

Gender, Minorities and State: A Study of Agitational Politics

A Dissertation Submitted to the University of Hyderabad in Partial Fulfillment of the

Degree of

MASTER OF PHILOSOPHY

In

SOCIOLOGY

By

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September 2022



CERTIFICATE

This is to certify that the dissertation entitled "**Gender, Minorities and State: A study of Agitational Politics**" submitted by **Ananya Dash** bearing Reg. No. **20SSHL10** in partial fulfillment of the requirements for the award of Master of Philosophy in Sociology is a bonafide work carried out by her under my supervision and guidance.

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1. "Sociological analysis of two case studies in larger discourse of Gender and Law" at International Conference on Recent Advances in the Field of Management, Law, Education, and Technology: An Interdisciplinary approach Organized by The Aligarh Muslim University, Aligarh.

Further, the student has passed the following courses towards the fulfilment of the coursework requirement for her M.Phil. Program:

Course ID	Course Name	Grade	Credits	Results
SL701	Advanced Sociological Theory	B+	4	PASS
SL702	Advanced Research Methods	B+	4	PASS
SL703	Academic Writing Course	B	2	PASS
SL721	Research Theme based Course	B+	4	PASS

SEMESTER GRADE POINT AVERAGE (SGPA):7.85(in words): SEVEN POINT EIGHT FIVE

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DECLARATION

I, **Ananya Dash**, hereby declare that this Dissertation entitled, "**Gender, Minorities and State: A Study of Agitational Politics**", submitted by me under the guidance and supervision of **Dr. Asima Jena** is a bonafide research work. I also declare that it has not been submitted previously in part or in full to this University or any other University or institution for the award of any degree or diploma.

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ACKNOWLEDGEMENTS

No words are enough to express my gratitude towards my Supervisor, Dr. Asima Jena; she is a hardworking supervisor in the true sense, and more than that, she tried to bring the best out of me. I couldn't imagine completing my MPhil with anyone other than her. She taught me how to learn many things and unlearn many. Further, I like to express my special gratitude towards Dr. R.Thirunavukkarasu for his sincere suggestions that enrich my research work.

My profound sense of gratitude towards Prof. Raghava Reddy, Head of the sociology department. And I am obliged to provide constant help and needed information from all the non-teaching staff of the Department. The resources of the IGML library are beneficial, as it allows access too many books.

From the core of my heart, I thank Mohammad Nazim Usmani and Anamika Das for their valuable time and suggestions, which make my work more accurate. Simultaneously, I like to express my special gratitude towards Nyamath and Chandra Shekar for their constant moral support and for sharing multiple academic ideas.

Last but not least, from the bottom of my heart, I like to express my gratitude to my family for never stopping believing in me and encouraging me to the optimum level.

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Time-line

1857- Indian Rebellion or Mutiny

1890- Sedition law (section 124A IPC)

1915- Defence of India Act.

1935- The Government of India Act

1950- Preventive Detention Act

1950- A K Gopalan vs State of Madras

1955- National Register of citizens (NRC)

1956- Hindu Succession Act

1958- Forces Special Power Act

1958- Armed Force (Special Power) Act (AFSPA)

1965- India and Pakistan War

1967- Indo- China War.

1967- Naxalbari Movement

1968- Unlawful Activities (Prevention) Act (UAPA)

1971- India and Pakistan War

1971- Maintenance of Internal Security Act (MISA)

1973- Chipko Movement

1973- Silent Valley Movement

1975-1977- Emergency period in India

1976- Bonded Labour (Abolition) Act

1978- MISA Act Amendment (MISA, 1971 was repealed)

1978- Charles Sobraj vs The Superintendent., Central Jail, Tihar

1978- Public Safety Act (PSA)

1978- Rameeza bee Rape case

1979- Mandal Commission.

1979- Public Interest Litigation (PIL)

1980- Beginning of Ajudhya Movement

1980- National Security Act (NSA)

1985- Ahmed Khan vs Shah Bano Begum and Ors

1985- Debate on UCC emerged

1986- Muslim Women (Protection on Rights on Divorce) Act

1987- Hashimpura Massacre in Uttar Pradesh

1989- Scheduled Caste and Scheduled tribe (Prevention of Atrocities) Act (SC/ST POA ACT)

1990- V.P. Singh Government declared its intent to implement the Mandal Commission recommendation made in 1980.

1992- Babri Mosque demolition.

1997- Vishakha Guidelines laid down by Supreme Court

1997- D. K. Basu vs State of west Bengal

2004- Meira Paibi protest in front of the main paramilitary headquarters in Kangla, Imphal, Manipur.

2005- Protection of women from Domestic Violence Act.

2005- Hindu Succession (Amendment) Devolution of Act

2006- 7 / 11 Mumbai Train Blast.

2007- 2G Scam

2011- Sedition case filed against Soni Sori

2017- Shayara Bano vs Union of India against the issues of *talaq-bidat*, *nikah-halala* and polygamy.

2018- Supreme Court released a consultation paper on UCC.

2018- Kathua Rape Case

2019-2020- Four Labour laws were passed by the Parliament which includes The Industrial Relations Code 2020, The Code on Social Security 2020, The Occupational Safety, Health and Working Conditions Code, 2020 and The Code on Wages 2019.

2019- Repeal of Article 370

2019- Citizenship Amendment Act (CAA)

2019- Brutality of Police inside Jamia Millia Islamia University Campus

2019- The Muslim Women (Protection of Rights on Marriage) Bill

2020- Farm Bill passed in Parliament.

2020- Delhi Riots.

2020- Pregnant Elephant died in Kerala.

2020- Hathras Gang Rape case

2021- Disha A. Ravi vs State (Nct of Delhi) & Ors

2021- Repeal of Farm bill

2021- National Population Register

Abbreviations

AFSPA- Armed Forced (Special Power) Act

BJP- Bhartiya Janata Party

CAA- Citizenship Amendment Act

CSOs- Civil Society Organizations

CrPC- Code of Criminal Procedure

CSWI-Committee on the Status of Women in India

CJS- Criminal Justice System

DPSP- Directive Principles of State Policy

FIR- First Hand Information

HRC- Human Rights Council

ICMR- Indian Council for Medical Research

IPC- Indian Penal Code

JCC- Jamia Coordination Committee

KIA- Kundli Industrial Area

MISA- Maintenance of Internal Security Act

MAS- Majdur Adhikar Sangathan

NCW- National Commission of Women

NRC- National Register of Citizens

NGO- Non-Governmental Organizations

PIL- Public Interest Litigation

QRT- Quick Response Team

RSF- Reporters' Sans Frontières (RSF)

SC- Scheduled Caste

SC/ST POA ACT- Scheduled Caste and Scheduled tribe (Prevention of Atrocities) Act

ST- Scheduled Tribe

SHO- Station House Officer

WGAD- Working Group Against Arbitrary Detention

WTO- World Trade Organization

UAPA- Unlawful Activities (Prevention) Act

UCC- Uniform Civil Code

Chapter-1: Introduction

The scenes in Indian prison baffles us in contemporary times. In almost all central and in district jails more than 50% and 72% respectively replete with are under-trial prisoners (Grover 2018). Secondly, jails are overcrowded –running at 150% and in some cases more than 200% of their capacity and importantly, disproportionately crowded by the powerless communities –*Dalits*, *Adivasis* and Muslims- (Lokur, 2022). And thirdly, we see rising number of political prisoners where the present dispensation detained the supporters of democratic protest by using draconian laws. The latter groups are the victims of arbitrary arrest as aptly argued by Narrain (2021, p. 95). Those who feel some responsibilities to the Constitution, like- human right activists, farmer organizations, women's organizations and other dissenters, are precisely detained in jail without trails. In 2019, 2361 UAPA cases are pending for trails which is 98% in portion with 2% of 33 convictions (Narrain, 2021, p. 83,)

It is a shared knowledge that India achieved its Independence after a massive fight against an absolute arbitrary regime. The forte of the struggle was organized and supported by people from across social, cultural, and religious backgrounds. Women's participation in Indian nationalist movements can be considered as an initiation of women's involvement in mainstream political projects and equally an encounter with the experience of a broader framework of police, court, and law. Simultaneously, women's participation in anti-imperial projects and their experience with the colonial legal and justice system is not monolithic, as underlined by Visweswaran (1996). Our historical democratic struggle was the founding pillar of India's moral principles. Democratic imagination of the Indian State is achieved through gainful social movements (Balagopal, 2011). Further, it expands the sphere of political activities among different sections of society, automatically increasing the value of struggle. For Balagopal, the egalitarian framework of Indian Constitution did not just emanate from discussion in the constituent assembly, it equally developed as a result of people's movements during the time.

Democratic agitation shows us the essentials of questing and criticizing the authority, even if these attempts suffer from the torture of supreme power (Banerjee, 2008; Ray, 2020). After Independence, elite visionaries might ignore the further need for agitational politics; therefore,

they didn't maintain any particular provision for the right to resistance directly, although the initial post-colonial period manifested the need for agitational movements¹. Given the scenario of unbundling of sovereign nation states with the opening of the economy, global regimes deliberately consider talks on universal citizenship, transnational approach towards sensitive local issues on gender, domestic violence, climate change, the importance of international human rights, etc. So, inappropriate dealings of the state towards its so-called “personal issues/internal matter” might threaten laws of the international treaties. Thus, it automatically creates a pressure on the state to act wisely on local matters (Sharma and Gupta, 2006). In the twenty-first century, the query is what is required to invoke Constitutional morality, particularly its democratic ethos, the role of the State and its relationship with independent civil society, etc.? Ironically, the state's gradual movement toward the instruments of colonial rule and becoming a totalitarian regime in the current climate might be the answer. So, there is a need to awaken and agitate to assert our civil and political rights, which were demolished by killing the Constitution in thousand cuts (Narain, 2021, p. 10). And after the 75th year of Independence, efforts were made to discard the contribution of a specific section of people in the nation-building process and victimize their living status in their own country.

The struggle in India still concentrated on gaining equal citizenship rights through Constitutional provisions. Hence, the current debate in America on cosmopolitan citizenship is a dream for India as per our present political stand, which encourages exclusionary and xenophobic nationalism, illegal arrests of human rights activists, malfunctions in law and judiciary autonomy, misuse or overuse of law to cancel the practices that used to protect the individual from against state/government (Chandhoke, 2021). Religious minorities and *Dalits* are the vulnerable targets, and they are more burdened to prove their nationality (Visweswaran, 1996). The right-wing regime erased their contribution in Indian art literature, painting, and music and strategically eliminated the rights of a religious minority and social caste minority. Religiously motivated riots, *Dalit* girls' rapes, assault discrimination, restriction on the rights to perform their own rituals, *hijab* ban in academia amounting to denying educational rights for Muslim girls and mob lynching have rapidly

¹After 1975 (post emergency period) the Supreme Court attempted to protect the rights of dissenters through deep engagement with law and interpreting fundamental rights wherein, the right to protest were aligned with ‘right to liberty, freedom of speech and expression and to live with dignity’. Through this process the Supreme Court maintained the relevance of the Constitution in a dynamic society (Bhatia 2019, Balagopal 2011 and Babu 2022).

increased in contemporary India. In parallel, there is suppression of any kind of protest against state policies. Although, courts after 1975s have performed an active role in protecting the Constitutional morality and curbed the injustices, at present our legal system is silent and reluctant to give a verdict against it. According to Narrain (2021), minority groups- implying those who were oppressed and faced discriminations- not only consist of *Dalits* and Muslims; the migrant worker, transgender, farmers, and daily labourers can as well be encompassed (Narrain, 2021, p. 165). These categories of people are waiting for their full access to citizenship rights through various struggles against State and its xenophobic and exclusionary policies.

While discussing the practice of equal access to citizenship rights, marginalized sections of women are the actual warriors of the struggle to achieve credible identity as women, and a reminder of the fact that minority religious status and ascribed unprivileged caste are additional drawbacks in accessing national citizenship as equal to male and privileged women. Caste, class, and community also contribute to configure women as cultural meaning is attached to their bodies (Kannabiran, 2008). So little denial towards gender as a homogeneous category does not necessarily imply undermining the merits of women's movement rather it nudges us towards rethinking gender, as women from subordinate class, caste and community challenge multifarious battles every day. Therefore, the idea of gender justice will require multiple layered justice as multiple identities are attached to gender. But the developmental and reform policies of the State never changed its fundamental approach by arguing both males and females are human beings, so policy can't be vastly different. So, women's movements just ended up as a pressure group. Until the 1990s, women's specific identity as *Dalits* and Muslims were obliterated, and women movements were popularized as Hindu, urban, upper-caste, and middle-class women movements. After the Ayodhya movement and Mandal controversy which brought to the fore the fractures within the Indian feminism, feminists believed in the social marginalization of *Dalit* and Muslim women and their more intensive battlefield needs particular attention from the entire feminist community (EPW, 1997).

It is imperative here to outline how Indian feminist strand changed post 1990s. When the Shah Bano was appealing the court for her right to maintenance, controversies regarding personal law set fire. Several petitions were filed on the Supreme Court against religious personal law as it

upholds faiths which are discriminatory towards women in various ways. Under such circumstances, State proposed a Uniform Civil Code (UCC) via Article 44 to abolish personal laws and create a uniform legal platform for women of various identities to secure gender justice, equality, and dignity. Even though this provision under article 44 strengthens the state's position to propose a UCC to abolish personal laws, it jeopardizes the specific identity of Dalits, Adivasis and minorities. And the feminist groups in India who used to fight for equal citizenship status fell into this trap without analyzing how this idea could come up with various adverse consequences in this pluralistic society. In the very initial stage, UCC got positive approval from various women groups, but when UCC was promoted by Hindu nationalists in favor of national unity, and by projecting Muslim women's status as more vulnerable in comparison to Hindus due to their personal law system, then the affirmative attitude of women's organization took a '*U-turn*' and believed that it is a strategic national political agenda which gradually come up with beef ban and justifying Ayodhya temple and create feeling among minority community as a second class citizen to live in the mercy of national dominated race (Menon, 2016). Projecting Muslims and *Dalit* as the centers of UCC reform on the ground that Hindus have already given equal rights to their women, is not just vague but also a false argument to put, whereas it is interesting to note under which circumstances Property rights to women were allotted under Hindu law in 2005. States need transparency and alienability of property to mobilize capital industrialization, but in the majority joint family system, the property is held by the decenter community; in this situation, encouraging individual rights on property becomes a way not just to show the modern approach of State but also give rise to a capitalistic economy. On the other hand, the modernity of Muslim law was sidelined from mainstream debate, although since the 1930s, individual right to property has been sanctioned. As Muslims believe marriage is a civil contract, Muslims can resort to divorce rather than maintain the relationship to justify the sacrament. On the other hand, *Meher* provides financial support to Muslim women although in a small scale. And the most highlighted problem of polygamous marriage is not associated with Muslim males only, it is equivalently visible in the Hindu community, but the difference between both the community is, divorcee women have their rights, and Muslim husbands have some kind of obligation towards their ex-wives, which is absent in Hindu culture. Moreover, Domestic violence Act, 2005 -which deals with marital disputes of women and protection, irrespective of religion- and 'Muslim women (Protection on Rights on Divorce) Act 1986', have been handling issues related to *Triple Talaq* and victims of polygamy.

So, the fake emerging need of UCC is a political agenda in the name of integration and gender justice.

The idea of the Uniform Civil Code gradually seems to be majoritarian uniformity, as they encourage abstract citizenship by arguing against the special status of Kashmir and minority reservation in an educational institute and claim the issue of minority religious identity and casteism as communal. Therefore; the fear of erosion of identity of marginalized and minority women become the primary concern of feminist in India. So, feminists changed their stands from desirability for UCC to denial of UCC and stressed on the reform within personal law in 1990 and advocated rights for women not just covering the area of personal law but also including work in public level, maternity benefits, equal wages, etc. (Menon, 2014). Delhi-based working group on women's rights (WGWR) believes that laws on gender justice are supposed to be drafted by feminists and left secular groups. As women's questions can't be separated from democracy, equality and secularism, and modernity, so it's essential to look at Uniform Civil Code from a political angle also as it is giving fire to the national politics in the shadow of gender justice. In fact, The Supreme Court released a consultation paper in 2018, finding the UCC neither necessary nor desirable at this stage in the country. Even earlier, B.R. Ambedkar also stated that UCC was supposed to be voluntary, not compulsory (Rajagopal, 2022). But in the gesture of development, a strategic attack penetrated against Muslim's custom, and participation of upper-class women amplified the polarization of feminist stand and women movements in India, especially in the case of Babri Mosque demolition, and suspicion arose on women's stand when they protested for the anti-Mandal commission. It raised many questions about the feminist stand in India by *Dalit* movements and secular feminism.

Critical sociology explains that democracy cannot be reduced in instrumental sense i.e., number game and statistics or majoritarianism. Rather it implies protection of minorities or safeguard against majoritarian tyranny, special solicitude towards vulnerable sections of society, strong labour protections and other socio-economic rights in order to uplift the marginalized sections, which is referred as substantial democracy (Bhatia 2019, Kumar 2022). While underlining the intrinsic relationship between democracy and secularism, Chandhoke (2021), further explained that secularism- by protecting the rights of religious minorities- actually enhances the meaning of

democracy. However, very often Indian legislature constrains the idea of democracy to numbers and statistics whereas a plural and democratic society is supposed to protect the rights of the minorities. Indeed, majorly Muslims and *Dalits* are the major victims of population control programs. For the sake of making affirmative changes for minorities, the idea of reform was used very politically. For example, the Indian state in order to uplift the status of women in the Muslim community, not just made *triple talaq* illegal but-also criminalized Muslim men, which was celebrated by more Hindus than Muslim women. And the recently created hate disagreement towards wearing *Hijab* by making a criterion to access education. Nevertheless, it was very boldly protested by Muslim women by proclaiming that they can fight against their communal patriarchy, so there is no need to make it an issue of increasing communal disharmony. The more initial concern is the fight against the subordination of the Muslim community and the false narration of Muslim men. So, it's certain that the welfare of minority women is made as a medium to target or abolish personal/community laws. In the present regime, through various social media forms or sometimes by the spokesperson of the Government, many times, they claim that India is supposed to be a country for only Hindus as Muslims are the foreign people. First of all, it shows the rudimentary perspective of the ruling owner of the State, and secondly direct exclusion of non-Hindus. In the pretext of partition, the image of Muslims has been caricatured in a negative way and made key target of violence. Nevertheless, the Hindutva regime in the deep structure of society does not just consider Muslims as somewhat less human; *Dalits*, Tribals, and *Adivasi* are judged in the same parameters. So, it can be argued that the social location in the market-oriented economy and position in the socially segregated hierarchy are other ways to polarize the so-called Hindu community. The status of less human or less citizen becomes non-citizen or anti-nation if the question on the reason of their subordination and demands their rights to be fulfilled. However, it's not a new phenomenon, but the intensity got deeper with proper strategic methods (Narain, 2021).

While dealing with minority group's entanglement with law, it is vital to reiterate that even if the category of women is itself an oppressed group, but in addition to that, lower social and cultural identity makes their status more vulnerable. At this point, we feel the necessity to adopt the intersectional approach to analyze the problem, more specifically double minority, where women from minority communities are expected to perform a docile act when the State hunts them through its injustice and violence. So, the rebellious behaviours are out of social imagination. The Indian

Government's partisan ideology turns radical when it comes to restoring Constitutional morality, and the dictatorial approach explosively reflects on women who exercise their independent political stand (Kannabiran, 2008, Ray, 2020). Inequality and hypocrisy are deeply rotten in action toward women as a whole group, and severity increases when women's identity is attached to a minority community (Visweswaran, 1996). Moving to mapping the idiosyncratic characteristics of the Indian state, Sunder Rajan's argument is pertinent. The Indian state, through its affirmative action and reformist endeavors like age of consent, ban on dowry, etc. projects itself as the progressive and modern nature of the State, and represents people in society as backward and are still captive of conformist practices. But on other occasions, when the women's movement questioned the State's laws, then, the whole women's movement was falsely charged and projected as illegal. So, when State is itself the culprit (in the case of AFSPA), then institutionalized agencies are employed to discredit the active role of the women's movement, especially when it is initiated by and questioning the minority women's rights. It is very often seen that the majoritarian state attempts to wipe out the identity of minority women. The neoliberal economic agenda manipulates institutions leading to reversal of economic justice toward marginalized communities. The standard method of the current Government is violating the Constitutionally approved rights in the name of prioritizing the nation's welfare in comparison to particular group demands on the other side, using coercive military force to curtail the resistance activities.

Panchali Ray (2020) contends that in secular India, women are upper-caste Hindus, and the Muslim and *Dalit* women can either be Indian or Muslim. Still, they can't be Indian Muslim women. Urban, elite and educated women mostly led the social movement in India, and they used to talk on behalf of others. In some other cases, minority women struggle to highlight their presence in the sizable political scenario. Irom Sharmila is the perfect example of minority women becoming victims of state indifferences and native patriarchy. Nationalist male adopts the '*Bharat Mata*' restrictively for Hindu upper- and middle-class women, neither for labouring nor Muslim women (Ray, 2020, p. 1). In other words, the Government's approach toward safeguarding citizens' rights, especially those involved in questioning the totalitarian regime, is absolutely in denial mode, and this worsens when the dissenter hails from a minority background. Minority women who the State has charged with an offense that is political in nature are deprived of their liberty. Being a political prisoner entails dissenting against State's policy or law and bearing the cost of

the State's violence and witch hunt. The case of a woman political prisoner from a minority community necessitates us to address; First, how do a majoritarian and neoliberal state and its repressive and ideological apparatus respond to political prisoners from a minority community, and second, what kind of message an authoritarian state and majoritarian Government purport to give to women political prisoners, and lastly, how do we see the mediation of global agencies in confronting the nation-state dealing with political activists. Having outlined the intricacies involved in the identity of political prisoners from minority communities, it is vital to briefly discuss the historical antecedents.

The Constitution adopts the colonial structure of the State and many provisions of the 'Government of India act 1935', including emergency power of law and order. When Independence was snatched out from the colonial regime, a privileged political group retained some inherent principles of the Britishers. For the elite nationalist, the idea of politics is used to attach with 'national' and detached from 'anti-national' or 'criminal'. Political involvement of communists, Naxalite and Hindu Mahasabha were illuminated as anti-national (Singh, 1998, p. 17). Action like resistance, struggle, and protest, which is the republican character of the Indian State, becomes a threat to national security, and the diplomatic Government's role/ counteraction falls on the side of non-violence and peacemaker (Singh, 1992, p. 281). Ironically, 'while women became the repositories of the national essence and, as such, outside the sphere of politics, peasants and tribals were delineated as incapable of rational political activity'. Visweswaran (1996) pointed out that treatment of political offenders was not equal during the British era. For instance, left communists, peasants, and lower caste/ class women never allotted the rights of political prisoners and this pattern was reproduced in the post-colonial era, where native distinctions were maintained by popularizing artificial liberal reform of gender. Legal frameworks of the colonial period were repeated by the Indian elite political party, which continued its dictatorial politics of targeting the dissenters. The new independent congress that ruled India also employed an army just like the imperial period, against several popular national movements. On similar lines, Ramnath (2022) writes that even if Independence was brought out due to various kinds of social movements, the Congress regime selectively recognized some movements as "national." 'Both the communists and Muslim communal organizers were put in prison under the various public safety ordinance and maintenance of public order ordinances to prevent dangerous activity. So, the dominant political

culture of struggle against a colonial regime is envisioned as the inability of the Government to cultivate the democratic culture of deliberation and debate with the political opposition in various hues' (Ramnath, 2022, p. 123).

In the post-colonial period, the condition of women political prisoners remained the same, as women in prison were doubly deprived of their freedom. The idea of women political prisoners is not just the uni-linear one; instead, it's a multilinear way as it is functional due to several variables. Subordination of women political prisoners doesn't stand alone; instead, a combined manifestation of caste, class, ethnicity and patriarchy make their status of subordination. The intention behind the behaviour towards minority women in prison discourse, in comparison to colonial times, has not changed much.

As mentioned earlier, Indian Constitution was drafted out of a deliberative process and people from various ideologies, constituencies and communities participated in the process. The striking feature of the Constitution is, although it is a rigorous process, still, the Constitution can rectify its faulty provisions or if it is less effective in extensive public welfare, then the nation's people have all the right to reject it. This idea of rejection is supported by B.R. Ambedkar, as he believed that the morality of the Constitution is inclined towards substantial democratic structure, where the notice of democracy is more of social democracy. He articulated the word "Fraternity" because political democracy does not have any meaning if there is no "we feeling" in the society. Inclusive participation from divergent groups and respect to their interest is a more accurate form of democracy. People's indifference towards discrimination is identified as serious crisis in democracy, therefore the stand of civil society and media paid utmost priority in a fraternity featured community. But the outlook of the media in the present political climate exhibits their unsympathetic attitude towards the discriminations which are carried out by mobs but orchestrated by majoritarian dispensation. Notable fact to mention is democratic citizenship is compromised on the basis of social identity and the contradiction between their identity status and denial to access citizenship rights (Chandhoke, 2021). An inclusive pattern of the Constitution puts a lot more emphasis on preventive discrimination management against minorities. Here, minorities are a comprehensive term as it symbolizes minorities from many groups and it is the responsibility of the state government (as per Arvind Narrain, it is better to call a Constitutional state government)

to safeguard the Constitutional provisions and reflect ideas offered by the Constitution in their policy making as Constitution prioritizes deliberative Constitutionalism.

Besides increasing religious fundamentalism in India, we see neo-liberal economic policies of the Indian state add the burdens on the minorities. One major setback of neoliberal policy includes the decline of trade unionism and this sets a chilling effect on workers given the current scenario where the informal sector constitutes a major part of the economy. Since the informal sector is outside of state regulation where labour laws- which ensure security of the workers- do not apply, suppression of trade-unionism is an ominous trend. Essentially, trade union activism too contributes in the project of social democracy by strengthening the working class when it fights for their (irrespective of caste, language, religion, etc.) welfare rights. In this neo-liberal era, favored capitalists are not just ruining the labour welfare system but also manipulating the aims of trade unions. Earlier the election agenda was focus on development of politically strong trade unionism which was oriented towards immediate wage gain but State and political parties change their orientation towards curtailing responsible trade unionism but the on the other side they provided populist welfarist entitlements. So, in this way the state indirectly weakens the bargaining power of labour (Chakraborty, 2021). On the other side, due to the social division in Indian society like caste, religion, and gender differences, *Adivasi*, *Dalit*, and migrant labourers were the major section of exploitation by elite capitalist personnel by using them as cheap labour and by taking their labour rights. In the welfarist State of operation, the country's development was believed to achieve with the development of the poor and subaltern, but the post-colonial way changed it to the development of capitalism by reducing the scope of formal/ organized employment. Approximately 100 million informal labourers in India suffered the most during the Covid-19 pandemic. Government, political parties, and higher caste personals have participated in the conjugal oppression against so-called anti-national, urban Naxal, *Dalit*, *Adivasi*. Gender, national status, and caste are the major forms of exploitation in capitalism that have been utilized to expand the capitalist economy. *Dalits* and Muslims are hardly recognized as dignified social people with equal rights. As Wankhede (2022) used, 'Proletarians of the proletariats' are poor, and other minorities who are different from both elite and middle-class salaried workers and distinct from the formal working class as wages are low along with zero legal security.

Statement of the problem

Although it is a widely shared view that sedition and anti-terrorism charges are slapped against political activists, a sociological work explaining why do political prisoners and torture occur in particular society (irrespective of democratic or dictatorship regime, liberal or ultra-right regime) and at particular time is limited. Even in the minuscule writings on political prisoners, it overwhelmingly focused on men. On the other side, even if feminist scholars (Kannabiran, Kaushik and Sharma 2009; Haldar and Jaisankar, 2007) have dealt substantially with women prisoners and highlighted violation of their human rights and discrimination in jail, the study on women political prisoners from subaltern and minority sections is negligent, barring the writings by Panchali Ray (2020), Rose (2016), and Mallarika Sinha Roy (2009). Continuing this latter thread, this research aims to focus on women political prisoners from minority communities and in particular analyses the experience of Safoora Zargar and Nodeep Kaur.

Research questions:

1. How do we draw a connection between human rights violations of political prisoners and prolonging their stay in custody?
2. How do political prisoners' gender and minority identity further inflect their citizenship?
3. What kind of mechanisms are used against minority women by state apparatus to project them as an “enemy of the State”? How do we see the nexus between media, legislature, police and court vis-a-vis Constitutional morality?

In this study, the objective is to analyze the functioning of the present legal system, including many agencies that are organs of state such as legislative, judiciary and executive, actions of police, towards the subordinating section of women precisely and how much it is in sync with the provisions of Indian Constitution. The reckoning of the Constitution makes it mandatory to revisit the concept of State, then specifying 'democratic state' and interconnectivity between state and agitational politics, participatory citizenship, and the role of civil society. Concerning all these subjects, two case studies of minority women have been selected. Kaur and Zargar were illegally detained in custody in the same timeline when the attention of international media concentrated on the massive agitational struggle against the CAA (citizenship amendment act) and NRC (National

Register of Citizen) and farm bill passed by the union government. It is worth mentioning that Kaur and Zargar did not participate in these movements as women. Protests against the current regime started in the university campus, and they were the ones who were detained under sedition law. Safoora Zargar participated in the protest against the national policy Anti- CAA and NRC (2020), and Nodeep Kaur, protested with 2000 labourers in support of the elimination of farm bill (2020) with an argument that farm bill is not just anti-farmer but also anti-labour welfare. Though both are women activists and belonged to minority communities- Muslim and Sikh respectively, - nevertheless, being a *Dalit* Kaur had another disadvantageous status. Kaur was sexually tortured in the Jail. Second, although at the surface, Kaur and Zargar's agitational politics appear as isolated from one another, nonetheless, there is a thread-line which emerged while analyzing their personal experiences. For instance, while Kaur was arrested for farm-bill, she too equally participated in a protest against the CAA for which she was already on the radar of Delhi police. Third, their political involvement is not for women's rights per se rather for the larger democratic agenda. However, their incarceration uncovered certain specificities, which is related to their multiple marginalized identities. Thus, the study attempts to document their experiences of dealing with the legal system and treatment by autocratic State directed institutions like the police, judiciary, and media.

Case study is used as research sampling where we try to look at the depth of fact of two purposively chosen cases. Ever since the lockdown, digital data has become an important repository of information and precisely during this time, both of them were arrested. Initially, the plan was conduct a telephonic interview with Zargar, however we failed as we did not receive information. Thus, for the testimonies, this study relied on digital sources i.e. the personal video of Zargar available on You-Tube (name of the channel: citizens for justice and peace), a personal interview of Safoora Zargar taken by 'The Wire' and these helped us to manifest the original perspective of Zargar. Likewise, Kaur's personal interview with "The Wire" was used for analysis. Besides these, various electronic media both conscientious (the live-law, newslaundry, the Hindu, scroll. in, the-print.in, outlook, thequint.com, indiankanoon.org, thediamonddrives, feminiminindia.com) and popular one was scrutinized for the study.

Chapterization

This work has been organized into four chapters. First chapter "Introduction" engages with the concept of citizenship and illuminates the complex identity of minority women in India and how their political role tramples their basic right to live with dignity when state appropriates preventive detention. While historicizing the debate and deepening the idea of democracy and secularism, it fleshes out the broader objectives and framework of the study. The second chapter "Gender and Political Prisoner: A Scholastic Landscape" organized scholastic work from different perspectives while paying attention to the complex relationship between agitational politics and state and how it evolved over in due course of time i.e., colonial, post-colonial and neo-liberal. Through critical writings it engaged with gender and citizenship question through intersectional lens and explained the manner in which agitational politics is aligned with Constitutional morality. In crux, it argues that agitational politics does not imply using illegal method and violence while protesting against injustice, rather it is the peaceful assertion of civil and welfare rights of minority groups as enshrined by the Constitution, gets tagged as "terror" through the hegemonic nexus between the legislature, executive and media. Third chapter "Entanglement of Minority women in Agitational Politics: A Critical Reading of their Travesty" with the law deals with specific experiences of Zargar and Kaur with various state functionaries and media against the backdrop of contentious Citizenship Amendment Act and Farmer's Bill. Since both these acts invoke conflictual interest for the minorities, it provides the opportunity to study both the complex and contradictory relationship between society and state when minority women actively resisted. It attempts to narrate women political prisoners' treatment in jail and analyze how they were dealt in the courtroom and their experience with the police and other detainees by drawing from their testimonies. Fourth chapter is summary and discussion.

Chapter II: Gender and Political Prisoner: A Scholastic Landscape

The current chapter intends to engage with scholarly debate on agitational politics and political prisoners in India. While doing so, it tries to organize literatures on two themes, one, historicizing dissent by building from the work of historians particularly subaltern historians in a bid to illuminate the manner in which social movements and uprisings were responded by the colonial regime and the point of departure and convergence in contemporary period. Second, it puts these literatures into various perspectives ranging from feminist, Foucauldian to subaltern.

Before moving to discuss these, it is essential to conceptualize feminist understanding of state and citizenship. Women, conferred with second-class citizens by state agencies, are found to occupy the most oppressed status, when they accept their subordination unquestioningly. So, when they initiate questioning about their demotion, they are projected as deviants or arguing out of the normal order. Here arises a query: who castigates such an image of womanhood...? Unambiguously, it's not a section of people; rather, it is an entire functioning system. Our society is a part of a large social structure dominated by the other half of the population, i.e., man/male. Since time immemorial, patriarchy is disguised in the name of the state, upheld its value system on the graveyard of women's rights and dignity. When the idea of the nation-state was introduced, they acknowledged the people of the land as citizens and the status of citizens were linked with certain rules and rights. "Citizenship is a more total relationship, inflected by identity, social positioning, cultural assumptions, institutional practices and a sense of belonging" (Davis, 1997). The right of citizenship claims equal status for both genders, but it's contradictory in its effects, as many hegemonic theorizations find gender relation irrelevant. Therefore, national ethos gets divided in civil society, further divided into the public and private domain and operated by state bureaucratic apparatus. So, if we try to relate the dots, bureaucracy, which controls the civil society, is the product of patriarchal state structure; therefore, freedom and rights within civil society will depend on patriarchal regulation. The aggressive nature of males reflects on the characteristics of the state (Hobbes), and it is believed that women are not part of the process of nation-building. It is assumed that they are excluded from the social and political domain as it belongs to the public sphere in the theory of Pateman (Davis, 1997). However, even if women are excluded from the national political arena, their power of reproduction and construction make them included in nationalism and mainstream political framework discourse (Davis, 1997, p.14). The

state becomes a site of male violence and victimization of women. Further, the states create identical differences between the citizenship status of men and women, and again, dogmatic differences are made between women and women (good/bad, normal/deviant, working/ non-working). As per the status hierarchy of citizens, power relations and allotment of rights also vary in the monolithic state structure (Rajan, 2003, p. 2)

Marxism believes that the state serves the interests of the ruling class's hegemonic interest and doesn't amalgamate the whole 'people' as a national community (Davis, 1997). Davis (1997) and Rajan (2003) try to extend 'the traditional Marxist view of the state as an organ of ruling-class interests—primarily those of class and capital, to patriarchal, racial, and other hegemonic interests' (Rajan, 2003, p. 6). Rajan (2003) brings attention to a Foucauldian understanding of “governmentality” where it encourages the individualizing of citizens. Each section of people serves a different interest and is also treated differently by the state. Capitalist production and patriarchal production relations are motivated through the regulated mode of social and cultural discipline. The state enacted various gender-blind laws and policies and set rules for marriage in order to control the sexuality of women. Further, Rajan (2003) argues that even if state is masculine, within the broad scenario of state and politics, sexual differences are not enough; when class, race-ethnicity are attached to gender, it becomes a crisis that affects citizenship status. The notion of intersectionality is tied in the frame when women's social and political identities work together for the reason of their discrimination. J Devika (2020) while discussing about intersectionality, cautioned about state and neoliberal development agency appropriating feminist language resulting into depoliticization of feminism called “Governmentalized feminism”. Feminist mainstream visibility in politics impacted by ‘governmentalized feminism’ which deal with the aspect of state, market and civil society but more importance is paid to the production of development which support the idea of reform than revolt. However, this mainstreaming feminism makes a distance from gender intersectional approach where women of lower social hierarchy are not the part of the broad feminist question. *Dalit* and *Adivasi* women are excluded from the neo liberal self-help group which was global standard of ‘good subject’ and hunted in the name of security. Transnational method criticizes the privileged origin of feminism along with understanding the significance of standpoint method to address the unequal sufferings between women categories. Then it's become easy to identify inequalities in different social group from various dimensions (Devika, 2020)

Gender questions in India is largely contingent on caste and religious dimension (Roy, 2020). Drawing from Etienne Balibar, Rajan (2003) writes that “gender is not a community and “the only gender which is a community is the masculine, in as much as males establish institutions and develop practices to protect old privileges.” Rajan argues that in fact Balibar echoes, uncannily, a point made in the CSWI (Committee on the Status of Women in India) report in 1975: “Women are not a community, they are a category” (Government of India, CSWI report 1975, 304)” (Rajan, 2003, p. 3). Women as a whole single category share their interests and aim to achieve certain common goals. But women's community identity and personal law systems create a passive situation that will vary from the complications of large homogeneous categories. Women hailing from minority communities fight against gender violation and discrimination on a broad standard dimension; along with that, they approach the battle against caste and class solidarity. In such instance then, the state, sexually differentiates women not just from men but also from culturally and socially elite women.

I

Political Prisoners during Anti-Colonial Struggle

As our work investigates how subaltern women were doubly oppressed in comparison to women from non-subaltern category, this facet becomes vivid in the context of agitational movement too. India's record on human rights can put the country's performance on the deficit side and apart from violence against marginalized and disadvantaged communities at individual and group level, the Indian state is reported to be not so tolerant of those who are opposed to its rule (Sengupta, 2010). Demand for right and justice and putting a check on the state's dictatorial activities is possible through agitation, and we inherited it from our freedom fighters during the colonial reign. In order to fight against colonizers, agitation was used as a major technique and consequently, agitators were imprisoned and tortured for raising their voice against the colonial state. Exploitative nature of state is understood as Britishers' suzerainty over the land of India but bitterly even after getting independence, the characteristics of state remained unchanged despite our Constitution's commitment to socialism, welfare and pro-people principles. For instance, in 1950s, the Supreme Court of India had upheld the Constitutionality of the preventive detention laws that replicated their colonial antecedents. As Bhatia (2019) correctly articulated we need to pay attention to the contesting view of the history and based upon that history, contesting views about

what the Constitution of India represented. Recently, Delhi High Court in the verdict of JNU student's protest against CAA and NRC, reminded that as per the law book of India, agitational protest is not a crime of detention. Nevertheless, addition of extraordinary law changed the scenario (Singh, 2021). A. K. Gopalan Vs. state of Madras case in 1970s actually set a precedent when Supreme Court interpreted the right to do agitational politics on the line of Article 21 (Babu 2022)². Independent India's approach of criminalizing people of minority and law formation is influenced and borrowed from the colonial period which made it compulsory for us to analyze the colonial prison system in India and ill-treatment of political agitators in general and minority people/ minority women in particular.

Foucauldian Framework

Before veering towards the scholarly inquiry of colonial prison system management and differential treatment, it is necessary to understand the basic theoretical idea of imprisonment, punishment and reform as it governs the whole structure then and now. In the imaginary reformatory system through punishment and incarceration, the mission of searching a good man out of a convicted prisoner was the solo motto. The idea of punishment is mostly deterrence and retribution rather than reformation as death penalty is always considered as foremost choice to apply on prisoner through various special or draconian laws. Convict centric approach is generally ignored, so the mode of punishment contemplates as fairer than reform and the idea of capital punishment should be rarer, is disregarded (Raj, 2022). Mahua Bandyopadhyay (2008) invoked Foucault in her work and explained how political prisoners too negotiated and rebelled, though her study was not exclusively on political prisoners per se. But, a connecting point from her work is relevant to flag here. In India the prison system was never oriented towards reform as colonizers assumed prison as the hub of resistance during nationalist independent struggle. Colonial administration opposed the idea of reform on the ground of climatic obstacles and socio-cultural topicalities of Indian people. 'Issues related to caste sensibilities, considered to be one such socio-cultural typicality, did not quite enable a rational approach to organizational practice in prison. Rather, repression, physical violence and a system of other punishments such as solitary confinement for prison offenses, were accepted as the most effective ways of managing the prison

²Public lecture by Divakar Babu at UoH on "Transformative Constitution" on 13th July, 2022. A K Gopalan, was a communist leader who filed a writ petition under Article 32 of the Indian Constitution challenging his detention under the Preventive Detention Act, 1950.

population'. In specific to political prisoners, she argued that the 'presence of the category of political prisoners, educated, aware of personal human rights, and with an agenda of protest, often forced the administration to make certain adjustments. For instance, providing reading and writing material became important. These groups of Political Prisoners were aware of their rights within the prison' (Bandopadhyay, 2008, p. 390)

Unlike Bandopadhyay, Arnold (1994) takes a Gramscian and subaltern perspective, thus pinpoints how reform of prisoners took place under colonial prison regime. By putting forward the idea of torturing the soul of prisoners, colonizers nominated various activities for active involvement of inmates. Mostly they performed the duty of labourer, specifically construction labour, apart from that they carried out tasks like cleaning rivers, building their own prison building, digging irrigation canals, etc. However, Arnold clarified that the idea of reform was always a manipulative strategy whereas priority is paid to apprehensive conditions among inmates. Later on, prime focus stimulated the profit generating approach by turning prison into a factory and inputs towards reform or refinement shifted towards profit generating industry. Prisoners started contributing their own cost in the jail and also produced high quality of goods and services for the state. The state's total profit amount was Rs 270,000 after 20 years later in 1881 Madras Presidency produced goods of Rs 331,832. Besides a lot of criticism for using jail manufactured products for commercial purposes, several prison industries grow up behind the prison wall- gunny bags at Calcutta, woolen products at Agra, blanket at Bhagalpur, carpet at Hazaribagh (Arnold, 1994). Prison labourers are an important aspect of the prison industrial complex as explained by Julia Sudbury (2005), an idea that deals with social control and profit generating mechanisms. Julia Sudbury argued that government industries with profit-oriented minds imprison the poor and people of color in the greed of having more labourers. 'Like industry, the prison economy needs raw material and, in this case, raw materials are prisoners. Prisoners generate profits for companies that build prisons and are easily available as cheap labour with potentiality' (Sudbury, 2005, p. 63). So, the idea of imprisonment serves the needs of the labour force and encourages the idea of punishment rather than rehabilitation. So, state and capitalism work together for profit making. Neo-liberalism, state policies, imprisonment of prisoners are not isolated entities, rather are interconnected (Sudbury, 2005). The narrative of the prison industrial complex in colonial India was a method of social control and subordination and oppression of native people in their own land. It additionally

contributed to the rise of the demographic structure inside prison which resulted in inhuman living conditions.

Again, while understanding the penal system in India, it is essential to explain colonial legal enactment. By taking advantage of natural conditions (war), many laws got sanctioned (Singh 1998). For instance, in 1860, the sedition law was added to the Indian penal code, which especially targeted political offenders as their crimes were considered as extraordinary. Later, the Defense of Indian Act 1915 added on with the provision that political offenders can be detained without any warrant, and the movement can be restricted to a specific area. In contemplation of lawful detention of political prisoners, the State started amending extraordinary laws, which used to add on with new clauses in each amendment. Like Clause 113, of original draft dealing with sedition, but it was not included in Indian penal code 1860, Section 124(A) Special Act was added after 10 years later specially for political offenders as they are treated as exceptional cases (Singh 1998). So, extraordinary laws were needed to detain them.

Speaking about the criminality of unruly groups in the colonial period- who were from lower strata- and the burden of proof, Samaddar (2008) provided graphic details of confinement, dislocation and localization of the criminals. New forms of control and power over unruly bodies also developed around this time parallel to the development of the power of investigation, examination and judgement. “The judicial-political structure of confinement combined at once two opposite things: the public nature of judgement, and the confining of the accused and the criminal away from the public eye, at times in a penal colony faraway on an island, creating in the process new ‘criminalized’ groups whose bodies would be minutely detailed in records that would only to be brought to the public eye as evidentiary material once another criminal case came up,—an unending cycle of making public and keeping away from the public the criminal matters of society”(Samaddar, 2008, p. 357). For instance, Muslim peasants of Kerala who wedged Mappila rebellion were imprisoned in Cellular jail, Kalapani in Andamans. “These places of confinement would be within the country and society, yet ‘outside’ it, with their own specific laws of confinement in dormitories, cells, iron gates and grids of regulation combining with the complex interweaving of language, caste and kin. The jails and penal colonies developed by the colonial authorities enabled them to dislocate the criminals while localizing them again in a way that enabled the claims and limits of the ‘human’, to be tested and revealed in lethal form. The

combination of making criminality public and confining the criminal was neither a paradox nor an anomaly that belonged to the past: it was the very essence of democracy and democratic rule. Evidence and punishment in the form of the jail sentence were the public and the private of the newly emerging political rule called democracy, in the development of which the colonial experience was of cardinal importance” (Samaddar, 2008, p. 358).

Theories related to prison management got reflected in practices when colonizers established their monopoly over Indian freedom fighter /political prisoners. Interestingly, the idea of reform replaced the need of violence and the use of violence is not equal for all political prisoners. Arnold (1994) argued that the Indian prison system was not only influenced by colonized but also carried out various rules and norms set by colonizers. Prisoners and, specifically, political prisoners in India always acted as a pressure group in both colonial and post-colonial periods. In the colonial period, political prisoners were called freedom fighters, whereas later they have been charged under laws countering anti-nationals, terrorists and Naxalite. The Indian prison system not just acts as an isolated institution but also reflects the ideological framework of the state apparatus (Arnold, 1994). During the colonial period prisoners were treated as per their classification ‘dangerous (x)’ and ‘less dangerous (y)’. Political prisoners were confined separately in the cells and communication was prohibited. “Distinction between ordinary and political prisoners was further brought out in the nature of discipline which was to be exacted from the detenus” (Singh, 1998, p. 41). The main reason for the incarnations of political prisoners is to seclude them from society. Charting the root of this differential treatment for the political rebellions by the imperial state, Banerjee (2005) writes that during the anti-imperialist movement, the British jail administration treated the armed militant nationalists as criminals, but the Gandhian non-violent *satyagrahis* as political prisoners. It is to be noted that these armed militant nationalists were peasants and belonged to subaltern sections and thus different from elites- nationalist and colonial elites (Guha 1997). The ill-treatment of political prisoners entailing questions like concessions given to them, better facilities in terms of diet, clothing and accommodation, etc., came up during the non-cooperation movement, when thousands of *satyagrahis* (many among whom coming from the upper and middle class educated sections) who thronged the jails demanded privileges that were contrary to the hitherto followed administrative practices. Under the pressure of these influential political prisoners (often backed by liberal British public opinion), over the years, a “special division” was created for such prisoners, which was analogous to the category of “first class

misdemeanants” that was proposed for the privileged class among the prisoners in Britain. The practice of discriminatory treatment of Indian prisoners was thus instituted – with cotton- wool handling of prisoners who came from a superior station in life (including political opponents who adhered to the creed of non-violence), and brutal behaviour towards those who belonged to the poorer classes, or those political activists (even from the middle classes) who opted for armed rebellion to challenge the imperial order. Even if Banerjee (2005) did not inflect subaltern rebellion with gender here, still these descriptions were helpful and provide the opportunity to connect with Visweswaran’s (1996) point of unequal treatment of political rebels. The history of the torture that they underwent in the Andamans, the Hijli jail and other prisons in British India is well recorded in the reminiscences left behind by the revolutionaries of those days (Singh,1998).

Subaltern women’s perspective

During the colonial period, without directly controlling the movement of women in the political domain, Indian men showed them as a site of nationalist construction and cultural authenticity so they are worthy of pure culture, rather than get involved in manipulative male politics. By adopting this approach women’s participation in national politics was categorized as passive and unresisting. In freedom struggle they were allowed to participate in large mass resistance only when their male peers were supposed to be around (Ghose, 2008). Such partial treatment towards women political activists by society is further encouraged by the state. Visweswaran’s (1996) work supplements this idea that the colonial state and its authorities interpreted political women and their involvement in nationalist struggle just as a proxy on behalf of male leaders.

Our work analyzes the connection between women's subalternity and their citizenship rights in a broad province of state nationalist ideology. The reactive approach of subaltern women is controlled and criminalized by the state's exploitative and pro-elite power by declaring their access to the right as a threat to nationalism. The citizenship rights of minority women are intentionally blocked to protect their integrity and liberty. On that note Gayatri Spivak's dissimilitude between 'women as subaltern' and 'subaltern women' is appropriate which Visweswaran (1996) further reiterates. In the context of anti-colonial struggle in India, it is essential to differentiate the marginalizing the status of subaltern women in comparison to middle-class women in the subject of nationality. Visweswaran writes that women’s nationalism is judged from their responsibilities at home and their political consciousness is always suspended. If rich women are involved in the

political realm, before that they have to ensure that the household responsibilities are taken care of properly, then only they would be accepted in the 'patriarchal political area'. But, others like unmarried, poor, lower caste, domestic workers, prostitutes were put in a category where their belonging of nationalism become a joke and political participation was suspended.

Visweswaran (1996) discussed that political women's speeches and nationalism is recognized from their social status of husband or prestige of the rich father like Sarojini Naidu. As a married woman and from an elite and upper caste background, Naidu's speeches always get attention and are valued and her level of patriotism was never questioned. But in the same scenario no-one remembers the active participation of Rukmani Laxmipathi in the Salt march. Contrary to upper caste women nationalist, unmarried lower-class women have to prove their love for the country and their patriotism was suspected. A distinction can be noticed in terms of how criminalization and punishment of women from minority communities differed from elite women even though both of them were political prisoners. When Kamala Visweswaran looked at the participation of Tamil women in nationalist movement, she not only explained how women were treated as secondary citizens, she also described those women political prisoners were classified under class A, B, C as per their social image. They were placed in different classes like married, educated, reputed women were placed in class A while domestic worker, prostitute, unmarried women were indexed in class C. Class A mostly consist of upper-class elites, who were allowed to wear their own cloths, access food from home and provided reading materials. Class B inmates get approx. similar treatment with some limitations of no food supply from home and limited letters transactions and class C inmates were having lower status background and illiterates and they were struggling for the facilities which other two sections got easily. In a diverse country like India, intersectionality captured an important role, as it is necessary to recognize the web of overlapping discriminatory factors such as caste, gender, sexuality, religion mostly faced by marginalized one. For example, we are served with the fact that women face sexism, many of us fail to realized that transwomen, disable women, *Dalit* women are still existing and they are dealing with different problems (Visweswaran, 1996).

II

Agitational Politics during Post-Colonial Reign

Post-colonial India inherited a similar legacy of discrimination in the treatment of political prisoners. It was demonstrated in all its stark reality during the Emergency, when bigwigs among Indira Gandhi's political opponents were arrested, but lodged in government bungalows and rest houses where they were allowed all the privileges that they were used to, while the Naxalite rebels were tortured in police custody and kept in isolation in prison cells – often trussed up in iron chains (Choudhury 2017). Sunetra Choudhary (2017) in her book “Behind the Bars” which is the collection of famous prisoners' experience spelt out the discrimination in the treatment of police and prison staff towards inmates. A. Raja, the main accused in the 2G scam, could access all the luxurious lifestyle. Approach of police take a reverse turn when it comes to Wahid who was a school teacher, tortured brutally just as a suspect of 7/11 bomb blast and later was acquitted in all counts after wasting vital years that is 9 years of his life in jail. This narration imposes a question on the fundamental idea of state segregated imagination between affluent law violators and easy targets. As discussed by Sumanta Banerjee (2005) political prisoners are also two kinds, one is political criminals arrested on murders and corruption charges and the other group is people who participate in resistance movement and struggle against government decisions, or in short, prisoners held for political rebellion. If the former is privileged- treat incarceration as holiday while exploiting special facilities granted to them for their advantage-, the latter is dis-privileged as the state is little harsher towards them and deny basic facilities. In both police prosecution and judiciary decisions, these two categories – criminal and dissenters against state policies – remain blurred. Even today, offenders from the underprivileged classes continue to live in inhuman conditions in overcrowded jails. Interestingly, Banerjee (2005)'s work sheds light on denial of basic facilities including health and sanitation to the political prisoners which would be aligned with the experiences of Zargar and Kaur in the next chapter.

State's criminalization of political dissent and repudiation of fundamental rights of political prisoners takes us back to the era of colonial and post-colonial period in India (Banerjee, 2008). So, the question is what are the historical roots of this suppression of strike and protest? (Kannabiran, 2008).

As stated already through the work of Sumanta Banerjee (2005), Bandyopadhyay (2008) and Partha Chatterjee (1998), after Independence, the post-colonial state already inherited the colonial penal system. This was seen in the manner in which AFSPA (Armed Force Special Power Act (Banerjee 2008), sedition laws and so on were instituted. During the emergency period, when resistance against the government was seen by civil society, a differential approach was deployed by the state in terms of agitational politics and petition based one. Since Sumanta Banerjee spoke about the emergency regime's differential handling of Jaya Prakash Narayan led group and Naxalites, it is important to pay attention to the women who were involved in Naxalite movements from the work of Mallarika Sinha (2009). She writes that "women participated in the movement expecting it to be a magic movement which would tear down all structures of oppression, including gender. Their expectation was encouraged by their initial success in breaking certain social taboos and aspects of patriarchal domination for a brief period at the height of the movement, which could not be sustained later. Her interviews with women and men Naxalites of villages in the Naxalbari police station area revealed that the traditional gender division of labour in agricultural work almost broke down when women took over every responsibility in continuing agriculture in the lands captured" (Sinha, 2009, p. 216). Each woman who participated in the agitation, experienced severe violence from the police, paramilitary and military forces. Sinha (2009) recounts the memory of a female agitator when she was declared as a prostitute and tortured with in custody even after repeatedly saying that she was five months pregnant.

After the exit of colonial rulers when Congress party took responsibility to run the country one thing became clear that political independence didn't bring any fundamental break in the institutional stature of governmentality. Nationalist elites who started the movement in the name of equality and liberty paradoxically showed inadequacy to represent and guide the people towards a republican citizenship (Singh, 1998). In similar lines, Partha Chatterjee (1998) argued that except planning, the older structure of the colonial State, which constituted the structure of the 'State' i.e., armed forces, police, civil service, and civil and criminal codes of law, largely retained their older structures (Chatterjee, 1998, p.274). Like colonial states, where criminality is placed on a minority community (Samaddar, 2008), in post-colonial states too it is the subaltern, minority and various dis-privileged groups that constitute the criminals and predominate in the prison system. Feminist and critical scholarship like anti-caste academia, while shedding light in this dimension also explained why agitational politics is intimately connected to their issues especially when state

policies increasingly are anti-poor and anti-minority. For instance, Kannabiran (2008) quotes Upendra Baxi to underline the link between the impoverishment and assertion of these groups against the state. “Critiquing the strong paternalism that imbues anti-poverty programmers, Baxi uses the term impoverishment instead of poverty, as a way of reconceptualizing economic relations, so that the impoverished emerge as a series of diverse groups, and individuals within these...[who] have been impoverished, or maintained as such, by different causative factors and forces at different moments of domination.... The impoverished...quite often...display collective associational strength’ thereby inviting horrible repression. In the face of such repression, they ‘forge their own weapons of resistance and rationalization.’ In a perennial spiral, the violence of developmental judgements/decisions is reinforced by the militarization of governance and militarized state response is met by the assertion of insurgent groups that collective political violence is the only road to justice for the people. And this in turn leads to an exponential growth of paramilitary forces on the one hand and increasing numbers of ‘rightless’ people on the other” (Kannabiran,2008, p. xii).

Paula Banerjee (2008) criticized the brutality approach of the state by implementing the Armed Forces Special Power Act (1958) as it further resulted into massive violence and agitation by miserable citizens who were targeted by the state. She explains that through people’s protest- in the colonial period to independent Indian democracy- or through numerous ways, it has been reminded to the state that individual liberty and social justice has more prior importance in the Indian Constitution than state monopolization. The idea of the state needing control over certain groups by using violence, somehow Indian ruling party inherited from the British colonial period. Violence results in more violence response, state anarchy approach will not be going to bring peace and tranquility rather various struggles will head up which automatically lead to a vicious circumnutating (Banerjee, 2008).

Moving from the state’s brutal approach towards freedom of expression of individuals and its relevance in the context of national movement or any other social movement, to the repression of these movements by the state, we need to pay attention to a conceptual distinction made by Kalpana Kannabiran. She distinguishes between “agitational politics” with protest or strike from “lawful” petition-based politics. For her, “the former is direct and the most expedient ways that governments have found to deal with agitational politics has been ‘preventive crisis management’

whereby direct action that poses the most serious threat to stability is dealt with urgently, while more passive, 'lawful' petitioning is met with endless deferral" (Kannabiran, 2008, p. xiii). States claim the peaceful harmony of the society got damaged due to the rebellious action of the masses whereas in order to seek social justice they nonviolently involve themselves in required agitational politics. The critical role of civil liberty in upholding the democracy is ignored and assumed as a threat to national security. So, it's easy to suppress the voices rising up through resistance. Newly independent India that is around 1949 major legal focus was on 'public safety act' under which a huge number of oppositional left and demanders of civil liberty got captured along with the ban on education society, as they were against the colonial strategy of freedom repression in democratic society. For example- preventive detention act has many parallels with the repressive nature of colonial government for the sake of supporting the idea of peace. While we are discussing the state's indignant approach for civil liberties, it's necessary to keep in mind that all civil liberties movements are not the same and, in many instances, social movements are dominated by landlords and high caste groups. So, quite often it is witnessed that the oppressive approach of state towards social movement become more vicious when it is organized by lower caste / class people because political legal framework outlined by those visionaries who were preoccupied by their social construction of gender, caste and class and it is a barrier in making comprehensive legal system. Overly studying Indian power structure, repression, inequality will automatically add on with the subject of caste inequality. Anti-caste agitation, protection of civil rights and amendment of preventive atrocity never get much attention like preventive detention act. Our history is rich with events through which we can value the deep-rooted social struggle that acts as a facilitator of reform and emancipation and civil liberties help to achieve that through law and political activities with the complete exclusion of violence. Again, one sided critic of agitational politics is that it will hamper the public order by ignoring the other part that the law of Constitution also guarantees to protect social order that is socio-economic relation including property and status of life (Ramnath, 2022).

Agitational politics is an intrinsic part of the human rights movement. It puts pressure on the government to focus on public demands on specific issues. As argued in the first chapter, India's political history indicates the power of huge street agitation against a long-established regime. Till the time of foreign regime, the country was in an undemocratic political setup, violating the law through civil disobedience was justified but after elected legislature, the agitating power of civil

society was limited by various draconian rules and procedures. Mobilization of weaker sections is the core sense of democracy. But the state is contrary to it as it snatches their right to protest by slapping sedition charges which are non-bailable. Contrarily, agitational approach is a legitimate way to force the ruling authority to amend the decision as demanded by the resistance movement. Involvement of civil society in political activism through agitational politics is a healthy sign of democracy. Various movements in the post-colonial period like Chipko movement and Silent valley movement set examples for the necessity of public resistance and also admire the participation of women from lower social locations. Demand for being treated as being equal by marginalized or weaker sections is assumed as a challenge to hegemonic heritage of the dominant civilization. In order to tackle the challenge, present regime spreading xenophobic feelings among social and civil society whereas state should follow the path of mobilization of marginal. In this case the suppressed group left with no option apart from protest (Mukherjee, 2018). Again, very strategically utilizing government dictate institutions (police, media), so, the idea of protest is also stigmatized, as it is evident in the speech by the Indian Prime Minister in parliament session at New Delhi when he used satire for the whole group of dissenters by comparing them with parasites which depend on others for their survival and later become the reason of the destruction of that on which they were depended. Popular farmer protest was tagged as Khalistan movement, protests by university students were charged under sedition law. Nevertheless, in the view of the fact that these protests act as a reminder of Constitutional ethical discourse. If Kannabiran's work helped us locating repression and detention of activists involved in agitational politics under the garb of preventive crisis management, Ujjwal Singh's (1998) work dealt with how associational freedoms exercised through agitational politics, especially the right to strike gets criminalized, in short imprisonment of activists and contend with the image of criminal attached to them. For instance, Ujjwal Singh (1998) asserts that when activists are detained in jail for their political stand, they occupy another status of political prisoners in general, stereotypically notice of prisoners attached to the image of criminals in our society. So those who already have an unprivileged status as women, there is an additional layer of politically inferior status of criminals.

It's interesting to note the entanglement of law with different sets of values and institutions in India as law is twisted by the state to restrict the liberties of people and again civil reformists fought back by making law as a medium. The basic understanding of social movement/ agitational politics is betterment of previous law and reformation of Constitutional value through meaningful critics.

However, the Constitutional idea of agitational movement is blurred; there are no clear provisions which guarantee agitational freedom. Therefore, many times the Supreme Court tries to respond to it through interpretation of fundamental rights. Regarding public meetings and public marches/processions, the Supreme Court put a reminder on fundamental rights to assemble and fundamental right to move anywhere in the country. The Role of the judiciary is to remind the public and the ruling government regarding the moral safeguard of the Constitution. But adding the provisions of extraordinary law as a part of Constitution, a wide spectrum of agitational politics which is much broader than social movement by including spread of information or ideas through publications, meetings, demonstration, theater performances, right to access all the relevant information are illegal under Constitution even Kerala court once declared '*bandh*' as unconstitutional. Recently when the judiciary system became politically influenced, it became incapable of protecting the rights of civil society (Balagopal, 2001). K. Balagopal in his book 'ear to the ground' argues in support of agitational movements that in actual historical context many political practice and judiciary decisions are results of people's struggle rather than the judicial upholding of Constitutional value (Balagopal, 2011)

India is often hailed as one of the largest democracies in the world. There are, however, many dark spots and contradictions pointed out by scholars. Notwithstanding these contested debates, it is important to trace how our statemen valued the culture of dissent and critique from the work of Kannabiran (2021). To create an inclusive governance system that prioritizes the representation of civil society by including the voice of minorities, some legendary figures like B.R. Ambedkar, Abdul Kalam Azad, Jaipal Singh, and M.K. Gandhi built a foundational understanding towards it. Once Dr. Ambedkar had an interesting opinion of the process of election that is, the candidates of the majority community poll a minimum number of its voters from minority communities in their constituencies. It would be seen as a minority exercising a sort of veto on the majority community, we can say that the intention behind the electoral politics is a blanket process of including all. This action in future India protects the rights and interests of minorities. Abdul Kalam carries a critical approach towards the unified rule of law for a diverse population because various ethical, moral, and theological arguments emerge from Indian tradition in which Islam is also a part. Dakshayani Velayudhan claims that the resistance power of untouchables and *Dalits* made the Constitution what it is. Mahatma Gandhi clearly held the belief that affection attached to a government would lead to harm to India and a system of the country should be neutral (Kannabiran, 2021). Thus,

Gandhi too valued the tradition of “dissent”. Of course, irrespective of religion, ethnicity and minority status of citizens, democratic process of our country is responsible to ensure equal participation of all citizens in economic development and civil life. The Constitution believes in the maximum inclusive approach by adopting liberal and democratic principles. But the present regime just burns out all the foundational contributions of our Constitution. The State negated their claim for justice and forced them to survive mutely in marginalized social locations (Wankhede, 2018). Responsibilities lie with the government in power to provide safeguard to the Constitution and reflect Constitutional morality in their welfare policies as it is not just the government but Constitutional government, so its function and authority is limited by the Constitution. But as per Tarunabh Khaitan's opinion, the government is taking deliberate moves to kill the Constitution with a thousand cuts. It means the union government captures the mechanism of executive accountability, such as parliament, election commission, media, civil society, judiciary, etc. Upendra Keshwada, who resigned in 2018, also criticized the government for reducing the role of the union cabinet by eliminating deliberate discussion on specific policies. Certain foundational welfare pillars of the Constitution were directly condemned in these present provisions. Such as the federal nature of the state in which the executive can order the state in a particular direction, freedom of speech, expression, association, and movements have been restricted. In some instances, these activities have been criminalized under section 153(A) of IPC, which penalizes promotion of disharmony between groups. The right to Constitutional remedies is non-functional as the judiciary system is compromised in front of excessive executive power (Narain, 2021).

The legal measures for repressing political opposition existed against a backdrop of laws. Preventive detention act (1950), used against the communists in Telangana, was the first detention law after the Constitution was enforced. The declaration of The Defence of India Act 1962, during the Indo- China war which empowered the Central Government to make rules for civil defense, public safety, public order, etc. During the war with Pakistan in 1965 and 1971, the Unlawful Activities Prevention Act was passed in 1968. Applying many emergency powers under statutory law, i.e., the Defense of India Act, many organizations could be declared illegal, and an individual can be imprisoned for legal trials. After winning the 1971 general election, the Government led by Indira Gandhi passed the Maintenance of Internal Security Act, the containing provisions which gave a broad application to articles 22(4) and 22(5) of the Constitution. The national Emergency

of 1975 suspended the right of access to court to restore the fundamental freedom of the people under MISA. In 1976 Supreme Court upheld the validity of MISA as amended and refused writs of habeas corpus under article 226 of the Constitution. Further, in 1976 it declared that there was no law to prevent anti-national activities under fundamental rights part III of the Constitution. When a country is going through a very rough economic crisis, massive unemployment, and devaluation of rupees, the Central Government faces a high number of agitations. The government treated these movements as law-and-order problems and employed extraordinary powers and massive use of law enforcement agencies, including the police. Mainly during the emergency (1975 – 1977), mass imprisonment of political opposition was not a surprise; however, bureaucracy was used to target the opposition and societal delinquents, resulting in the overcrowding of jails that affected both ordinary and political prisoners (Ujjwal, 1998, p. 252). As discussed through Ranbir Samaddar's work earlier about the considerable fundamental criteria before treating a person as criminal and importance of collecting proofs and reasons, on a related note, Batra (2008) explained how the Supreme Court attempted many instances to put a check on the verdict of high court as it frequently gets affected by emotions, social order, general condition and indignation whereas the real term of justice is supposed to be gained through reason and evidence. The Judicial system itself counters the previous idea of 'justice is needed' by not allotting equal judgment in all cases. In some instances, the high court reduced the sentence when the culprit belongs to rural area, scheduled caste or illiterate. Even though we can't say that social class location has nothing to do with cases as in some instances police men are released on the case of custodial death by giving 1 lakh compensation. However, the ethical idea of granting justice is compromised which supposedly relied on evidence and proofs and not more or less influenced by the general condition of social order (Batra, 2008). This non-linear and inconsistent fashion of the justice system in India needs to be underlined in the next chapter, while analyzing the different judgments of the high court in the case of Safoora Zargar and Disha Ravi while both are convicted under the same charges.

The criminal justice system in India, supported by Article 46 of the Indian Constitution, developed to act as a safety protocol for the people of lower strata, i.e., *Dalit and Adivasis*, and notable to safeguard the rights of the socially excluded group as they are always denied access to political power and resources. Considering the unequal structure of Indian society, the Criminal justice system advised specific remedial measures that aim to protect the socially excluded sections of

society and integrate them into the mainstream through specific measures. So, if the criminal justice system (CJS) did not work for which it was introduced, then the number of criminals from the unprivileged group will increase. Social boycotts, denial of access to common property, denial of employment rights was supposed to be criminalized through enacted law which was completely ignored by SC/ST POA Act 1989 which was coming under their civil rights. Sometimes, due to uneven power structures the people from lower socio-economic backgrounds are overburdened by the legal and political rules. Simultaneously, protective laws (such as SC/ST POA ACT 1989) unsympathetically act against minority women, whose dependency situation is taken advantage of by dominant castes. For example, upper caste people often accuse that SC/ST (POT) Act 1989 are misused by *Dalit and Adivasi* women without collecting adequate information and grasping the structural inequality. To put it straight, since subaltern women depend on higher caste for their livelihood, by taking the advantage of poverty/ economic dependency of *Dalit and Adivasi* women, and by using socio- political power, dominant caste very often force them to misuse the Act in order to take revenge of their rivalry dominant caste group. Therefore, the inefficiency of our criminal system fortifies the stereotypes that subalterns don't deserve protection as they are criminal by nature. The drift to catch here is civil and political rights, that is to demand for the rights which was unfulfilled, are interlinked, and this notice has been clearly ignored (Mangubhai & Irudayam S. J, 2008, pp. 147). The Criminal justice system is constituted in order to provide an equal premise irrespective of caste and ethnicity, although in practice, it is seen as the opposite because it is influenced by patriarchal and casteist ideologies. All sorts of rights of subaltern women are violated and their identity as both individual and group has been compromised. Being a woman is a dominant factor of risk in itself and when socially exclude group like *Dalit and Adivasi* attached to it vulnerability of violence has increased and voice and freedom has been suppressed.

Parallel to Kannabiran, Wankhede (2021), explained why marginalized groups resort to agitational politics in a concerted manner by asserting Constitutional morality. He argued that since marginalized groups' -like *Dalits*, Muslims and *Adivasis*- livelihoods are increasingly dependent on common property resources, capitalist developmental policy of the Indian state on the other hand actually uses/promotes these common property resources for private profit without adequate compensation. However, Wankhede painstakingly writes that the Indian state instead of addressing these issues, represses their rights or inflicts violence through extrajudicial measures or police

force. We can insist on the state through its governance proceedings to generate violence atmosphere through formulating anti-public policy which ultimately becomes the reason behind triggering people's movement to be violent. In Chhattisgarh when the state became in a denial mood to admit injustice towards *Adivasi* inhabitants gave rise to regressive protest by local *Adivasi*. State through industrial policy allowed private investment to exploit the mineral which additionally approved permitting unsustainable use of other natural resources like river, forest whereas these *adivasis* dominated areas were safeguarded by Constitutional morality. Therefore, economic integrity and rights over land of marginalized local people has been intentionally compromised in the name of state developmental project strategy. Aggressive hesitation by the minority class allows the state to counter attack in order to protect the developmental scheme in broad welfare interest. This argument of Wankhede is relevant while situating Kaur's arrest as discussed in the next chapter. The State spends a major portion of taxpayer money on self-defense by building police stations, buying weapons and helicopters. In Dantewada district there are 26 primary health centers and 26 high schools whereas 37 police stations which add on with 33 new ones having been approved (Grover, 2018, p. 211). 'Crime against state act' allows police to arrest a large number of subordinated sections without proper evidence and legal security. In almost all central and in district jails more than 50% and 72% respectively are under trial prisoners (Grover, 2018,). K. Balagopal (2011) highlighted that the developmental policies were made by the state with destructive logic that dishonoured citizens' rights to life, liberty and livelihood. He tries to focus on how political forms, social bias and cultural pretensions repeatedly move forward undemocratic injustice against civil dignity and resistance by poor people. He also argues that the role of state is not always cynical, it is shaped by the responses of the struggle of political groups and ideological battle is also required regarding rules and laws irrespective of its usefulness.

Randhir Singh (1992) provided a brief narration of the state lampoon of political agitators. When political and national reside together they may serve the essential political aspiration as anti-national. In the later stage another category appears where the Indian republic is considered as a threat to the nation's security. When armed actions, protests, resistance and struggle in different parts of the country, gets depoliticized by the government which automatically falls on the opposite of nonviolence and rule of law. Political prison-hood is constructed in the process of resistance against state power. Political prisoners are used to denote a person who has been deprived of his/her liberty by the state for offenses perceived to be political in nature. Those who contest state

authority, once detained or convicted, often demand and struggle for recognition and their treatment is not the same as like criminals in principle (Singh, 1998, p. 29) Their ‘political consciousness’ and ‘conviction’ distinguish between political prisoners and ordinary prisoners. It creates a balance of social force which defines politics as depending on the nature of democratic values. The idea of ‘the docile body’ of Foucault again was highlighted by Ujjwal Singh (1998) along with another point of Foucault who argued that the rebels are treated by the state as criminals in order to discredit them. In the process of treating them as equivalently as criminals instead of human beings, rights of individuals also get ignored. Management of prisoners should make it mandatory to respect the basic rights and needs of prisoners. Deepan Sarkar (2022) believes the value of personal liberty will be realized when a person is out of the league to access it. Part III of Indian Constitution secures certain fundamental freedom of people and here the word people used as a wider inclusive form. Article 22 guarantees the right to protection in respect of conviction or offenses. If we follow the rules of the Constitution which is an illusion nowadays, prisoners also can’t be deprived of access to their liberty (Sarkar, 2022). Apart from basic human rights, we can include the arena of right to life under the Indian Constitution as per the results of the humanistic judgement of the Supreme Court which was seen during the post-emergency era. Article 21 of Indian Constitution advocates that “no person shall be deprived of his life and liberty except according to procedure established by law”. Personal liberty of convicts is an essential requirement and can be withdrawn only in accordance with the procedure established by law. So, deprivation of personal liberty must be founded on the most serious consideration relevant to the welfare objectives of the society specified in the Constitution. In the circumstances of the case, the court held that subject to certain safeguards, the appellants were entitled to be released on bail. In the landmark judgement *D. K. Basu vs State of West Bengal*, the Supreme Court held that custodial torture is a naked violation of human rights, dignity and degradation, which destroys to a very large extent the individual personality. Assault of human dignity pushes us backward in the step of humanity. Justice Krishna Iyer after noticing that wide armed power has been used by police against those who fall under custodial jurisdiction declared that “human dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials”. The Court gave detailed instructions to the concerned authorities for providing security and safety in police lock up and particularly to women suspects (Halder and Jaisankar, 2007).

If we move towards the treatment of women political prisoners, we have to pay attention to other subdivisions like- political prisoners and ordinary prisoners, male political prisoners and female, culturally elite political women prisoners and minorities. Political prisoners are not allowed to talk with other prisoners as there is a belief that they can influence others and start agitation within the prison itself. If political prisoners are segregated in jail from other inmates, the situation of women political prisoners is further complicated. Women political convicts seem like ‘a jail within a jail’, the female ward situated at the extreme corner and including the warden on duty was locked up from outside (Ray, 2020). Women inmates are only allowed to the corridor when in the evening male prisoners are kept inside. If the status of prisoners is stigmatized, then the status of female prisoners is more stigmatized so much so that as they were never accepted back in society even if they are not guilty. Even if her crime is not proved, she was never accepted back into society. Since women are not accepted in prisons which are considered masculine in nature, women who dare to venture into the masculine hub of criminality are seen as deserving to be treated brutally (Rajan 2003, Sharma, 2019). As so much stigma and shame are associated with sexual violence, it becomes a weapon for those who will not cooperate with the ideas of state. Adding to the point, Kalpana Kannabiran (2008)’s analysis of state imagining women as a sexual body and constructive state violence towards politically conscious women by institutional body of police system is crucial to iterate. In many instances state utilized this fear to strengthen its patriarchal structure/ nature by using violence against women and in frequent cases violence against minority women.

Apart from prison authority, the role of police (a serving body of state) is contradictory when it concerns subaltern women’s accessibility to justice. There are many cases wherein police authorities abuse their civil power regarding crucial evidence in order to save the real culprit, most often belonging to the dominant section. Foisting false cases, using certain manipulation methods, not using appropriate charges, favoring dominant caste power, forcing complaints to not file cases etc. are ways through which police block the path of justice to women of minority section (Irudyam, 2008). The Women’s section has been deliberately and painfully left out from mainstream activities despite their involvement turning them as the most brutal target. For example- various women agitations have been taking place in northeast India and the Meira Paibi movement takes a bold stand against the armed forces. The upshot of the action was many women has been raped in front of villagers, even pregnant women were not been excluded. One of the members of Meira Paibi movement Thangjam Manorama, was tortured and raped before she has

been shot several times by Paramilitary force of India. These events were clear evidence of arbitrary identity of armed forces power. The Manorama case raised questions on certain rules or limitations set on the investigation process of CrPF. As per CrPC section 100 - i) Armed forces can search a person in the presence of two other persons and submit in writing what has been seized. ii) Assam police manual part also deals with women who were interrogated or question witness, they were not to be summoned to police station, iii) CrPC section 160(1) contain a woman can only be questioned at her residence (Banerjee, 2008). Addressing the challenges owing to the special power given to armed forces in North-East and *Adivasi* pockets, Grover (2018) argues that legal service authority needs to serve two necessary aims, that is to provide legal representation to the indigent and the marginalized and secondly spread legal literacy. Law and court proceedings are unfamiliar to the group of marginalized. In that case increasing legal literacy is important. Article -39 A of DPSP of the Constitution of India makes it incumbent on the state to provide free legal aid to ensure that economic or other disabilities can't be the reason for accessing equal opportunity to secure justice). Anupama Koushik and Kavita Sharma (2009) conducted a field visit of 150 women prisoners in Jaipur central jail. Out of 150 respondents 144 had never heard about their human rights inside the prison. Most of the women prisoners are illiterate and poor enough to bear the expenses of court and often become the victim of sexual abuse. They believe that systematic ill treatment is normal which is common at home, in society and in prison also. Again, Constitutional and legislative provision of law has failed to provide constructive protection to minority section people, because social segregation of caste, class, gender became a deep-rooted mind set, as a result traditional caste approach/ law given more priority in comparison to modern judiciary law making system. Indian state law against the atrocity of SC/ST has no worth prevailing as it is not capable enough to provide the security for which it's enacted. 70% of crime cases against minority groups end with acquittals or discharge, which means minorities are the easy target for most of the offenses by police authority.

Unlike Chandhoke (2021) and Kumar (2022) who make a link between democracy and Constitutionalism (covered in the previous chapter), Sanjay Palshikar (2008) brings out a minor contrast between democracy and Constitutionalism. Democracy is majority rule whereas Constitutionalism is a counter majoritarian device as it ensures procedural curbs on government. Further democracy can be voluntaristic or deliberative as per the presence or absence of will, will of the political agent to convert people's will into decisions. Even so both Constitutionalism and

democracy supplement to the idea of protecting human dignity nevertheless the real essence of the pro-people intention is not delivered clearly or through various mechanisms. On a different note, Rajiv Bhargav (2008) argues that within the Constitution, the conceptual understanding of rights, citizenship, minority and democracy is blurred or missing. Certain ambiguity existed in the core plan of the Constitution. Fundamental state principles were accepted as a major concern over individual rights so, general welfare policy paid more importance than individual rights. Secondly, efforts are invested to make everyone believe that holding absolute power never allows the person to become an arbitering leader who will do whatever he likes. He was obligated towards instruction of instruments that are Directive Principles of State Policy as implied by liberal democracy. But the crisis arises when scope of these positive actions (Directive Principles of State Policy) is left to be decided by the state, so right there the compulsory provision turns into optional. Further in the name of developmental welfare policies, Directive principles got ignored. The State provides an argument that individual rights without sustainable welfare are unconstitutional. The Constitution upholds moral and ethical values but fails to engage with critical interpretation of these values. Constitution being a moral document committed to certain principles like justice, equality, fraternity and dignity and claim to be inclusive whereas this philosophy is elitist and insufficiently insensitive to rural India. The Constitution is a social object so a sense of natural objectivity is missing, in that case, it's needed to rectify misinterpretation of moral values through debates. As it became an integral part of our political arena there are so many necessary doubts pop up among various provisions of the Constitution. For instance, a broad view of political discourse dominated by community rights where priority will pay to the whole group interest. So, it automatically sidelines the individualistic dignity and rights and at the same time Indian Constitution prioritized individualist morality through fundamental rights in comparison to group rights.

The Indian state failed to be a welfare state as its institutional framework operates through the power of dominant caste-class ideology. The criminal justice system is supposed to operate in a democratic way where all citizens can expand their right to freedom. Gender and ethnicity issue which is above the parameter of the right of laws should be emphasized. As a result, judicial system support excluded subaltern women to enjoy their rights. Broadly speaking, the state by serving its duty towards subaltern women, like providing appropriate social conditions, security, education, will include them in the acceptable framework of citizenship. Gender friendly law-making system

require to act in a certain way victim or victim survivor become their partner in reinforcing social environment of justice rather than seeing them as dependent on judiciary for seeking justice. The process of law making and law enacting the system of state used to perform in a very superficial way, actually the entrust should be laid on law implementation and meets the expectation of subaltern people (Irudayam, 2008, p. 161).

III

Political prisoners in neoliberal times:

Like Wankhede, Grover (2022) noted that currently, the population of Indian prison is predominated by marginalized, poor and Muslims, so reformative changes in the prison system were negated as they are not worthy of time, energy, and resources that supplement their betterment. A 2012 study revealed that Muslims counted 21 percent of the prison population as they constitute 14 percent of India's population. In similar cases with Scheduled Caste and Scheduled Tribes, the population figure is 16.2% and 8.2% while their number in prison population is (22.4%) and (13.3%), respectively (Lal, 2022). The police force has institutional biasness against the Muslim community as it is evident from the case of Hashimpura massacre in 1987 (ibid: 55). Connecting the point of Indian police's prejudice against Muslims, Narrain (2021) added more groups who are ghettoized by the police under the right-wing regime. The idea of patriotism has been narrowed down to Hindutva ideology. To prove their patriotism, people have been propagandized to protect Hindutva from threats like Muslims, Christians, and the communist community. These minority groups are treated as outsiders so they are not worthy of accessing rights equally. This stage creates a resemblance with the Nazi regime, how Jews have been outcasts. By putting a step ahead of this totalitarian regime, trying to include Hindutva ideology in Indian law through CAA is absolutely a violation of the Constitution. India's present scenario indicates attempting to control the freedom of speech and expression through arbitrary arrests, illegal demolition, and an established climate of fear that shapes the thought process of civil society that acts against government or its policies will be torturous. He compares the present right wing state scenario with the law-and-order system during the emergency in 1975 while simultaneously underlining significant differences that the former is an undeclared and totalitarian regime

intending to bring major transformation while the latter was fascists, authoritarian and had a short-term agenda.

India as a nation- state has been impacted by transnational phenomena such as global capitalism as it challenges the heart idea of a nation-state: territory and sovereignty. The movement of people, goods, news, and money image reduces the state's monopoly over territory. The state's sovereignty is also challenged by world trade organizations (quasi-state-like) that regulate the population at the super-national level (Sharma and Gupta, 2006). While noting changing nature of the state under neo-liberation which includes Indian state as well, Sharma and Gupta (2006) discussed three implications as a result of economic liberalization, one, withdrawal of the state from social welfare responsibility which badly affected the subaltern sections, second, positive and unscripted and emancipatory side of economic liberalization i.e., transnational activism, which holds relevance as far as justice for the political prisoners are concerned. Third, the state's sovereignty is challenged by movement of news, people, money, etc. Returning to the second implication, transnational activism itself is related to resisting global forces/certain economic restructuring. "Resistance to different aspects of globalization is itself organized in ways that challenge and go beyond nation-states. They draw from Margaret Keck and Kathryn Sikkink (1998)'s work who used the term "transnational networks" to describe loose transborder affiliations of activist groups organized around specific "local" issues like the environment and violence against women (which nevertheless have trans local appeal and organizational potential). These networks transcend the boundaries of nation-states even though they are composed of groups that are located within them. They work by bringing transnational pressure to bear upon individual nation-states and on international institutions such as the WTO" (Sharma and Gupta, 2006, p. 6). Rajan (2003) also echoes the point that the Indian state is made accountable through a "development index" via the UN in which status of women occupy a central place. She writes that "the status of women index has moved to a different context and gained a different significance and meaning today. If in the early years the Indian state had deployed its role on behalf of women primarily to initiate "social reforms" in continuation of the colonial state's perceived mission of establishing civilizational modernity, or otherwise to rescue, reclaim, and rehabilitate them in the fervor of a nationalist identity politics, it is now called on to attend to the status of women as a matter of its accountability as a state, in the internationalist arena. The new international standards and indices of women's

welfare and status sponsored by the United Nations and its agencies, which reflect each nation-state's priorities in the health, welfare, development, enforcement of legal rights, and protection of women and thereby indicate its unequivocal responsibilities in these areas, have become influential "universal" indicators of "human development" levels" (Rajan, 2003, p. 3). Gupta and Sharma (2012) and Rajan's (2003) argument- economic liberalization and influence of transnational network towards the release of political prisoners and - can be applied. As was seen in the case of three farm laws which introduced foreign direct investment for which farmers feared that their sovereignty would be lost by the entry of multinational corporations. Interestingly, many transnational entities too supported the farmer's protest as well as diasporic Indians. So international organization potentially impacted the role of the state.

If Gupta and Sharma (2006) pointed out the power of transnational governance, at the same time, they clarify that nation-states retain their power by referring to the work of Saskia Sassen (1998). Territory and sovereignty of the state is regulated by political power and there is a transnational mechanism through which state political power is modulated, so indirectly internal laws will be irrelevant as the state is managed by non- state mechanisms. "Transnational processes have clearly reshaped the presumed association between nation-states, sovereignty, and territoriality. Saskia Sassen uses the term "unbundling of sovereignty" to indicate the altered relationship between the territory of a nation-state and sovereignty in a situation where political power and regulatory mechanisms are being reorganized at a transnational level. Sovereignty, in other words, can no longer be seen as the sole purview or "right" of the modern state but is, instead, partially disentangled from the nation-state and mapped onto supranational and nongovernmental organizations. As Sassen contends, however, just because some of the regulatory mechanisms that used to be managed by states are now shifting to non-state, supranational actors, it would be wrong to assume that national laws and conventional forms of regulation based in nation-states are now irrelevant. Transnational economic processes and political reorganization may have altered the nature of and the presumed link between sovereignty and territoriality; however, that does not necessarily imply that the nation-state, as a conceptual framework and a material reality, is passe" (Sharma and Gupta, 2006, p. 7).

In this connection, Gupta and Sharma (2012)'s discusses the violence against the poor and marginalized by the state. Akhil Gupta suggests that state violence is systemic and structural. Even

if state officials were 'caring' and non-violent, the bureaucratic state in India does not allow prevention of suffering and death, mostly of the poor and marginalized (Gupta, 2012).

A discussion regarding civil society is necessary because it serves as a pressure group if it operates independently. Technically, civil society consists of a politically conscious citizenry and strong independent media and union and play an integral role in deepening democracy by raising the issue of social justice, sustainable development, human rights, etc. (Sengupta 2010). Demand from civil society many times brings changes or stimulate law formation in favor of a wider section of masses. Outrage of a particular section of people and success of their campaigns bring constructive and affirmative change in the law-making system and also challenge the core ideology of autocratic governance. By using power and control, the state not just separates itself from civil society but also sets particular disciplines for its population. Here the things needed to notice is how the state can assume to stand at the top of the hierarchy and regulate other mechanisms that deal with social relations (Gupta and Sharma, 2006). Civil society's collective approach got attached to social division and social positioning such as gender, class, sexuality. The hegemonic group's participation or response is assumed to be the whole civil society's response, whereas ethnic and racial minorities are even excluded from the concerning citizenship criteria. Rights of citizenship are mostly enjoyed by the state of those who spare money and time to the community, so in that context, rights of the poor are attached to passive citizenship whose rights can be ignored, and social resistance needs to be taken place to make state notice the rights of a subordinate part of the civil society. Again, this argument leads to another point that the state regulates the active engagement of members of civil society, and the positioning of individuals and groups are varied from one state to another (Davis, 1997).

State and civil society somehow build in together as both civil and political rights coincide in the public place with the guarantee of the Constitution, which is further enforced by the state. Dimension of civil society is regulated and restricted by both democratic and autocratic states and it is mostly done to control the present political scenario. Dealing with civil society might need to access two aspects of it, one is inputs of civil society through NGOs and CSOs (civil society organization) and second is involvement of the public sphere in the exchange of information of different aspects of society. In reality, expecting a neutral civil society has become a myth. NGOs mostly serve in consistency to their source of funding, and actions of NGOs become a denial to

work on real objectives of the society (Dasgupta, 2022). Social movement, which we can understand as civil society's voice, is known to be somehow manipulated by state interests. On the other side, civil society or social movements also depend on the politically powered party to negotiate certain objectives. The importance of civil rights has been depoliticized by the state which is actually the ongoing structure of power politics. Nowadays there are new restrictions that have been imposed on the right to assemble peacefully which was evident in police atrocity towards the Jamia Millia Islamia university student protestors against CAA and NRC with the exception of targeting human rights defenders and journalists that actually, the attack is on right to freedom and expression. The India against corruption movement put forward an idea that participation in civil society in the process of law making is also appreciated. Therefore, providing a space for civil society activists in the law-making process will be more prone to common people's interests. Through various ways the government tries to suppress the voice of civil society which has critical opinions towards government policy or law-making units. For example, cancellation of foreign funds, non-renewal of organizations, not allowing them to travel abroad and keeping a very close eye on activities of civil society activists. The recent case of the Pegasus security threat which was used by the government of India to put close surveillance on opposition leaders, journalists, reporters etc. is one such act (Dasgupta, 2022).

Summary

This chapter provided the historical trajectory of the prison system in India, Constitutionalism and relevance of agitational politics in democratic state and civil society and engaged with diverse scholarly views. For the better understating, the chapter brought out a kind of comparison between the episodes from pre independence era to neoliberal period in relation to agitational politics. In this connection, the chapter clearly spelt out the common pattern seen in three time periods. First, people who were indulged in agitational politics were persecuted by the state. Thus, in the post-Independence period, we saw communists were subjected to preventive detention by tagging them as “anti-national” and likewise, Meira-paibi groups in Assam who protested against AFSPA were criminalized. Second, even though protestors were criminalized by the state functionaries, the latter further exploited the social location of the dissenters and nakedly abused the human rights of political prisoners from minority backgrounds.

While explicating the fundamental shifts/departure from post-colonial period to neo-liberal period, it discussed that while civil society was not weakened and polarized in the planned era, with the crushing of trade-union and neo-liberalism benefitting the middle and upper-castes, the latter becomes indifferent towards vulnerable and marginalized sections, which in-turn subdues the idea of demanding accountability from the state. Further, ascendancy of religious fundamentalism empties fraternity feelings and secularism. Minority groups like Muslims, Christians, and the communist community are treated as outsiders, so they are not worthy of accessing rights equally under the right-wing regime. Nevertheless, the entry of transnationalism complicates the scene. In other-words, if at one level privatization and transnational money flow through FDI implies exploitation of subaltern groups, nevertheless, agitational politics in India receives solidarity from transnational network. Another shift was that the judiciary during the post-emergency period performed an active role in adhering to the basic principles of the Constitution particularly rejecting MISA Act, recognizing the right to agitate through Article 21, etc., however, in current times, the stand of judiciary is questionable. Role of judiciary and executive system specially in a democratic country is to serve the people by safeguarding the principles of Constitution but it's essential enough to mention the contradiction with in it, as these loopholes can blur the core value of Constitution. State will attach to the historical, political and cultural legacy but the role of state takes a diversion with the new economic flow and state started enacting new policies and democratic practices in support of economic development instead of public development. Therefore, it's important to remember Indian history which is not tied with capitalist-oriented actions (Balagopal, 2001). Besides this, a major argument underpinned here includes the democratic values of agitational politics and explained how it is linked with deliberative Constitutionalism along with why marginalized communities and minorities are involved in agitational politics.

Chapter-III: Entanglement of Minority women in Agitational Politics: A Critical Reading of Their Travesty with the law

This chapter aims to discern the predicaments of women political actors from minority communities³ through the case study of Safoora Zargar and Nodeep Kaur. While encapsulating their struggle and harassment, an attempt has been made here to discuss their concerns from multiple realms, ranging from their encounter with judiciary, civil society (comprising media, human rights organizations and citizens), law enforcement agencies like police, medical organizations and jail authorities to legislature or parliamentarians. As stated in the methodology, this study analyzes their painful experiences through their testimonies and public documents. Popular media accounts were also equally evaluated (besides media platforms known for maintaining their ethical standards) in order to note the manner in which it vilifies human rights organizations/civil liberty groups by intoxicating religious fundamentalism unleashed by the present dispensation. As alarmed by Gupta, (in the previous chapter) neo-liberalism too divides the civil society and affluent sections become apathetic to the sufferings of the masses, when corporate policies aid dominant sections to concentrate wealth while jeopardizing the subordinated groups.

Deliberative and Transformative Constitutionalism

According to Constitutional morality, each organ of the state has separate and independent powers, in the sense that the judiciary is supposed to interpret the law, adjudicate and protect the Fundamental Rights of each and every citizen while upholding Constitutional morality i.e., equality, fraternity, justice and freedom. Whereas the legislature's role is to make law through deliberation and ensure its execution by the bureaucracy. Notably, the task of parliament and executives is to do good governance, attainment of independent socio-economic rights and distributive justice. And bureaucracy's role is to enforce the law. However, judiciary is not accountable to legislature and executive but to people and thereby Constitution as our preamble goes with "We the people of India" (Babu 2022, Bhatia 2019 and Chelameswar 2021)⁴. In crux,

³ We use Arvind Narrain's idea of "minority" as explained in the first chapter.

⁴Chelameswar, Jasti (2022). Constitutional Morality. Online Public lecture delivered in Citizen's Forum India, on August 14, 2021.

the Supreme Court's role is deemed as "Constitutional umpire (Bhatia 2022)." Media, being the fourth organ of the state, its role is to make the state accountable and democratic by taking the side of minorities and marginalized and highlighting the injustices. However, in practice these neat divisions are tweaked and often the media instead of speaking the truth transmit conservative accounts and adopt the language of the regime. Law enforcement agencies like police and medical organizations tweak the law according to the whims of the government. Though judiciary have performed a proactive role after 1970s -- contrast to the conservative strand in pre1970s where it aligned with the landed and propertied interests to thwart the reform agenda, particularly land reform initiative of the legislature -- by protecting the spirit of the Constitution, a reversal trend i.e., judicial evasion- is noticed in recent times (Bhusan,2022, Bhatia 2019, 2022). Thus, the more one analyzes the recorded documents, the more it becomes clear that in the whole travesty, legality takes a backseat and triumphs over illegality by punishing the dissenter and appropriating the multiple identities of the political actors. Even if political actors get bail, the point is that they are already punished in their encounters with the judicial system, jail, media trial, and police, which is an irreparable loss. Given this broader canvas, this chapter has been organized into three sections. The first section provides a description of the social location of Zargar and Kaur, their stint in politics, and the details of the criminal charges. Here the stress is to make connections between their participation in social movements and their social positioning to invoke the point of deliberative⁵ and transformative Constitutionalism⁶. The second section outlines their experience

⁵Condorcet and Rousseau while speaking about civic state which is defined through Constitutionalism argue that laws should be general and in accordance with or expression of "general/collective will" and thus it is inviolable, indivisible and infallible. So, in a civic state, laws cannot be less general in the sense that it cannot benefit only the few. If it benefits few, then it creates segmental division. From this standpoint, the citizenship amendment act- is less general as it alienates the interest of the Muslims. Similarly, the farm laws were less-general as it is believed that corporate giants would benefit majorly through commercialization of agriculture without a provision of minimum support price for the farmers. Condorcet made another point that Constitutionalism allows deliberation and discussion meaning, laws should be formulated after consultation and discussion and he categorically emphasizes the discussion and deliberation should take place with not just experts and intellectuals but also with the direct stakeholders, meaning people whose lives are intended to be affected by the laws and they have every right to oppose the law, if it is against their interest. For details see Zeitlin (1969) and Scott (2009).

⁶The "Transformative"- a conceptual framework associated with Constitutionalism magnificent- (Roy 2022) and Gautam Bhatia (2019) pronounced transformative Constitutionalism in Indian context by evoking the strand of Justice Vivian Bose made in 1956 and 1964 and Dr. Ambedkar. Justice Bose in 1964 while framed his argument regarding Indian Constitutionalism stated that the Indian Constitution has blotted out arbitrary and despotic power in territories of India and over its citizens and is grounded on the sovereign will of the people with no class, caste, race, creed, no distinction and no reservation. For Bhatia, the Indian Constitution is transformative in two senses. Firstly, the Indian

of living in prison without trial from their standpoint and the kind of narratives provided by the police and prison system to the court and broader society in their defense and maps its disjunction. Weber's concept of "social status" is recapitulated to discuss the point of "dehumanization of minorities". The third section comprehends the main argument while linking with dehumanization of political prisoners from minority background.

I

Social Background of Political Prisoners from minority community

It is commonly argued that our culture stigmatizes women when they try to break cultural and political boundaries (Ray 2016). In India, we address women as mothers and sisters and define them through community and religion rather than treating them as independent individual citizens (Thapan, 1997). Their presence is always appreciated when they only perform and comply with the assigned social role and norms, but violating standards invites threat (Chakravarthy, 2018). Despite conferring second-grade citizenship status to Indian women, history is a testament that they are victims of violence in the war of men (Davis, 1997). Motherhood status is celebrated worldwide, and women are the threshold of motherhood. The imprisonment of a pregnant 27 years old Muslim woman is a testimony of “stratified familialism”⁷ that not all motherhood is equal in the eyes of the state and society. In this case, the hypocrisy of officials creates a boundary around motherhood and politicizes motherhood as it is a reward for obedience and a punishment for deviants. Around the same time when Zargar's bail plea was rejected, a pregnant elephant died a torturous death standing on the river. No doubt, this issue has become politicized, and people all over India, including Bollywood celebrities, campaigned against the cruelty of people. But when it came to the refusal of bail of a pregnant woman from the minority community, the civil society-maintained silence, signals disunity in civil society. At a time when the state's economy is more

Constitution transformed the legal relation between the individual and state when it changed the subject of colonial regime- Government of India Act, 1935- into “citizens of republic” via democratic logic of popular sovereignty, public participation and limited government. Secondly, Indian Constitution sought a thorough going reconstruction of state and society itself, thus it aimed to dislodge feudal society and provided group rights through protective discrimination. However, Bhatia contended that barring a few occasions, in the judicial history of India we see conservative and continuity stand rather than the transformative. Babu (2022) too added in this context by specifying the provisions of article 142 which empowers the higher courts to intervene against arbitrary law making.

⁷ Extending the term used by Rajni Palriwala and N. Neetha (2011) where they discussed the differences in child care practices of upper-caste and bourgeois households and subaltern households in terms of assigning the “care surplus” and “care-deficiency” respectively. We note further the indifference and uncaring attitude faced by women from society and state, when they make entry into agitational politics.

oriented towards money making and disregards the welfare of people and redistributive actions, the worthiness of the elite section rises up and the poor, who are mostly culturally marginalized get side-lined. Through this neoliberal process civil society got divided. Therefore, we witness that elite people rarely remark about the issues like state violence and discriminatory approach towards minority group as if people die due to natural calamities (Gupta, 2020).

Previous chapter underscored that the post-colonial state in the name of threat to the state, went for preventive detention (Kannabiran 2008 and Ramnath 2022) and social identity of the agitators too brought in to support the charge of “anti-national” (Roy 2020; Narrain, 2021). So, it is worthwhile to detail the social context of Zargar. Safoora Zargar, a student of Jamia Millia Islamia, was continuing her M.Phil. Program from the Sociology department. She is originally from Kishtwar, Kashmir, but she has been living in Delhi since childhood. So, the Kashmiri accent in her talk is not easily visible. Despite that, she was stigmatized and derided as Pakistani in her school. Later, when she was again in jail due to her political involvement, she was disrobed as Pakistani (Wikimedia, 2022). These illustrations attest to the critique made by Ray (2020) that a Muslim woman in India cannot be simply addressed an Indian Muslim Woman but instead reduced to either as Indian woman or Muslim woman despite having long history of multi-culturalism. But she always questioned this outsider treatment and claimed herself as a Delhiite⁸. She worked under the media coordination committee against CAA and NRC, and in 2020 she led the movement to the forefront. Even if our Constitution provides natural citizenship to everyone irrespective of religion, if he/she wishes to be a citizen, the amendment made Muslims feel abandoned and excluded from the idea of national citizenship. It emanated owing to the CAA which made religion

⁸Although Safoora Zargar’s dissent against state policies and action has come to limelight through Anti-CAA and NRC protest, nevertheless, she has been an active critic of state violence. For example, she forayed into protest against the murder of Gauri Lankesh in 2017, followed by Kathua rape case in 2018, when she was doing her post-graduation in Jamia Millia Islamia. Gauri Lankesh was a journalist who was killed by right wing forces as she was disseminating true picture (of malicious onslaught of Brahminical and right-wing combine campaign) and critical knowledge to the wider public through local language newspaper in Karnataka. In the latter case a girl child from minority community was raped by the priest of the temple (citizens for justice and peace 2022, thediamonddrives 2020). Feminist campaign (where Zargar was associated) emanated due to the fact that even if the local police have already made the investigation, BJP legislature not only supported the accused but also tried to change the narrative by arguing that this case is a riot between Hindu and Muslim community and CBI should investigate the matter. Another contention initially was that Kathua’s family alleged that the local police had done very little to trace her (Bukhari 2018).

a consideration while giving fast-track citizenship to non-Muslims to flee to India to escape persecution while simultaneously making registration of citizens more difficult for Muslims and Muslim immigrants (Roy, 2022; Edward and Ford, 2021). This triggered agitation by Indian citizens and civil society organizations in many states in December 2019. The campaign against the CAA spearheaded by women for the first time not just showed the hypocritical side of the right-wing regime but also an independent, concerted, well-coordinated, and articulated side of a civil disobedience movement amalgamating embryonically the vision of Gandhi and Ambedkar. Despite the un-favourable situation towards Muslims, Muslim Women at Shaheen Bagh (major protest site in Delhi against CAA)⁹ dragged the attention from various realms towards Islamophobic state violence which mostly targeted Muslim males. Women at Shaheen Bagh through their creative and peaceful protest showed how religious nationalist attitudes of state become the enemy of secularism and multiculturalism. They also highlighted their rhetorical position as wives and mothers through hyper visibility via digital media (Edwards and Ford, 2021)

For the first time in recent history, India was seeing Constitutional provisions and spirit being articulated by people in the street and on every nook and corner, sharply talking back to the regime and reminding the legislature about their Constitutional duties. As Roy (2022) succinctly puts, “Women at Shaheen Bagh used the physical form of Constitution in the anti- CAA protest by reading out the preamble of Constitution and transformed the Constitution into an insurgent text. The ubiquity of the Constitution in the anti-CAA protests transformed the Constitution into an ‘insurgent’ text – recasting the Constitutional order from a fetter on democracy to one of re-iteration of the principles that would be adopted by ‘We, the people’” (Roy, 2022, p. 3). In her view, a range of innovative protests inserted new idioms of Constitutional citizenship through rallies and sit-ins, street art, and theatre, and institutional practices of public action, asking for a conversation around the Constitution and law. These iterations marked a resurgence of citizenship by making the Constitution popular. As people read out the Preamble and held up its copies in sit-ins and rallies and displayed posters with the text of the Preamble inscribed on them, the Constitution became the most visible symbol of popular churning (Roy, 2022, p. 3). Consequently, a fivefold increase could be seen in the sales of the Bare Act of the Constitution. Roy (2022) noted that in “the field of contests around the CAA, the protestors were invoking ‘principles’, going

⁹ In Delhi itself, there were 100 sites where sit-in protest was seen against CAA and NRC since December 2019.

beyond Constitutional conformity to introduce ethics as a consideration for evaluating the law. People were buying physical copies of the Constitution not simply to understand the complexities of executive decisions, but as a text which could be lobbed into the public space as an expression of fraternity and empathy, the core components of Dr. Ambedkar's idea of democratic citizenship" (Roy, 2022, p. 4). The protests around the CAA recalled the Constitutional ethic of the past. Further, Phadke (2022) rightly described that Muslim women participating in a significant number were not just conveying the message that "we are capable of handling our family issues" but also their right to the city. This certainly rattled the Government, and thus punitive action against the women leaders (also Muslim male students) through draconian laws like UAPA were lodged to silence their voice is indicative of the point. However, fixing cases on UAPA was not done instantly because prior to that a well-orchestrated communal riot in northeast Delhi was created as a sign of vendetta war to teach minorities a lesson because of the electoral debacle in Delhi.

It is important to recapitulate the crime of Safoora, for which she was denied bail. Safoora was arrested on April 10 by the special cell with FIR 48/2020 at the Jaffarabad roadblock case. Here the reason for the arrest is dissenting against an Act. Safoora indulged herself in a wider circle of protest, which was going on against the Citizenship Amendment Act in December 2019. Contrary to commonsensical view, there is nothing illegal or criminal about it. Indeed, it's Constitutional since our fundamental rights safeguard individual freedom of expression (Lawani, 2021). Secondly, the Indian Constitution is marked by its deliberative nature, where laws are required to be formulated after due deliberation and discussion (Kannabiran, 2006). It is worth pointing out that the Constitution allows the direct stakeholders of the Act to point out loopholes of law if it contravenes their rights. In this case, being a Muslim, the CAA amendment directly affected them as it alienates them from citizenship rights. However, state machinery like the police did not see Safoora's agitation through protest as Constitutional. Instead, the Delhi police, as a compliant servant of the Government, saw anti-citizenship act protestors as the conspirators of North East Delhi communal violence to despise Narendra Modi's Government. Delhi police invoked the Unlawful Activities Prevention Act (anti-terror law) and arrested 21 people, many of them were students (Lalwani, 2021). Making a false narration about the CAA and NRC protest by limiting its reach to only the Muslim community, the present Government drew it as an issue of a particular community. For all intents and purposes, it is an issue of fundamental Constitutional morality and rights of minorities, and the protest gained momentum by getting solidarity from multiple religious

communities. Student's participation in agitation against CAA was laudable, and it dragged government's radar on certain students like Umar Khalid, Mrs. Zargar, Dewangana Kalitha, Natasha Narewal, Asif Iqbal Tanha, etc., who overly criticized government decisions like the farm bill, labour act, sufferings of migrant workers during the lockdown, illegal detention of activists in Bhima Koregaon, etc. The Delhi riot was just an excuse for cracking down on dissidents. As Lahiri (friend of Umar Khalid) stated that in the month of February itself national convenor of I.T. (a cell of BJP) posted a tweet '*Umar Khalid, already facing sedition charges*' whereas he was arrested in September under sedition charges of UAPA for the involvement in Delhi riot, 2020 (Basak,2022).

Though Safoora was granted bail on April 13, the same day, police added a new case against her, i.e., FIR59/2020, and arrested Safoora under the provision of the Unlawful Activities (Prevention) Act which makes it impossible for the accused to get bail quickly. She was arrested under such law neither as a convict of using violence nor for accumulating arms and dangerous weapons. Instead, as she was just openly critical of CAA law, she was punished for her democratic consciousness.

As Delhi police charged Safoora due to her involvement in communal violence, it is imperative to unfold the details of the event that ensued during the CAA protest but ended up criminalizing the protesters. The brutality of the police on Jamia students created a sphere where the role of the police has been questioned. In literal terms, police attacked students, beat them without any specific reason, and humiliated students who were part of the protest. Those people are enforced to protect the security of the people; they are the ones who misuse their power and become the puppet of the ruling regime. Among those who were beaten up, they were friends of Zargar, and this incident made her feel that this was an atrocity against a particular community. The more she took stand against the violence, the more she was dragged into the picture of terrorists and anti-national. Representing Zargar as terrorists encourages police action against innocent and hostile citizens, and Government was not ready to have a dialogue with protestors other than weaponizing institutions and misusing the power of institutions against the dissidents (Lalwani, 2021). Police's dubious role here and in Kaur's case can be related to Irudayam's (2008) critique of police authorities who abuse their civil power regarding crucial evidence in order to save the real culprit, most often belonging to the dominant section and in this case both dominant sections and

majoritarian state. Besides the Union government's disinclination to have a dialogue with protesting students, it was seen indulging in the polarization of civil society to reduce sympathy for the protestors. As noted, by Arvind Narrain (2021), the union dispensation actively promoted the media and civil society against the agitation in order to scuttle the democratic potentials of these entities and depoliticize the society. Writing about the polarized civil society, Narain (2021) bemoaned that it is wrong to refer to the present regime as fascist and dictatorial. Following Hanah Arendt, he argued that it is a totalitarian regime intending to change the total system, the fabric of India, both state, society and market in a long-term manner. So, he explained how ironically the right-wing-oriented civil society organization has deeply penetrated society which manoeuvres the policies of the Government and indoctrinates the Muslim-phobia in the minds of people, which bypasses the reach of any other civil liberty-oriented groups. This alarming sentence of Narain (2021) explains why civil society and the media did not resist when Zargar was arrested despite being pregnant. Zargar's suffering in the jail without trial resonates with Sinha (2009)'s argument that even pregnant Naxalite women were manhandled in the jail. In the recent You-Tube Video, Safoora Zargar, on the occasion of Gauri Lankesh's 60th birth anniversary, spoke about how she refuses to normalize the Indian state's mistreatment of her and, at present, how she was bullied and attacked on social media by spreading Islamophobic ideas. Nevertheless, it is essential here to draw a connection between Lankesh and Safoora and underline the similar trend for which both of them were subjected to the majoritarian government's persecution. The former, as a journalist-used to write in both English and Kannada (in "Lankesh Patrike")- had been a strong advocate of freedom of press and freedom of expression. She had also raised apprehensions about how people are targeted because of their ideology (Express web desk, 2017). Both her writing (in different media outlets) and activism – against caste system and communalism in politics- stretched from Karnataka to across the whole of India. Lankesh extensively wrote on toxic endogamous practices of the caste system, freedom of press, role of religion in politics (influence of Brahminical Hindutva ideology), hazardous conditions of untouchables and manual scavengers (Dasarathi, 2017; Sethi, 2019). If Lankesh's writings and activism were in consonance with Constitutional ethics (particularly solidifying fraternity with interfaith and inter-caste marriage), it clashed with the majoritarian ideology which seeks to fragment the society by halting inter-religious marriage¹⁰.

¹⁰ In fact, in many states particularly in southern states inter-religious marriage is inter-caste.

When it comes to approaching women's political outrage, they not only create a divergence between women; rather, they attach the notion of community honour to women's bodies. Thus, it became easy to control their actions or distract their voice from the real matter. The term 'motherland' is not simply a dialogue, rather it is a political statement that freezes women (mother) like land as its static objects to be possessed. So, the idea of 'nation as mother' (*Bharat Mata*) can only be protected by its glorious sons, basically male citizens (Ray, 2020). As the land has its precise boundaries, similarly, women also have its limited area, which is secured under the protection of the state and its foot male soldiers. If, for a second, we accept this intention, then again, we have to admit that the state has failed in providing security to its mothers/ women in many cases. The crux of Ray's point is that Muslim women are not included in the scheme of "*Bharat Mata*" to be protected and this facet becomes handy when we see the manner in which Safoora (to be a mother) was incarcerated for 38 days with all pregnancy complications and denied bail. But this inhuman action was justified by Delhi police in a bid to garner support from the majoritarian community. Defending behaviour towards Muslim rights is termed as anathema and our media houses project the community as ghettoized and secluded people who lack patriotism by our media houses. In the recent video, Zargar was critical of the state's projection of Muslim women as victims of *triple talaq* and religion, i.e., wearing *hijab*. She argued that Muslim women defied the right-wing regime's portrayal of victimhood of Muslim women. Thus, now Muslim women came out for themselves and proclaimed that majoritarian state's demonization of the Muslim community is a bigger problem as it also criminalizes the Muslim community and lynching. She takes a strong stand against the state manufacturing of lies (Zargar, 2022). This critical standpoint of Zargar alerts us about the patronizing tone of the regime, quite akin to what Spivak referred to as "epistemic violence" where the voice of the subaltern is absent, and instead, an interlocutor (here the right-wing regime) tries to rescue and speak on behalf of the minority community women.

Introduction of CAA, protest against CAA, and detention of CAA protestors with false charges show how the current dispensation openly attempted to make Muslims unequal citizens, as well as the extent to which it captured the judiciary that the judiciary did not deliberate the legality of CAA despite activists filing petition against it, let alone court handling communal riots that were

orchestrated in March 2020 (Prasad, 2021).¹¹Narain (2021) writes that the striking characteristics of the present authoritarian regime¹² are against the communists (thus against trade unionism and openly harbor capitalist and neoliberal ideology which benefit the corporates at the expense of the farmers, labourers and other proletariats), Muslims and Christians. The detention of Kaur and sexual torture to teach her a lesson is a telling example (elaborated in the next section). Analogous to Zargar, Nodeep Kaur was involved in a peaceful protest which was converted into a violent mob, and Nodeep was punished by the police on behalf of the government for expressing her opinion and participating in the resistance movement. Like Safoora, she also hailed from a minority community and became a threat to the ruling party as she criticized the Farm bill.

Nodeep Kaur, a girl from Punjab, was aspiring to carry forward her higher study at Delhi University but turned into a labour activist. Nodeep belongs to Punjab's Muktsar sahib, and after completing 7th class, she joined a factory as a worker in bulb making factory named FIEM Industries in Kundali (Kaur, 2021). Categorized as a poor and marginalized *Dalit*, circumstances forced her to start working as a factory labourer. Despite that, she was always courageous in fighting for the rights of *Dalits* and against anything that seemed wrong. After leaving her previous telecom company, she joined a mask manufacturing factory in Kundli Industrial area (KIA) in October, 2020. She again shifted to the glass manufacturing site in this area. Gradually she was associated with Mazdoor Adhikar Sangathan, a local labour rights organization, and she was gradually aware of the poor working conditions, lack of implementation of labour laws, and differentiation of payment between men and women (Junaid, 2021). At this juncture, it is vital to see why Kaur joined MAS. Kundli industrial area (Sonipat) settled with more than two lakh workers who belonged to *Dalit*, Muslims, landless, and poor peasants. They are paid less than Rs. 7000 per month even if the Government of Haryana notified Rs. 9.319 as the minimum wage for unskilled labourers. Further, Kundli Industrial Association has a QRT (Quick Response Team) which doesn't allow labourers to hold demonstrations and meetings, and they are not allowed to observe 'May Day' (Anwar, 2021).As written in the previous chapter, unlike the previous regime who too tried to suppress democratic movements, the present regime's scale in crushing trade

¹¹Devika Prasad, 2021. "Communal Violence: Delhi 2020", lecture delivered at Citizens-Forum-India, on 16th October

¹²Arvind Narain (2021) writes that dictatorship implies a ruler-centric regime which the present dispensation is but the present government is not just dictatorial but also authoritarian because its intention is to reconfigure India holistically and usher social transformation.

unionism is a point of departure plus an avowedly pro-corporate stand which can be exemplified through tweaking labour laws in the guise of "make in India and self-reliant India," and the last nail in the coffin was the farmers' bill.

Chakraborty (2021) “sketches out a perspective on the Indian state in the context of two historical policy processes: a) the shifting role of the Indian state from promoting 'responsible trade unionism' to curtailing workers' rights and privileges, on the one hand; and b) extending welfarist entitlements to its citizens, on the other” (Chakraborty, 2021, p. 6). Drawing from Sanyal (2007), he argued that the “nature of post-colonial capitalist development is such that primitive accumulation produces a surplus population that cannot be absorbed within the circuit of capital. In the 18th or 19th century, the capital was not burdened with the responsibility of looking after the redundant population of surplus labour. Many of them would die in wars or famines; some would migrate. But what has profoundly transformed in the intervening period is the political context in which capitalist production takes place in post-colonial countries. The spread of normative notions of democracy and the rights of citizens has made it difficult for the post-colonial state to ignore this redundant surplus population who populate the informal sector either as workers or self-employed” (Chakraborty, 2021, p. 7). The point to be noted here is that these redundant populations are *Adivasis*, migrant labourers, *Dalits*, and Muslims, and they were not formally absorbed in industry nor in the public sector but became part of the informal economy under a contractual system with the absence of the security provision. The welfarist interventions and other supports like microcredit from the Indian state can all be seen as attempts to create a subsistence economy outside the circuit of capital. He argued that the post-colonial state suppressed or weakened trade-unionism by creating proxy unions attached to the ruling political party which diminished its independence. Thus, the rise of the capital mode of economy widens the social division globally as it deals with race, and in India, caste, tribe, and gender differences are evident. Thus, exploitation of labourers not only takes place due to owning or not owning forces of production but-also other social markers like race and ethnicity, as Balibar had reminded. Migrant labourers, *Adivasis*, *Dalits* particularly are used by the capitalistic system to get labour power cheap. In contrast, labour status is also associated with legitimate rights as assigned by the nation, apart from being just a victim of conjugal oppression. But by limiting and restricting the trade union, rights to demand have been snatched away from the workers. The party in power by

accepting neo-liberal policies attempts to abolish trade unionism. In addition to that, workers have been fired from jobs for accessing their rights to defend their rights (Chakraborty, 2021).

In December, 2020, Kaur supported a farmer protest at the Sindhu border as she was convinced that the farm law would also negatively affect marginalized labourers besides farmers. So, with 2000 labourers, she addressed the protest site. She had to pay a heavy price for her active involvement in the protest, and she lost her job at a glass manufacturing site (Dayal, 2021). According to her, the law will negatively impact the working-class if farming land is affected. In order to marketize farming, farm laws are in favor of the privatization of farming, so it automatically leads to the rise of food products and increases the hardship of the working class (Pandey, 2021).

Parallel to the case of Safoora, there are two versions of the event on January 12, when Nodeep was arrested by Sharan Elecmech Private Limited. Nodeep and her family share one perspective, and the other contrary one is held by Kundli police. According to her family, workers conducted a peaceful march; they marched to Sharan Elecmech private Ltd to get the dues that had been pending for a long time. There were many women protesters who participated in the resistance movement, but only Nodeep Kaur got arrested. It makes us wonder why she was solely arrested? Because Nodeep engaged in fighting for civil rights in anti-CAA protests and farmer protests, she was well informed about her rights and demands. Therefore, the Haryana Government intentionally targeted those people who opposed the Union Government policies and rules or the elite section since the former and latter belonged to a similar political organization (Kumar, 2021). Later it was also seen that, in the farmers' protest, solidarity was expressed towards Kashmiri Muslims against article 370 which abrogated its special status and women protesting at Shaheen Bagh against CAA. Interestingly, Rajveer Kaur (sister of Nodeep Kaur) after the release of Nodeep, addressed a press conference and made a demand to release not just protestors against the farm and labour law but also those who were arrested in the aftermath of Delhi riots 2020 (Ara, 2021). These insights and public statements are indicative of the fraternity and Bahujan/horizontal solidarity (between *Dalits*, *Adivasis*, *Muslims* and *Sudras*) which threatens the regime as it intends to fragment the society (Narain 2021) and employs constructive violence (Kannabiran 2006). In fact, after Nodeep Kaur was released on bail, at a press conference she said,

“State repression is on a rise. Whoever – Muslim, Dalit, Adivasi or Sikh – raises their voice, is called names and labelled, booked under stringent laws and jailed. It shows that the state is scared. It is scared of us protesting, of us distributing pamphlets” (Ara, 2021)

Market growth-oriented state policies prefer to recruit women for low wage labour more than utilization of public resources by them. Miserable working conditions of women further imputed with sexual violence and harassment. Lower strata women are manipulated owing to their poverty and social exclusion by the patriarchal state. Here comes the distinction between higher status women and lower status women as their exploitation varies in terms of accruing the benefit of liberalization and privatization along with political power. In other words, the idea of equal citizens has been compromised here. Women from certain unprivileged groups are doubly burdened - apart from caste and gender minority, power allied to them is also minimal. Vulnerable and weaker section in our society, endure more discrimination and atrocity despite having proper provision approved by the Constitution of India for removal disabilities and discrimination against Schedule Castes and Tribes. Lower rank, gender and ethnicity women may be called as ‘violated group’ as they are the easy target by male centric dominant caste position.

If in the domain of society their powerlessness is palpable in multiple fronts, state agencies like police too inheres societal (including economic) ideology instead of adhering to rule books. Contrary to the version of Kaur and her family, for the police, Nodeep and her co-accused, who managed to escape, employed violence in their protest. They stormed the company office with wooden sticks and demanded money. Thus, according to the police, she was arrested under charges of murder, rioting, and assault to deter a police servant from his duty. There were three FIRS filed against her, out of which two of them were by the SHO (Station House Officer) of Kundli police station and the accountant at the factory. They accused that Kaur tried to break into the factory and extort money from the staff there and physically assault the police with a *lathi* who tried to intervene, and caused injury to seven personnel. The third FIR complaint by Shamsher, an employee with a private security agency that patrols the Kundli industrial area, related to the incident of December 28 under the charges of extortion (Dayal, 2021). It was kept secret in order to make that use in the future by concluding that Kaur is a habitual offender by section (649). In fact, Nodeep and her lawyer were unaware of the FIR till the prosecution mentioned it. It can be read from another angle that law enforcement agencies become the ally and serve the communal

agenda of the Union government and capitalist pursuits of the industrial employers instead of performing Constitutional duties. So, all these are conjured up against the *Dalit* and minority labourers. Police instead of protecting the rights of labourers and following the rule of law, aided the management in planting a spurious charge against exploited workers. As brilliantly advocated by Angela Davis et al. (2022) that we need to abolish the police and prison system on the ground that abolition feminist or critical resistance group need to respond to gender violence that does not depend on a sexist, racist, classist and homophobic criminal system. We need to develop strategies that challenge the criminal justice system and that provide safety for survivors of sexual and domestic violence. Connected to Zargar's case, Davis et al. (2022) writes why feminist movements globally now question the role of campus police and are reconsidering the contract with local law enforcement.

II

Dehumanization of political prisoners

Bhatia (2019) Babu (2022) argued that the Indian Constitution has the provision for transformative Constitutionalism which means making the Constitution relevant in accordance with the changing nature of society. This is why the Indian Constitution is referred to as a living and dynamic Constitution rather than an abstract and static entity. In this connection, the role of judiciary is pivotal to interpret laws and examine them in accordance with Constitutional morality. If in the post-emergency period, the Supreme Court made many landmark judgments and performed as a shield for “people”, a reversal of trend is seen recently. Among these landmark judgments post 1975, protection of human rights of prisoners including political prisoners was commendable as it linked their rights to Article 21. From this angle, according to law, political prisoners cannot be denied basic civil rights while under detention. This section attempts to spotlight how these provisions were violated. Since, this chapter started invoking discrimination between human beings and elephants during pregnancy, it is necessary to detail Zargar's pregnancy days in custody. She was 23 weeks pregnant when she was arrested. At the beginning of the three days, she was regularly shifted to different police stations as the Jaffrabad police station didn't have a women's cell. As per the availability of space and accommodation, they moved Safoora, which was ill-conducive for her physical requirement. As per her request and considering her pregnancy, they

put a standing fan; otherwise, there was no fan in the cell. There were no bedding facilities, and she had to manage to sleep on the floor, which was not clean at all. They provided mats and blankets, but Safoora hesitated to use them because they were not only dirty; instead, they were smelling like alcohol. Again, when she was transferred to Tihar jail as per the protocols of the pandemic, she was isolated for 15 days, but other inmates who came to prison after her, were roaming freely in the corridors, which may bring adverse consequences to others since Covid cases were increasing in huge numbers. Hence, she complained regarding this to the superintendent, but she did not receive any response. When she was in custody, one female inmate opposite her cell committed suicide; this is what the police stated. As per Safoora's account, she witnessed that the lady was beaten up and poorly tortured as there were black and blue marks all over her body. Safoora was sure that it was murder, not suicide. This incident took a toll on her mind, and she became restless (Lalwani, 2021)

The above instance shows how jail authorities bridged the line between human and inhuman to such an extent that an undertrial "accused" during her pregnancy was treated like a prisoner. Other inmates assumed that Zargar was a Kashmiri terrorist who killed 53 Hindus in the Delhi riots. She started feeling insecure within custody. As she knew that she had to take care of her, she started reading the Quran to divert her mind from disturbing events. She was completely kept in solitary confinement, and whenever she asked anything, she was threatened that '*you also want to break your legs*' (Lalwani, 2021). These experiences of Zargar reinforce Ray's (2020) lament that women political convicts seem like 'a jail within a jail', even the female ward situated at the extreme corner and including the warden on duty was locked up from outside.

Zargar's suffering did not end there. After staying in complete confinement (like others, she is not allowed to go outside the cell), her mental stress started impacting her pregnancy, and complication has been increasing. Between the date of another hearing coming up on June 4 and now, she was five months pregnant. That was the time when many Covid cases had been reported in jail, and as per ICMR's guidelines- pregnancy itself alters the body's immune system and response to viral infection in general, which can occasionally relate to more severe symptoms, and this will be same for Covid 19 (Pain, 2020). Due to complications, as she was suffering from polycystic ovarian disorder, there were chances of miscarriage; now, Safoora's health is not the single concern. Still, Judge Rana simply instructed the jail superintendent to provide adequate medical facilities to her

but refused to grant bail under UAPA provisions. Undoubtedly, the state forgot to treat prisoners as citizens of the country, and providing safe custody is their responsibility. In one of the landmark judgments (Charles Sobraj vs The Superintendent., Central Jail, Tihar on 31 August, 1978), the Supreme Court has reiterated that the right to live with full dignity is not only applicable to citizens, but also to the prisoners. As per the Indian Constitution, solitary confinement is illegal unless it is backed by law. Prisoners have the liberty to move and interact with co-prisoners as it is offered by Article 21 of Indian Constitution. But, the experience of Zargar and Kaur shows otherwise. Zargar's health was also compromised by denying her bail appeal. In these populated prison circumstances, how is it legitimate to keep arresting people just on the basis of suspicion? In the case of Safoora Zargar, not only she was in her trimester, but there was no prima facie witness or any strong evidence to prove her guilty, still she was incarcerated for months. Interestingly, as per the law, under trial prisoners' cases need to be scrutinized by a review committee of each district, so it will be easy to release them soon (Loker, 2022). This statute was clearly violated in the case of Safoora.

Guilty Without Trial and Evidence

With regard to evidence, Ahmed, the government prosecutor, alleged that the Jamia Coordination Committee (JCC), especially Zargar, was managing most of the anti-CAA protests, and although she was not personally present in the meeting at Chand Bagh, she was coordinating the plans for riots which was held on February 23, 2020. According to the government prosecutor, on that day, Zargar gave a provocative speech which influenced the mass riot to become more furious. In response to it, Trideep Pais, Zargar's lawyer, said that she had passed Chand Bagh on that day but just to reach Khureji, which was another spot ten kilometres away from Chand Bagh. She was using a cab on that day as the metro was closed. Even though she did give a speech on February 23, it's not at all inflammatory; there was also no FIR also registered for the violence in Khureji, after three days of the speech. Pais also discarded the claim against JCC that police recovered blankets and relief materials from the office. In spite of all that in the defense argument Judge Rana in his order, believed that those were the material available on the record, not denying the fact that the accused was involved in disorderliness and disturbance of law and order at an unprecedented scale. Therefore, it can't be disagreed that the provision of UAPA has been valid to invoke. And her absence from the violent scene was not accepted as a fact to be considered as she

was the convict of a key conspirator, and there is prima facie evidence of conspiracy. Again, it was told in the courtroom that there was proof that Zargar intentionally organized a roadblock (*chakka jam*) and unlawful assembly (Sharma, 2020). These narrations point out how judges too compromise and bend to the language of the union government. At the time of writing this, with the change in the guard in the Supreme Court, at least there was an attempt to examine whether one can arbitrarily slap UAPA case against the dissenters. Article 142 of the Indian Constitution provides extraordinary power and it is within the jurisdiction of Supreme Court of India and High Court to change the arbitrary laws and embark on judicial activism if certain laws and functioning of the bureaucracy distort Constitutional morality and violate of Fundamental Rights, and particularly the right to life and liberty (Babu 2022). Post emergency, the Supreme Court and high courts have played an important role towards maintaining Constitutional morality and transformative Constitutionalism. This was effected through Vishakha judgment, environmental activism, provisions of PIL, poor man directly writing complaints in postcard, etc.

In the case of Safoora Zargar, Delhi High Court while denying bail to her after charging her with unlawful assembly even though she was exercising her democratic right to protest, justice Rana stated "*When you choose to play with embers, you can't blame the wind for having carried the spark a bit too far and spread the fire*" (Sharma, 2020; Bhatia, 2021)

Kannabiran (2021), in her article, criticized such an opinion, especially while it is the case of personal liberty, and raised questions on access to fundamental rights. In this statement of session court, Gautam Bhatia wrote that "when a court needs to rely upon metaphors instead of law to justify keeping an individual in prison, it is perhaps time for the justice system to take a long and hard look at itself" (Gupta, 2020). In that violent riot of February 2020, a man was caught red-handed with a gun in his hand, but he did not face any difficulty in getting bail; union minister Anurag Thakur chanted '*shoot the traitors of anti CAA protestors.*' This slogan clearly instigates violence (Pain, 2020). And also, local BJP leader Kapil Mishra with inflammatory speech and threats of violence have not yet been arrested. Interestingly Justice Muralidhar of Delhi High Court got transferred when he instructed the police to ensure safe passage by deploying all resources for the injured victims and ordered to arrest them (the wire analysis, 2020). But a five-month pregnant woman with complications was confined to imprisonment (Pain, 2020). These anecdotes concur with Arvind Narrain's assessment that the mob patronized by the current regime not just enjoy

complete impunity from the judiciary but also does not care about electoral system, and obviously, the present government uses them as an instrument to enforce the new laws and simultaneously, due to activating polarization of civil society, legal protection of minorities and particularly the political activists, who are pushed to the periphery. Furthermore, Statement of Justice Rana vis-à-vis Justice Muralidhar, silence of courts in important matters, toxic message spread by media, police and mob violence, etc. points out a Sunder Rajan's (2003) theorization of state. State is a space of negotiation which results in different kinds of manifestations, and is based on contingent factors such as the ideologies of political leaders and regimes, different styles and attributes of individual bureaucrats and officials and the climate, and time, all of which are frequently marked by 'contradictions, cross-purposes, and confusion' (Rajan, 2003, p. 6).

Returning to the scrutiny of the judges, additional session judge Dharmendra Rana is famous for his various notable verdicts, such as Nirvana and Disha Ravi. Justice Rana granted bail to Disha Ravi, who was charged under the farmer protest tool kit sedition case. His words quote- "*Citizens cannot be put behind bars simply because they disagree with the government.*" He declared the case in Disha's favor due to the scarcity of evidence. In another case, Zargar is kind of similar to Disha Ravi as there is no proper evidence that the police were able to produce which can justify Safoora's involvement in violence, but justice Rana denied bail when she was five months pregnant. Because of his different approaches in the two cases, many people argue that now justice will also differ from religion to religion (Bhatia, 2021). Justice Rana also granted bail to two men who were indulged in the protest against farmer Bill but were arrested under sedition law for spreading fake news against Delhi police.

As we are discussing punishment without undergoing trial owing to prolonging their stay in jail, it is interesting to note that women political activists were not only tortured by the authorities while being in custody, they were also hounded by extra judicious media trials on digital platforms. On social media, several misogynist comments trolled Safoora's marital and pregnancy status. Safoora expressed that when it comes to Muslims, level of rumors against accused has been multi-layered. She believes that Muslims or people from other minority communities seem easy targets to justify the false narration and dirty communal politics of the Government, Government-sponsored police, and media. Safoora believes saleable media executed their own trial in her case where they already declared her a convict without giving her a chance to defend herself. Prejudiced behaviours of the

media created the public perception that the Delhi riots were completely anti-Hindu, whereas 40 Muslims died, religious symbols of Muslims were destroyed, and many more workshops were broken. But there is no sympathy for them in the media house. Many official documents and charge sheets leaked to the media, presenting more lies. For delivery of hate speeches ahead of the riots, Delhi high court had ordered FIR against BJP leaders. But morally incorrupt media don't show such information on their news channels (Lalwani, 2021). So, it's more of an anti-Muslim program, exposing Islamophobia in the country. There is no doubt that violence and riots affect both Hindus and Muslims, but it is also needed to accept that Muslims are affected more than Hindus. Whenever Muslims raise their voice, ask for their rights, and express their perceptions, they become communal and anti-national. Muslims and other minorities in general, like *Dalits* and Sikhs, are already socially, economically, and politically backward, as the justice Sachar committee report showed. In fact, they have to come up with a lack of opportunity and education; still, they are the only ones who always expect to suppress their rights. On the other side, the cost which they have to pay as a disadvantaged community for dissenting is huge (Davis, 2022).

On June 23, there was a trial executed on video conferencing to discuss Safoora's bail appeal. Safoora was released on that hearing, where she was made to furnish a personal bond of Rs.10,000 with the warning of not involving any activity which shall affect the investigation. In case Zargar needs to travel, she needs to take permission from the session court, and she is ordered by the court to remain in touch with the investigating officer once in 15 days. Tushar Mehta, solicitor general, made an appeal that the bail order of the case based on concession and on humanitarian ground shall not be cited or treated as a precedent in any other case. Order of the court is not declared as per 'ongoing investigation.' Hence it is decided that this case will not be treated as precedent as it's not passed on merits. Delhi police strongly opposed Zagar's bail plea saying that Safoora was supposed to not get bail for such a serious offense, even though there is strong, reliable, and sufficient material available, which strengthens the fact of her direct involvement. Further, police advocated by claiming that *“there have been 39 deliveries which happened in Delhi prison in the last ten years. Therefore, handling Safoora's pregnancy was not a difficult task to take care of”*. Delhi police criticized the ground of pregnancy for getting bail, especially when the accused is charged with such a devilish crime. Police were claiming that they have proof of statement of the witness that clearly exposes Zargar as the part of co-conspirator not only in Delhi riot but also, police claimed they have strong evidence that justifies her involvement in various anti-state

activities in other parts of the country. Delhi police believed that the court approach became sympathetic and sensitive, which is ultimately not in favor of justice as well as the public (Press Trust of India, 2020). But in reality, police didn't have evidence to prove the "devilish crime "of Safoora. Police lack evidence against Safoora primarily lies with the fact that there was no report of violence that came to notice even after the speech of Zargar as it was claimed that her speech was provocative. In fact, Delhi police didn't find any dangerous weapon or document which could prove that Zargar was worthy of being kept in prison under UAPA. Although she was not present at Chand Bagh still, she was accused as the key conspirator again, for which there is a lack of evidence. This insight shows how police instead of following the rule of the law actually toyed with the line of the legislator and so also the media which instead of pinpointing injustice done by the government, re-inscribed the latter's narrative.

As explained by Sharma and Gupta (2006) in the previous chapter, due to the liberal and global capital model, ideas, images, people, and crucial issues have been interconnected and discussed on a global platform by sidelining the state territorial norms. So internal laws, rules, and policies are debated and diagnosed by international intellectuals and organizations. The political rationality of the state gets impacted by transnational networks and international organizations. In this context, discussing how the UN Human Rights body condemned the whole episode makes sense. Geneva-based UN Human Rights Council's (HRC's) working group against Arbitrary Detention (WGAD) criticized the government's working style in keeping a pregnant woman in custody. Safoora was deprived of liberty, mainly dealing with the right to freedom of opinion, expression, and peaceful assembly, which is recognized as a universal human right. WGAD claims to take action against those who are responsible for the violation of her rights and irregular detention despite her pregnancy, where she was forced to sign on blank paper and take control over her right to protest. WGAD referred the case to special Rapporteurs to promote and protect the right to freedom of opinion and expression while countering terrorism (Haidar, 2021). India violated the principles of the Universal Declaration of Human Rights and International covenant on civil and political rights as India is a part of it. It created a panel of experts from Australia, Latvia, South Korea, Zambia, and Ecuador in Safoora's case. They filed a report on the deprivation of liberty of Safoora, which breached article 2, 3, 7, 8, 9, 10, 11, 19, 21(1) of the universal declaration on human rights, which basically stresses the right to have life and liberty along with freedom of declaration without any discrimination of race, religion, origin, class, language, politics and other opinions.

And as per equality before the law, each individual has the equal right to a fair and public hearing by an independent and impartial judiciary system. Article 2(1),3,9,14,25(a),26 of the International Covenant on civil and political rights within categories i, ii, v highlighted that no one's liberty should be deprived through arbitrary detention, and press and the public must be from all or part of the trial for reasons of moral, public order or national security in a democratic society. The working group believed that Safoora's detention was utterly illegal, except when the police-maintained secrecy regarding the course of the FIR. Again, she was arrested for another FIR, which was filed in another police station, which implies systematically they misused the law by the police to target her. The Working group also opined that considering Safoora's medical condition; it was not necessary to arrest a student activist. Secondly, the police's intolerance regarding expressed opinion and peaceful assembly, although these rights and freedom have been granted by internal treaties. As per American Bar Council – there is a lack of evidence in the FIR of Safoora, which suggests her involvement in violent activities; therefore, pre-trial detention is not required, especially when pregnancy is a concern in this case. Detention must be for a short duration so that the release of a person can ensure the representation of the defendant in judicial proceedings. The United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders conclude that non-custodial means should be preferred for pregnant women during pre-trial whether that is possible or appropriate (Wire staff, 2020).

Moving on to the aftermath of the arrest of Nodeep Kaur, Rajveer Kaur (sister of Nodeep kaur) alleged that Nodeep was sexually assaulted and tortured in police custody. When she was arrested, she was dragged by her hair into the police van, and police started beating her inside the van and also in the police station. She was slapped and punched and hit with shoes and sticks, including her private parts, which made her suffer for a few days of heavy bleeding. She has been detained in jail for more than 20 days without bail (Pandey, 2020). Doctors of Sonipat civil Hospital on January 25, exactly after 13 days of her arrest, gave report of evidence that Kaur had been tortured in police custody. As per the report, there were purplish bruise marks of around 10cm and 7cm over her left thigh, and about 5cm and 6 cm marks on the right buttock (Sethi, 2021). Since her family account provided insight into how illegally she was tortured by police, it is inevitable to connect this account with a feminist analysis of the normality of state violence against minority

women and subaltern sections of women as articulated by Kalpana Kannbiran (2008) and Rajeswari Sunder Rajan (2003).

Kannabiran (2008) contended that the issue of state violence/custodial violence is not new in the discussion; instead, it is an issue of negligence that always raises questions against government servants and the judicial system. Women's bodies are associated with 'honour' and 'community.' Indian women-hood is a complex reality across class, caste, community, and region, even in some sense of integrity and justice. Dealing with rape and sexual assault in the outer world is definitely a social problem, but rape and sexual assault in custody create the government's image of treatment towards its citizen in a wider sphere. Minority women are mostly seen as helpless in front of the judicial system even after the victim is tortured by the police authority. Kannabiran (2008) provided the example of Rameeza Bee, a Muslim woman, who got raped in police custody, and this case has been proved in court, however, despite that a widespread protest was needed to ensure justice for Rameeza. In front of blind communal and patriarchal ideology, women's character is considered as evidence in our justice system. Women's character assassination becomes a part of the discussion (Kannabiran, 2008), even in the case of Safoora; she has to face filthy comments regarding her pregnancy. Kannabiran argues that this subjugated status of the communities emboldens the state authority and non-state actors to exercise illegal violence with complete impunity. Noddeep and Soni Sori were sexually tortured in custody, and it has become normal for women in north-east to be raped and murdered by armed force. Ray (2020)'s argument can be alluded to here that the idea of *Bharat Mata* is territorialized to the dominant community, and Muslims, *Dalits*, Tribal and other minority women are excluded from the image of *Bharat Mata*.

The court adjourned Ms. Kaur when it was found out that her medical reports had not been placed on record by the state and also signified the brutal torture of police. Therefore, court *Suo motu* registered a case of 'illegal confinement' of Kaur. Similar to Zargar's case, while granting bail to Kaur, there was no record that gives ground for section 360; no law-and-order situation has been created. There are some materials/ recordings produced by Kundli police under various sections of CrPC against Ms. Kaur; even so, they are under investigation. All these justifications are not sufficient to seize or deny anyone's personal liberty (Ghazali, 2021). Other two FIR of extortion (384) and attempt to murder (307) have been rejected by session court and judicial magistrate by saying it is not the case of extortion rather it is about worker's rights as they are protesting for their

due wages and there are no such activities that had happened which justify the charge of 307 (Anwar, 2021). As mentioned earlier, Kaur believed that repression of the state has been on the rise. The state got scared due to the protest led by minorities, Muslims, *Dalits*, Sikhs, and *Adivasi* and by seeing their pamphlets. In that case, the state makes use of its repressive laws by using police (who actually don't have brains) and judicial institutions. Even when she was in incarceration, many women shared their experience as being raped for 15 days straight and torture is quite common for them. By dividing the Nation into Hindus and Muslims, the Government wanted to divert the topic (Ara, 2021). Previously, there were a number of cases that considered the identical case when it comes to custodial torture and physical assault of women by the police authority. They are especially those women who raised their group voice against discrimination caused by Government policies. Paula Banerjee highlighted how women's suffering increased in the Northeast zone of India after the enactment of (the AFSPA) Armed Forces Special Power Act. After 1942, not only high-ranked captains but also lower-rank noncommissioned officers had the power to take action; now, this Act is not only limited to Manipur; rather, its applicable to the whole part of India; as a result, many women have been raped and killed within police custody. Soni Sori, an *Adivasi* woman, fought against the local politically influenced contractor However, for her involvement into agitational politics she and her husband went through barbaric torture by the state police. There are many more other examples to focus on. But Nodeep Kaur's case caught the attention of international media due to the tweet of Meera Harris, an American Lawyer. In that tweet, she criticized the brutal torture of police and claimed that it violated her human rights. Then after Social Security, Women and Child Development Minister, Chaudhary appealed to the NCW (National Commission of Women) that the Punjab Government, provided legal assistance to Kaur. As she is a member of Mazdoor Adhikar Sangathan, other members and her colleagues demanded her bail (Pandey, 2020). Thus, like Zargar's case, Kaur's bail was possible due to transnational activism.

Notably, civil and criminal laws completely ignore the visibility of women as they use the term 'reasonable man' and in family law the identity of women is judged through culture and religion and denial to property rights considered preferable options for good women. The counter of misogynistic practices which is supposed to be maintained by Constitutional equality of law is itself in the witness box for re-analysis. When both the cases were questioned in the proceedings of the judicial system, there it's needed to carry a discussion on it. Generally, the judgment of the

court is always acknowledged because its system follows specific procedures which are based on facts and strong evidence. After going through all sorts of information that has been proved in the courtroom regarding the case, the court provides a legal right judgment. So, a person will be submissive to legal power only when proper evidence is available, and this burden of collecting proof depends on governing bodies. When the state accuses a person, it becomes its duty to furnish all the evidence. If any kind of malfunction happened in this process which is mainly collecting proof, then the right of the public has been compromised as they have the right to know the real criminal, and also an innocent will be punished for another's crime. And at the same time, it will put the question directly on the system of the state. Not only about criminals rather, public rights include knowing about the investigation, interrogation, and sentence. In the process of identifying the body of criminals, the initial stage is to present the accused in court. Samaddar (2008) argues that in those particular circumstances, criminals should be away from public eyes because it is crucial to observe all the facts such as color, shape, traits, position, hairstyle, fine movement, etc. Making criminality public and confining the criminal was the very essence of democracy and democratic rights. But the scenario is pitiful when all this theory is not applied in practicality. By giving the excuse of collecting proof, the accused, both trailed and under-trailed, were kept in incarceration for many days, and they endured such pain in the name of interrogation. And legal clauses of draconian law add to this suffering. Evidence theory needs to be read just repeatedly because if we return to the colonial roots, nationalists will be punished for committing terrorist crimes. As it believes that evidence can lead to the discovery of truth, confession becomes a crucial form of evidence where the fact asserted by the opposing party was true. But evidence act section 24 clearly declared that if the confession was caused by any inducement, threat, or promise, the confession was irrelevant. The nature of confession depends upon various issues like- psychological aspects of confession and interrogation, nature and character of confession treatment, and questioning suspects. Confession was judicially less significant because it's the end of all the reasons, but when gathering of facts or investigation leads to the confession, that helps to find other criminals and crime gangs. If we extrapolate Samaddar's point of tactics employed by colonial reign to incarcerate freedom fighters, both- Zargar and Kaur- were subjected to confinement in the pretext of interrogation and Zargar was forced to confess by making her sign on a blank document.

Dalit, *Adivasis*, Muslims, students, feminists, and other marginalized communities slowly but effectively claim their equal rights and oppose the idea of Hindutva forces. Similarly, these marginalized groups also have been opposing many of the policies seemingly designed to help the corporates at the cost of masses. In the past, Supreme Court, itself by playing a transformative agent have iterated that these protests are not just the epitome of freedom of expression but also assertion of key Fundamental rights i.e., right to live with dignity irrespective of religion, caste, creed, sex, etc. In other words, as per Constitutional morality, the right to strike is legal. But they have been sent to incarceration for many days, their protest categorized as 'Khalistan,' 'Maoist' and 'anti-national' activities. Starting from Rohith Vemula in 2016, there have been huge protests in various universities against the upper caste Brahminical cultural values. Such movement inside the campus creates an impact on civil society to think twice on the present status of freedom of speech, nationalism, social justice and the method of critical inquiry. *Adivasi* conducted street protests and marched against the commitment of the present govt toward corporate agenda, which compromised the policies of social and political justice of marginalized communities. Therefore, in Andhra Pradesh, Odisha, Chhattisgarh, Jharkhand, and Maharashtra, many *Adivasis* are booked under UAPA. Similarly, *Dalits* independently also attacked Hindutva right-wing in the event of Bhima Koregaon. Muslims started to condemn the inequality of gender, class, and caste relations in their internal community, and they are also questioning social justice and secularism of India. Each struggling group has a different consciousness and interpretation of struggle even though there are ideological gaps also, like between *Dalits* and *Adivasi*, one group wants recognition in government policies. The other wants no interference in their habitats. But the present situation is not afforded to carry forward struggles separately when there is no strong support from the media; because of this absence of unity, Hindutva ideology wins with the help of the wealthy capitalist class (Wankhede, 2021).

III

Inflection of Status into Agitational Politics and Media Trial

The previous section, elaborated the manner in which minority women who were associated with agitational politics were terrorized by the state and were denied basic rights. The other point is how the judiciary, media and police are gradually toyed with the standpoint of the legislature rather

than the Constitution. Reverting to the role of media and society, we see that Zargar and Kaur were just left to the mercy of the jail authorities and people did not care about their mistreatment and dehumanization. What explains this? Definitely there is no solidarity in the society which points to the stratification system i.e., caste system despite Constitutional morality dislodging it. When it is believed that a specific group of people (minority, poor, women) need affirmative support, then many factors and forces start dominating them. Disguised collective repression is initiated in the name of the development of a particular group. In such conditions, militarized states use their dictatorial power in order to suspend some voices raised for their rights, and the state portrays this political violence as a counter-reaction for the protection of civil society. *Dalits*, *Adivasi*, Muslims, and women are always vulnerable in the sight of the structure of crime due to the lack of effectiveness of the justice system. No doubt that the Constitution assured the dignity of individual human beings in its Preamble, but still bonded labour (abolition) act was enacted in 1976; however, Article 23 of the Constitution was already placed in 1950. Feudal economic order thrived along with patriarchy. Ironically, we witness patriarchal biases of criminal law, especially in cases of either sexual assault on women or outraging her modesty when they are in incarcerated. It shows the masculine nature of the state. India is protruding as the largest democratic country in the world. The present situation compels us to self-rating in the list of giving value to democracy, especially when India placed at 142nd rank out of 180 countries in the 2021 world press freedom index produced by reporters without borders (RSF). Currently, we see instrumentalized agencies of state (police, judiciary) started overusing or misusing the legal provisions. Like many people arrested under sedition charges just by a mere tweet or harmless jokes without providing appropriate legal assistance. Atrocity of state is not at an aberration anymore as it has become a mundane affair. Core values of democracy lie with freedom of speech and expression, which is the major medium through which a system can self-assassinate. The implementation of UAPA, NSA, PSA, and AFSPA are anti-people laws, whereas the welfare state's intention is supposed to be pro-people. Freedom of speech has been seized by using draconian laws on them (Piscatory, 2021). There are many more instances that confirm the assumption that the union government's police use and UAPA were intended just to keep the accused in custody as it is difficult to get bail under such law. Like Zargar, Gulfisha Fatima was again arrested on the same day of getting bail under UAPA sections (Yamunan, 2020). Such a state of affairs absolutely counters the idea of impartiality and moto of the welfare state; it also reflects it is the minority community who always

gets targeted by xenophobic people. And nowadays, this fear of people has been utilized by the ruling power to get their own advantage. Women are themselves a group of minorities; still, their positions have been hierarchized. As comprehended in the previous chapter and in the beginning of this chapter, the difference between the current regime and earlier regime lies with the extent to which judiciary and media has been captured along with the right-wing agenda and neo-liberalism which seeks to gain electorally by exploiting or drawing divisions of society.

Culturally subordinated groups in order to get over their suffering, uplift their identity by making use of politics. But in that case, their suffering has increased because of the clash between the 'we group' and 'not we' group in politics. Zargar was arrested under UAPA for supposedly giving an instigative speech during the Delhi riots, whereas union minister Anurag Thakur and BJP leader Kapil Mishra openly threatened to shoot the Anti-CAA protests, but they were not even interrogated once. Delhi police's selective harassment was evident when charges against Zargar were not justified by sufficient evidence; still, she was imprisoned for 38 days; although evidence was there against an inflectional politician, no action has been taken. Dominant political persons have their strong roots, and they have dominated the institution of government in their favor, so other minorities spoke-persons like Zargar became the target of politics of belonging. This segregation is also caused by the suppression of resistance by dominant groups, so it's needed to uproot the domination through various means as it is the case of pain and injustice towards culturally minority groups who are mostly *Dalit* and Muslims. Through the resistance approach, they can create a new 'we' which focuses on new measures for solidarity for nation/nationalism and tackle the attack of state atrocity towards them. The Indian Constitution allows the citizens to demand justice when their fundamental rights have been violated, and they can highlight their demands through protests, demonstrations, and other forms of the resistance movement. So protesting is not an unlawful offense; however, it became a threat to national integrity during the resistance movement held by the subordinated group (Kannabiran, 2006).

When the British invaded India, religion was not the key factor of our differences; instead, caste was expressed as the diverse form of social identity, community, and organization. Jyotirao Phule, Savitribai Phule, Periyar, and Dr. B.R Ambedkar, tried to dislodge it through critically analyzing the caste system. Even the National Campaign for *Dalit* Human rights believes that *Dalit* people of south Asia are deemed as outcasts in society; they were and are still considered polluted. They

have been forced to keep within a low social status. When untouchability has been in discussion, violence and affirmative action come into the picture through which the state is directly connected with the caste system. Recently there was the Hathras case where a *Dalit* girl was raped and murdered. Here too, like the case of Safoora and Kathua, we see the questionable role of police authority which supports the higher caste victims. Similarly, in the case of Nodeep Kaur, a *Dalit* activist, she has been sexually attacked within custody merely for protesting for their due wages. Here is a fact to be noticed that Natasha Narwal and Devangana Kalita (two female protestors one is from higher Jat, and the other one is married respectively) were also arrested under UAPA like Nodeep Kaur. But they didn't complain about sexual assault or any kind of mistreatment as they stated after their release (Ghosh 2021) like Kaur who was unmarried and also a *Dalit* from minority community. This points to the fact that police and jail too catapults hierarchical norms of society and thus break society and state division that the latter is autonomous from society (Sharma and Gupta, 2006).

In 1966, the Committee on the Elimination of Racial Discrimination stated that

"The Convention on the Elimination of Racial Discrimination does not refer only to race, but that 'the situation of the Scheduled Castes and Scheduled Tribes falls within [its] scope,' further observing that despite legal safeguards provided to members of these groups, 'the relative impunity of those who abuse them point to the limited effect of these measures.'"

It proves social exclusion in India is not an inside matter; instead, it is the view of the world. It is the duty of government not only to form laws and policies of anti-untouchability rather more critical to create official knowledge regarding the reasonable, theoretical tenable and legitimate articulation of caste as various scripture suggest violent treatment towards Chandals/ *Dalits*. The manhood of caste controls the passivity of women of caste. The Schedule Caste and Schedule Tribe (prevention of atrocities) Act 1989 focuses mostly on the experience of *Dalit* women. "The definition of atrocity, therefore, makes explicit mention of the kinds of violence that women may be subjected to – sexual assault, non-consensual contact using the position of dominance, stripping, and parading naked, are acts that fall within the meaning of atrocity in the law" (Kannabiran, 2006, p. 65). Under this scenario, priority of the *Dalit* women's movement has been an increase as male-dominated *Dalit* movements underscored the discrimination and violence placed against *Dalit*

women. *Dalit* women's movement opened the way to wider the democratic space while at the same time creating and preserve their identity and specificity (Kannabiran, 2006).

All kinds of status groups carry their form of action, as it acts like a community. In India, Hindu, Muslim, and *Dalit* communities have different levels of status. When any communal action takes place among a particular status group, sometimes that action may positively or negatively affect certain other status groups. Status gives preference to 'honour' instead of the class situation and maintains a boundary for status group individuals to get involved with others. Equality among the status group is repugnant; each status group is expected to belong to a specific style of life circle. Communal actions like marriage have been restricted per the criteria of social esteem. Stratification among status groups qualifies certain status groups for social intercourse, and this qualification is based on *prima facie* unless they belong from a reputed family background. High socially honoured groups conventionally occupied the legal privilege and also achieved stability by a stable distribution of economic power.

Gradually status moved to the closed condition like caste and started to believe in ethnic status groups which believed in exclusion of social integration. Like the caste system, status distinctions become functional distinctions within political socialization. This functional operation reflects in the legal system, which is dominated by a so-called high status. Police make use of specific laws just having the intention to detain the people of unprivileged status by appropriating the logic of hierarchical order of society. Status situation determined the interest of the state bodies, which is clearly visible in various policies which primarily prey on the people who considerably have less honour in the society like Muslims, *Dalits*, and *Adivasi*. The powerful status of monopolized political authority has been weakening the ways to approach their fundamental rights. The honour of status precipitates a sense of dignity in the positively privileged group as they shape their present by exploiting the past of unprivileged and unprivileged groups and fighting to acquire that dignity. Stratification of status is attached to the monopolization of ideas and access to better opportunities by privileged status groups. The higher status group also disqualifies definite lower class works like physical labour and artistic and literary activities. As the order of status position, monopolization and access to the market are dependent. It's become evident that status groups, to a large extent, control the role of conduct of specific people (Grusky, 2008)

Summary

The third chapter dealt with the two case studies of women political prisoners from minority communities and narrated their humiliation by state machineries by using narrating the broad theoretical framework of Constitutionalism. Constitutionalism suggests that the nature of law is supposed to be equal for all citizens and protect the rights of everyone as argued by Condorcet and Rousseau. The transformative nature of Constitution deals with sovereign will of the citizen and provides protection against discrimination. Thus, agitation against law (Farm Bill and CAA) is legitimate if it contravenes or alienates the rights of a citizen and deliberative nature of Indian Constitution endorses this idea and furthermore, higher courts during post-emergency recognized this. Further this chapter pointed out the dismal function of different organs of state and raised questions on freedom and independence of media platforms in the present regime. When the media is colonized by the government, it weakens the democratic credentials of the state as the state's injustice goes unchallenged and creates a scenario of despotism. The first section of the chapter provided the social location of Safoora and Nodeep by highlighting the other side of the story i.e., from agitator's perspective which is the fundamental and civil rights of dissent as per Constitutional morality. Their participation in social agitation is absolutely legal and also recalled the idea of transformative Constitutionalism. The second section addressed their encounter with police, jail authority, judicial tussle and insane projection by digital and television media. Safoora Zargar was denied bail on the fifth month of her pregnancy and incarcerated in solitary confinement under UAPA Act whereas, Nodeep Kaur was brutally tortured and sexually harassed by Police. The behaviour received by these two women from state functionaries forced us to think from two angles, first one is- the inherent legacy of agitational politics now is an act of punishment and secondly, even if political actors are persecuted by state, their differential status in society on the axis of gender, religion and caste adds to their humiliation. As seen in the case of Safoora she was not just denied bail despite not having any concrete evidence against her, but also denied basic facilities like bed and sanitation and her character was assassinated while spreading rumors during her pregnancy. On similar lines, owing to her *Dalit* status, officials did not restrain themselves from sexually abusing her. This seems like written to Manusmriti where punishment differs not only according to the nature of the offence committed but also according to the caste of the offender. Neoliberal agenda of the state vitiates the climate as elite sections do not move by the drudgeries and exploitations of the informal sector (comprising agriculture and small and medium

enterprise where subalterns are employed). Oppression of Constitutional rights has been executed through arbitrary decisions of legislation, fruitful judgements of judiciary and unlawful conduct of law by executive. However, in the present scenario the court is working under tremendous pressure where the independence of the court and its responsibility to protect the civil rights of citizens, particularly right to dissent is a question of analysis. Different verdict of justice Rana in two different cases (Safoora and Disha) is now questioned by many intellectuals and at the same time the real inflammatory speech giver (Kapil Mishra) is free from any legal charges which clearly question the nature of law which can't be less general in nature. However, the independent role of the Supreme Court is very essential for the deepening of democracy as it has extraordinary power to run the country through proper interpretation of Constitutional provision. Through reasonable descriptions of Safoora and Nodeep, the poor existence of Constitutional morality is clearly witnessed. And minority women face the wrath of the state and society when they indulge into agitational politics. Along with that their treatment within custody and in the courtroom, is an ideal example to claim that the state's approach to deal with political dissenters carry some resemblance with the approach of colonial and post-colonial states. Electronic media's response clearly shows the division in civil society and its unsympathetic attitude towards these two crucial cases of women and it is the outcome of ruling power control over the fourth pillar of democracy. Solidarity within civil society threatened the despotic nature of the state like the way Nodeep Kaur being a labour activist supported farmers' protest and similarly farmers protest pitch for illegal detention of CAA protestors. Therefore, the totalitarian government invests all its skills to divert the attention of civil society in multiple directions.

Chapter IV

Summary and Discussion

Progressive and egalitarian ideology of the Indian Constitution emanated from dialogue in the constituent assembly as well as social struggle in the wake of independence which witnessed active participation of different communities and different ideologies. Despite the egalitarian ethos, the experience of citizenship is not homogenous for all the communities. If at one level, denial of rights and inequality is the root of social protest, at another level, it is the protest, most strikingly against state policies, that is the cause of their persecution, despite it upsetting Fundamental rights. Second contentious debate is gender question, which is both a transnational and developmental concern and has become a compulsion for the sovereign nation state like India to address in the global era. Intersectionality adds another layer of complexity in the gender debate. India's case is much complicated with regard to gender justice of minority women since state projected its protectionist image in *triple talaq* while at the same time criminalizing Muslim men. This contradiction was laid bare when an amendment to citizenship rights was introduced. Nira Yuval Davis (1997) provides a foundational understanding of citizenship, how women get figured in the concept of citizenship and the manner in which race, coloniality, class problematizes the European notion of citizenship as well as gender question. She argued that women's cultural identities shape not just the behaviour of the state but also the approach of civil society towards them. Our selected two case studies help us to understand, state's cruelty against minority women especially when they are the part of dissenters' group, those who raise their voice against government policy through agitational politics. Safoora Zargar and Nodeep Kaur are clearly the victims of state violence. And it is seen that, the more state terrorism got exposed, it will adopt its more devastating form. Then it's more difficult to fight back against a transformed state.

Second chapter broadly dwelt on the scholastic ideas evolved around gender, political imprisonment, agitational politics, civil society, interconnection within them and their critical relation with the State. State's perspective towards political prisoners in three different time periods is not so different, but the extensive polarization of civil society in the neo liberal and Hindutva era is the point of departure. This point is worthy of discussion as it reduces sympathy and empathy for dissenters from public eyes. Putting political dissenters into prison is assumed as the easy solution to tackle all the critical allegations and activities with conflicting nature towards

the state, which often gets classified as an act of punishment. So, the ideal treatment inside prison is more punishment oriented than reform but historically when the focus was paid on reform by engaging the inmates in various activities that became a manipulative strategy of profit generating. Therefore, Arnold (1994) argued that prison and its management in different eras emulate the ideology of that era. Political prisoners are anyway different from common criminals as political prisoners give momentum to political activism outside and also provide political education to other prisoners inside the jails. So, State's behaviours towards them are also different from other criminals and also social and cultural identity is another reason for this treatment of indifference. It is to be noted that nationalist's group of peasants, subaltern sections and communists got different treatment from colonial elites and state officials (Guha, 1997). Visweswaran (1996) discussed that political women's speeches and nationalism is recognized from their social status of husband or prestige of the rich father like Sarojini Naidu. However, minority women and sexually subordinated women's involvement in anti-colonial struggle is misrecognized and reduced as criminal. Such practice continued in the post-colonial period but in a different form as it was evident from the work of Sunetra Choudhary (2017) and Sumanta Banarjee (2005) which further aligned with the experiences of Zargar and Kaur. Like colonial states, where criminality is placed on a minority community (Samaddar, 2008), in post-colonial states too it is the subaltern, minority and various dis-privileged groups constitute the criminals and predominate the prison system. While analyzing agitational politics from intersectionality perspective, we trace how the subjugated section of women were never part of the broad global standard and their participation in agitation projects against developmental projects is seen as a security threat. This notion is also reflected through the criminalization and brutal actions towards north east women during the protest against AFSPA. On the other hand, those feminist movements chosen by government to be part of mainstream politics helps government to create its image of pro-women despite of excluding the struggle of marginalized women.

Second section of the chapter, engaged with conceptual understanding of agitational politics and the relation of state with it in different time periods, shows the modulation in the state approach. Kalpana Kannabiran (2008) points out that those who involve in agitational politics face direct consequences from the state in comparison to lawful petition-based politics and in the present regime, the rich tradition of agitational politics is categorized as against the notion of the nation. It's interesting to note the entanglement of law with different sets of values and institutions in India

as law is twisted by the state to restrict the liberties of people and again civil reformists fought back by making law as a medium. In actual historical context many political practice and judiciary decisions are results of people's struggle rather than the judicial upholding of Constitutional value (Balagopal, 2011). But in many instances the Supreme Court took initiatives to interpret the provisions of Constitution in order to safeguard agitational politics as the idea of agitation is blurred in the Constitution. Representation of civil society through agitation by including the voice of minorities has been prioritized by the founding figures of Indian Constitutionalism. But the nature of the state doesn't operate accordingly, it negated their assertion for Constitutional morality for justice and forced them to survive mutely in marginalized social locations by implementing draconian laws and spending more energy on self-defense rather than welfare of people. Further the arbitrary role of police supplemented by the failure of the legal service that is to provide legal representation to the indigent and the marginalized and secondly spread legal literacy (Grover, 2018).

Third section of the chapter critically addressed how the neoliberal policies include the repression of trade unionism and this creates a miserable effect on workers specially the informal sector which constitutes a major part of the economy. In addition to that, Narrain (2021) gave a broad picture of religious fundamentalism and how many minority groups and subjugated sections are ghettoized by the police under the right-wing regime. The idea of patriotism has been narrowed down to Hindutva ideology. At the same time normalization of state violence exposed by various human rights activists through demonstrations, protest rallies by university students, teachers, doctors, and farmers in the country are on the roads to resist various repressive forms of policies. While participating in the procession of protest, or we can say while exercising their Constitutional rights in a democratic way, they encounter state violence executed by the police. The brunt of violence has fallen upon individuals from marginalized *Dalits*, *Bahujan*, *Adivasi* and women.

Following this problematic situation i.e. disregarding law and order, the third chapter invokes the idea of deliberative Constitutionalism and transformative Constitutionalism in order to appraise the functions of public institutions and state functionaries. This reminder is essential as it has lost its real aim of protecting the interest of the minority community and running the country as per the sovereign will of the public and this is why the Indian Constitution is referred to as living and dynamic Constitution rather than an abstract and static. Judiciary have performed a proactive role

after the 1970s - by protecting the spirit of the Constitution, but a reversal trend i.e., judicial evasion- is noticed in recent times (Bhusan, 2022; Bhatia 2019, 2022). So, the role of the Supreme Court to maintain the transformative nature of the Constitution is now at a stake. This chapter also recounted the polarization of civil society through media and state's neo liberal policies. So, in this particular scenario, we are left with the option of civil liberty, and democratic rights movements and that need to be acknowledged for fighting for state accountability in a law-and-order context and trying to maintain solidarity within civil rights movements. A recent protest against the Farm law by farmers in Delhi not just opposed pro-capitalist laws but also criticized the autocratic stand of the Government towards Kashmiri Muslims and showed their solidarity towards those women protesting at Shaheen Bagh.

Certain things mostly get unnoticed but they are present in besideneess or betweenness, which are utilized by the strategic state to create polarization among the citizens and gradually turning our democracy into police-cracy. The word 'strategic' has been used in this study very frequently for the present Government as it plays with the hidden fear/ insecurity of the people; otherwise, how a Hindu gets afraid of his existence, that too in a Hindu majoritarian country. There are certain ideological assumptions pre-occupied with the thought process of a normal human being. There are certain xenophobic ideas that exist inside, like maintaining distance from the Muslim population by assuming them as terrorists, by showing indifferent attitude towards their food culture, etc. So, this intolerance towards other cultures is appropriated to produce an atmosphere of violence and heartedness. We need to seriously understand why Kaur's sexual violence in custody and reproductive rights of Zargar did not prompt sympathy from the state functionaries, wider media circle and society. It was not just their active participation in agitational politics, their cultural identity too played its role. On the other-side, the unscripted side of global governance, acted against the illegality of the state's action. Muslims are not just a minority category by their demographic structure; rather, their treatment in the country practically proves that also. As much before the state showed its sympathy towards Muslim women's vulnerable condition by making their religious personal law as malefactor, so, when women from that community raised their voice against state's atrocity, it became difficult for the state to address them. Therefore, social movements led by minority community women are categorized under unlawful activities or anti-national. Ujjwal Singh (1998) figured out how, genealogically, the notion of political movement segregates between national and anti-national and the depending on which matter is highlighted

and by whom it is organized. Safoora Zargar and Nodeep Kaur were involved in those movements which were against ruling party and its policies, therefore their movements were targeted and attacked in the name of anti-national and the response from state functionaries are neither the way to treat a political prisoner nor to a responsible citizen of the nation. The old usual tactics of image shaming of women and oppression of her sexuality as a way to oppress her idea was again materialized in case of Safoora Zargar and Nodeep Kaur.

Terrorizing the responsible civil society is used as a medium to silent the demand of deprived section. People are punished nowadays for spreading the truth or standing with truth/facts. So, the largest platform for spreading accurate news, i.e., newspapers, and television media houses, are forgetting their core responsibilities i.e., questioning the repressive activities of the ruling power so that it will maintain the track of welfare. Rather paid media houses participate in moulding common sense of the public in favor of ruling authority. Now the situation has come where we need to give thought to the idea that if the role of media is so important and influential, it also needs to be closely checked when it abdicates its responsibility for the greater public. Beside the fourth pillar of democracy, other major organs like legislative, executive and judiciary are lacking in performing their individual roles independently.

The idea of reckoning Constitutional morality will lead a way towards transformative Constitutionalism which will maintain the relevance of the Constitution in correspondence with the changing nature of society for which we actually called it living Constitution. And it became very important when this study engaged with freedom of speech and the right to dissent. This peculiarity of the Constitution can be saved by the judiciary system as most of the time legislative and executive bodies are misguided from their Constitutionally approved role whereas judiciary is an independent institution and not answerable to any power authority. But the major duty of judiciary is to listen to the people's matters which were ignored in a very skillful manner as hearings are pending on many petitions like anti- CAA, demolition of Article 370 etc. As Arvind Narrain (2021) argued, attempts have also been made to include religious ideology in law, even if it's unconstitutional. For example - Citizenship Amendment Act. Pandemic period used appropriately to nugget the role of legislature that is deliberative discussion and then pass a bill. Similarly, Higher Courts did not discuss the current trend of Constitutionality of detention of student activists without having a trial and despite finding concrete evidence. That is not just

unconstitutional or violation of human rights; rather such a negligent approach also leads to various other problematic issues. Like - overcrowding of prisons, failure in providing adequate facilities to all inmates and which further hampers their rights to live with dignity and liberty.

The present condition of this pluralistic society is demanding for internalizing the Constitutional values and cultivating it within common masses, then there is a possibility of creating a real sense of inclusive nationalism which will not be limited within the idea of Hindutva. Addressing inequality is of no use till the time common people don't understand the sensitivity of the discriminations. The fundamental idea of Democracy is closely attached to secularism and fraternity, and that implies upliftment of the weaker sections and safeguard their interests. And political democracy has no meaning without 'we feelings' within society. However, civil society has been polarized by the juggernaut of fundamentalism and neoliberalism, besides diminishing role of the Court.

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 PARENT'S NAME BADRINARAYAN DASH / PUSPA DASH

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COURSE NO	TITLE OF THE COURSE	GRADE	CREDITS	RESULTS
SL701	ADVANCED SOCIOLOGICAL THEORY	B+	4	PASS
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