Castes and Scheduled Tribes (SCs and STs)- despite constitutional guarantees of equality

Article 14 of the Indian Constitution guarantees that every person has the right to equal treatment, regardless of religion, race, caste, sex, or place of birth. However, the criminal justice system in India is often criticized because this promise of equality is not fully realized in practice, especially for communities belonging to lower castes. One of the most serious concerns is discrimination by law enforcement based on caste. Research shows that people from lower castes are more likely to be targeted for arrest, subjected to harsher treatment such as shackling, and denied equal protection under the law. Cases involving disadvantaged caste groups often receive less attention from police officials, who may hold caste-based prejudices.

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<sup>1</sup>G. Mohan Gopal, “Justice and the Two Ideas of India,” *Frontline* (May 27, 2016), available at *Frontline.in*: <https://www.frontline.in/cover-story/justice-and-the-two-ideas-of-india/article8581178.ece>

Judicial bias is another major barrier. Although courts are expected to be impartial, studies suggest that lower-caste defendants often receive harsher sentences than higher-caste individuals for similar offences. Caste prejudice can also be seen when judges are reluctant to hear cases involving abuse against lower-caste communities, particularly in regions where caste divisions are strongly enforced. Delays in the justice process, including long trials and large case backlogs, further disadvantage marginalized groups, as they struggle to obtain timely justice.<sup>2</sup>

Inequality continues within the prison system as well. Correctional institutions often reflect the same caste hierarchies found in society. Lower-caste prisoners frequently face discrimination, mistreatment, and violence from both prison staff and other inmates. Such experiences of abuse and exploitation reinforce and deepen caste-based oppression within the criminal justice system.

### **3. Gender discrimination**

Gender inequality is one of the major barriers to achieving justice and fairness in society. Disparities based on gender within the criminal justice system create serious obstacles to equal access to justice. This problem affects women the most, as they continue to face many challenges when seeking justice, whether they are victims, witnesses, accused persons, or prisoners. The criminal justice system has traditionally been designed around the needs of a largely male population, even though the number of women in prisons around the world is increasing at a faster rate.

Historically, the criminal justice system was created by men and mainly for regulating and punishing male offenders who violated social norms. At the time of its formation, the system did not adequately consider the existence or needs of female offenders or individuals belonging to the third gender. As society has evolved, the number of female offenders has increased, and crimes against women have also risen. Crimes against the third gender have also grown significantly. This makes it essential to reform the criminal justice system so that it can respond to the needs of a changing society and ensure that every individual, regardless of caste or gender, feels safe and protected.<sup>3</sup>

Gender disparity in the criminal justice system refers to unequal treatment and underrepresentation of minority genders, especially women. It appears in various forms,

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<sup>2</sup>*Indian Journal of Social Science and Literature (IJSSL)*, Vol. 5, Issue 1, September 2025, ISSN 2583-0643 (Online).

<sup>3</sup>*International Journal of Law Management & Humanities*, Vol. 7, Issue 3 (2024), ISSN 2581-5369.

including bias in policing practices, lack of gender diversity within the judiciary, and stereotypes that influence legal decisions. Addressing gender disparity requires gender sensitization, fair representation, and equal treatment at all levels of the justice system.

Much of this inequality is rooted in the deeply patriarchal nature of society. Gender stereotypes, particularly those affecting women and other gender minorities, continue to shape attitudes and practices within the justice system.<sup>4</sup> Changing societal mindsets is essential, and greater participation of women in legal institutions, along with stronger gender awareness, can play a key role in promoting equality within the criminal justice system.

### **Systemic Barriers in Policing**

Policing is the first gateway into the criminal justice system. The decision to arrest is often discretionary. Although laws provide procedural safeguards, the reality of policing is shaped by social perceptions, stereotypes, and institutional pressures.

Marginalized communities frequently experience over-policing in certain contexts and under-protection in others.

Law enforcement in India continues to struggle with deep-rooted caste prejudice, which leads to unfair treatment of people from disadvantaged castes. Although the Constitution promises equality before the law, lower-caste communities still face both open and hidden discrimination from police officers. One of the clearest forms of bias is that people from lower castes are arrested more frequently. Studies show that in disputes related to property, violence, or domestic issues with caste tensions, police are more likely to detain individuals from underprivileged castes.

In many rural areas, strong social hierarchies based on caste influence how law enforcement operates, causing policing practices to reflect these divisions. Lower-caste individuals are often subjected to arbitrary arrests and sometimes physical abuse because they are viewed as socially inferior and less deserving of fair treatment. Police behaviour can show both obvious and subtle discrimination, shaped by officers' own caste identities and prevailing social norms.

In cases involving violence or theft, especially in rural settings, police often give more support to complainants from higher castes than to victims from lower castes. Such selective enforcement of laws increases the power imbalance between castes and results in further injustice for already marginalized communities.

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<sup>4</sup>*Indian Journal of Legal Research & Analysis (IJLRA)*, Vol. II, Issue 7 (Dec. 2024), ISSN 2582-6433, available at: [www.ijlra.com](http://www.ijlra.com)

Law enforcement agencies often show caste bias, which results in officers ignoring or failing to properly record incidents affecting people from lower social groups. Victims from lower castes who face physical assault, sexual violence, or caste-based discrimination frequently encounter resistance when they try to file complaints or request investigations. Police often dismiss these cases as routine or unimportant because of the long history of discrimination against these communities.

Many lower-caste victims struggle to access justice simply because of their social background. The continued practice of manual scavenging, despite being legally banned, is a clear example of ongoing discrimination. Reports from the National Crime Records Bureau indicate that police provide protection to lower-caste victims in only a very small percentage of cases. When crimes are committed by higher-caste offenders, police may fail to take action or may even shield the accused.<sup>5</sup>

In case of women, the condition is equally worse. Women often face discrimination in reporting crime against them at police station. At the police station, officers who are in charge of registering FIRs generally do not register complaints because of their patriarchal mindset. In reporting sexual crime, women are not able to report the crime properly to male reporting officers; this adds to their trauma and exacerbates their suffering. Chances are that because of improper reporting, criminals may escape from the hands of law.

In order to facilitate reporting of any woman-related crime, each police station should preferably have about one-third of its staff as women. Women police personnel are very effective due to minimal usage of brawn and better communication with the general populace.<sup>6</sup> However, each station must have sufficient infrastructure, which are comfortable for women. This will not only make stations more approachable for a common woman but will also make a traditionally patriarchal police force more sensitive towards women's problems.

The above mentioned scenarios are when you belong to the socially weaker sections of the society. Now imagine if you are economically weaker too, when you don't have the financial backing to Abuse of power by law enforcement often takes many forms, particularly affecting poor and vulnerable communities. One common issue is illegal or false arrest, where police wrongfully detain individuals without proper grounds, sometimes to gain financial benefits, satisfy political pressure, or settle personal scores.

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<sup>5</sup>*Indian Journal of Social Science and Literature (IJSSL)*, Vol. 5, Issue 1, September 2025, ISSN 2583-0643 (Online).

<sup>6</sup>*Indian Journal of Legal Research & Analysis (IJLRA)*, Vol. II, Issue 7 (Dec. 2024), ISSN 2582-6433

In some cases, individuals are kept in unlawful detention for extended periods, and their families are forced to pay money to secure their release. Closely related to this is the fabrication of false evidence or filing of false FIRs against people who lack the resources to defend themselves. Police officers may tamper with evidence or create false charges in order to obtain bribes or act under pressure from influential authorities. Such practices undermine the fairness of the justice system and create fear among economically weaker sections.

Police brutality further highlights the misuse of authority, where excessive force, torture, and custodial violence are used against vulnerable individuals, sometimes leading to custodial deaths that go unreported or unrecorded. Corruption through bribery is another widespread issue, where officers demand money in exchange for protection, leniency, or basic services, compromising public safety and trust in the system.<sup>7</sup>

Additionally, unwarranted searches and illegal seizure of property disproportionately affect poor communities, with police sometimes misusing their powers to evict residents or confiscate property to benefit powerful builders or other interests. These actions not only violate legal rights but also reinforce social and economic inequalities by targeting those with the least ability to resist abuse.

### **Unequal Legal Representation**

76% of India's prison population has not been convicted but is awaiting trial. That is the 6th highest share globally and more than twice the comparable share worldwide: 33% Undertrial prisoners in India spend roughly 12.3 months in prison on average, but - as of 2022 - 11,448 inmates had been awaiting trial for over five years (NCRB, 2022). A number of factors contribute to India's exceptional share of undertrial prisoners. The police have long been accused of abusing their powers of arrest. In 1999, Justice M N Venkatachaliah claimed that "60 per cent of the arrests are unnecessary and 43 per cent of the expenditure on jails are on prisoners who need not have been arrested at all"<sup>8</sup>

Once arrested, many defendants have bail applications denied, despite the Supreme Court of India repeatedly affirming the principle that "Bail is the rule, jail is an exception". 11 Conditional on being granted bail, many defendants cannot afford to pay the bond. India's judiciary suffers from chronic delays that prolong undertrial prisoners' wait for trial. As of

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<sup>7</sup> Kartikey Jain, "Police Brutality Against the Poor in India," *Legal Bites*, available at: <https://www.legalbites.in/police-brutality-against-the-poor-in-india>

<sup>8</sup>Nitin Kumar Bharti & Jonathan Lehne, *Justice for all? The impact of legal aid in India* (Working Paper, Paris School of Economics, 2025)

2024, there were 45 million cases pending in Indian courts (National Judicial Data Grid, 2024). Once a trial date is set, undertrial prisoners are reliant on the availability of police escorts, causing many to miss hearings.

Navigating the legal process is likely to be considerably harder for individuals without a full understanding of their rights and without legal advice. The demographics of India's undertrial prisoners suggest that many have limited economic opportunities and may struggle to afford private legal counsel. 26% of undertrial prisoners are illiterate, and 50% are under the age of 30. Relative to their share in the population, members of Scheduled Castes and Muslims are over-represented.<sup>9</sup>

Apart from the fact that these poor and illiterate undertrials do not get good quality legal aid services, another reason why furnishing for bail gets delayed is the fact that the prisons in India are overcrowded and understaffed and this difference in ratio creates a lot of problems. Prisoners are not brought to court hearings at the right time because of a shortage of prison staff and escorts and this results in these prisoners being victims of delayed justice. This problem gets even worse in the case of female undertrials because of a huge shortage in the number of female escorts. Though video conferencing facilities were introduced years ago, however, they are limited to only a few prisons and courts. However, the number of undertrials can be reduced by firstly, repairing the ailing legal aid system. Since legal aid services can be of huge help to poor undertrials, it requires strong backing from the Union government, and it also requires new and more competent lawyers<sup>10</sup>

As mentioned above the marginalized communities again become the subject matter of this discussion. The Indian judiciary is built on the principle of providing impartial justice without discrimination based on caste, religion, or creed. However, in practice, judicial outcomes often reveal caste bias that influences decisions involving lower-caste defendants and victims. This bias, sometimes unconscious, appears through stereotypes that shape how judges interpret cases. Lower-caste offenders are often viewed as more dangerous or likely to reoffend, and caste identity may be given more importance than actual evidence. As a result, lower-caste individuals frequently receive harsher punishments than upper-caste defendants for similar offences, especially in disputes such as property conflicts where courts tend to favour upper-caste parties. This unequal treatment reinforces existing social and economic inequalities.

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<sup>9</sup> Members of Scheduled Castes account for 20.9% of undertrial prisoners and 16.6% of the general population. Muslims account for 19.3% of undertrial prisoners and 14.2% of the general population. Muslims are also overrepresented relative to their share of convicted prisoners: 17.1% (NCRB, 2022).

<sup>10</sup>Manupatra, available at: <http://student.manupatra.com/Academic/Abk/Law-Poverty-Development/Chapter8.htm>

Lower-caste communities also face serious barriers in accessing legal support. Many cannot afford experienced lawyers and must rely on underfunded legal aid systems, leading to weak representation and limited understanding of legal procedures. Courts sometimes treat caste violence as personal disputes rather than recognizing the broader social context, which reduces the seriousness of such crimes and weakens appropriate sentencing. Repeated experiences of discrimination create distrust toward the justice system, discouraging victims from seeking legal remedies and reinforcing cycles of injustice.<sup>11</sup>

Limited legal awareness, social stigma, and institutional prejudice further prevent victims from reporting crimes. Police may refuse to register complaints or fail to take cases seriously, particularly when accused individuals belong to higher castes. Even when cases reach courts, long delays and complex procedures often force victims to abandon their pursuit of justice. The lack of caste sensitivity training among police and judicial officials allows these discriminatory practices to continue, reducing the system's ability to protect vulnerable communities effectively.

When discussing gender bias in the judiciary, it is also important to consider the issue of representation. Studying gender bias in the judiciary matters for many reasons. The judiciary plays a crucial role in upholding the rule of law and protecting the rights of individuals. When bias exists within this institution, it weakens the rule of law and reduces public confidence in the justice system. The role of female prosecutors is especially important, and it is necessary to understand the unique challenges they face. Bias against them can affect their career growth, job performance, and the quality of justice they are able to provide. Addressing these biases can help create a more respectful and trustworthy judicial process, allowing female prosecutors to work comfortably and strengthening public trust in the system.

A judiciary that truly promotes gender equality sends a strong message to society about the importance of respect between men and women. Studying gender bias is also important because it directly affects female victims of crime. A fair and unbiased judiciary is more likely to ensure that women are heard and that their cases are decided impartially. This is particularly significant in countries like India, where issues such as domestic violence, sexual harassment, and rape remain serious concerns.<sup>12</sup>

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<sup>11</sup>*Indian Journal of Social Science and Literature (IJSSL)*, Vol. 5, Issue 1, September 2025, ISSN 2583-0643

<sup>12</sup>*Indian Journal of Legal Research & Analysis (IJLRA)*, Vol. II, Issue 7 (Dec. 2024), ISSN 2582-6433, available at: [www.ijlra.com](http://www.ijlra.com)

## Legal Reforms: Reimagining Equal Justice

Having examined the structural barriers that shape unequal access to justice across policing, bail, and sentencing, it becomes evident that reform cannot be limited to procedural adjustments alone. The persistence of marginalization within the criminal justice system reflects deeper social hierarchies and institutional practices that require targeted and inclusive legal interventions. Formal guarantees of equality, though constitutionally enshrined, remain insufficient when systemic inequalities continue to influence how laws are enforced and experienced by different social groups.

Legal reform, therefore, must move beyond a one-size-fits-all approach and recognize the differentiated realities faced by women, religious and ethnic minorities, lower caste communities, and economically disadvantaged populations. These groups encounter distinct yet overlapping forms of exclusion, shaped by historical discrimination, social stigma, and unequal access to resources. Without acknowledging these structural disparities, reforms risk reinforcing existing inequities rather than dismantling them.

An effective reform agenda must be grounded in the principle of substantive equality — the idea that fairness requires not only equal treatment under the law but also proactive measures to address structural disadvantages. This requires strengthening institutional accountability, improving access to quality legal representation, simplifying procedural requirements, and ensuring that the justice system is responsive to the lived experiences of marginalized communities.

India has enacted several laws to address caste discrimination, but their effectiveness is limited by weak enforcement and persistent caste biases within institutions. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 provides protection against serious caste-based crimes, while the Protection of Civil Rights Act, 1955 aims to eliminate untouchability and ensure equal access to public spaces, education, and employment. Despite these legal safeguards, implementation remains inconsistent.<sup>13</sup>

Enforcement is often hindered by social and political pressures, as well as bias among law enforcement officials. Many victims, particularly in rural areas, avoid reporting crimes due to fear of retaliation, lack of awareness of their rights, and low confidence in the justice system. Delays in legal proceedings further weaken trust and reduce the effectiveness of these laws, highlighting the need for stronger implementation and greater public awareness.

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<sup>13</sup>*Indian Journal of Social Science and Literature (IJSSL)*, Vol. 5, Issue 1, September 2025, ISSN 2583-0643 (Online).

The judiciary plays a key role in upholding equality under Article 14 of the Constitution and has delivered important rulings supporting affirmative action and protection against caste discrimination. However, courts sometimes fail to recognise the systemic nature of caste violence, treating cases as private disputes and limiting accountability.

Judicial reforms are necessary to improve sensitivity to caste issues and strengthen accountability. Training for judges, lawyers, and law enforcement officials can help address bias, while better monitoring of caste-related cases can ensure fair prosecution. Increasing representation of marginalised communities within the legal profession through affirmative action and reservations is also essential, as it can bring diverse perspectives and improve the delivery of justice.

Women in power is one of the most efficient and effective reform for upbringing and upholding the rights of women. The Ministry of Home Affairs has recommended that women should make up 33% of the police force, but they currently represent only about 10.30%. Increasing women's participation in policing is important for good governance and reducing gender inequality. Studies show that the low number of women officers creates a psychological barrier that discourages women from reporting crimes. A greater presence of women in law enforcement can improve safety, make police stations more gender-sensitive, and enhance trust in the criminal justice system.

The creation of women's police stations has been a significant reform, as these stations have led to higher reporting of crimes against women, with studies showing around a 22% increase in reported cases and FIR registrations. Officers in these stations are also less likely to hold gender-biased attitudes. Overall, increasing women's representation in policing is an important step toward reducing gender disparity in the criminal justice system.<sup>14</sup>

Representation of women in judicial roles is equally if not more important as them in other government offices. As of January 2024, women make up only 13.4% of High Court judges and 9.3% of Supreme Court judges, showing a clear need for a more inclusive judiciary. Similarly, women account for only 15.31% of enrolled lawyers, highlighting gender imbalance within the legal profession. A gender-inclusive judiciary can strengthen public trust, reduce inequality, and make the justice system more sensitive to gender issues.

As protectors of fundamental rights, courts have a duty to challenge gender stereotypes. The Supreme Court has done this through landmark judgments such as *Vishaka v. State of Rajasthan*, which established guidelines against workplace sexual harassment, and *Air India v.*

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<sup>14</sup> *International Journal of Law Management & Humanities*, Vol. 7, Issue 3 (2024), ISSN 2581-5369.

Nergesh Mirza (1981), which struck down discriminatory employment rules based on marriage. These decisions helped reinforce the principle of equality in employment.

To address structural barriers, efforts must focus on increasing women's representation through fair appointments, transparent promotions, and family-friendly policies. Continuous gender-sensitization training for judges and court staff is also necessary to challenge deep-rooted biases and better understand the experiences of marginalized groups.

Although progress may take time, creating a more inclusive and gender-sensitive judiciary is essential for achieving true gender justice and ensuring that the rights and dignity of all individuals are respected regardless of gender or social background.

### **Conclusion**

The criminal justice system embodies the state's coercive power. When that power operates within unequal social conditions, it risks reinforcing hierarchy rather than correcting it. Marginalized communities do not merely encounter legal disadvantage; they experience structural exclusion embedded within policing, bail, and sentencing.

Unequal access to justice is not an aberration—it is a predictable outcome of systemic inequality. Addressing it requires more than judicial pronouncements. It demands institutional accountability, resource redistribution, and a commitment to substantive equality.

Justice must move beyond abstract constitutional promise toward lived accessibility. Only then can the criminal justice system fulfill its foundational purpose: equal protection and equal dignity for all.

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