

**COUNTERMAPPING**

**PANDEMIC POLICING**



**A STUDY OF SANCTIONED  
VIOLENCE IN MADHYA PRADESH**

**CRIMINAL JUSTICE & POLICE ACCOUNTABILITY PROJECT**



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POLICE ACCOUNTABILITY PROJECT

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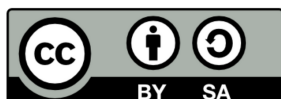
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# GLOSSARY

<i>Mukhbir</i>	Informant
<i>Soochna</i>	Information
<i>Vaidh Prapatra</i>	Valid form
<i>Samaksh Gavahan</i>	Witnesses present
<i>Patwari</i>	Revenue Officer
<i>Desi alcohol</i>	Country liquor
<i>Nagar Suraksha Samiti</i>	Groups of eminent personalities used to assist the Police at the time of festivals, communal tensions, law and order problems, traffic jams, etc. Formed at the Police Station and CSP Level
<i>Panchnama</i>	Witness testimony
<i>Suo motu</i>	On its own motion
COVID-19	Coronavirus Disease
DNT	Denotified Tribe
SC	Scheduled Caste
ST	Scheduled Tribe
OBC	Other Backward Class
MP	Madhya Pradesh
FIR	First Information Report
PS	Police Station
CrPC	Code of Criminal Procedure, 1973
IPC	Indian Penal Code, 1860
HPC	High-Powered Committee
UT	Union Territory
EDA	Epidemic Disease Act, 1897
DMA	Disaster Management Act, 2005
PGA	Public Gambling Act, 1867
NDPS Act	Narcotic Drugs and Psychotropic Substances Act, 1985
NSA	National Security Act
SC/ST PoA Act	Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989
POCSO Act	Protection of Children from Sexual Offences Act, 2012
NCRB	National Crime Records Bureau
NDMA	National Disaster Management Authority

# FOREWORD

The State's most visible strategy in addressing the COVID-19 crisis has been the implementation of stringent lockdowns in a quasi-federal manner. Union government notifications under disaster and disease control legislations overnight restricted movement and large aspects of public life. States framed their own regulations under the acts and individual magistrates invoked powers under section 144 of the Criminal Procedure Code (CrPC), 1973 to pass extensive orders on permissible movement and activities. These regulations and orders were often vague, overbroad and disproportionate, criminalising essential aspects of living through a pandemic, sharing information and expressing criticism.

As a criminal justice research and litigation intervention representing members of Denotified Tribal and other Adivasi communities, we understood that both the police's and the lockdown-related surveillance's colonial histories and wide discretionary powers may affect marginalised communities more severely. At the same time, public discourse was inundated with visual evidence of police excesses during lockdown policing, both in India and across the world. This framework of police excess did not, however, account for the effects of *everyday, routine* pandemic policing on ordinary citizens that makes the very process of being surveilled tantamount to punishment.

We sought to study and document these normalised, procedural forms of violence because readings of history tell us that wide-ranging emergency powers vested on State agents are seldom fully withdrawn, even after their purpose is served. The aim of our study is therefore to document the exercise of these wide discretionary powers and contribute to civil society movements that safeguard constitutional ideals against executive overreach. The findings of our study also make larger contributions. Just as COVID-19 has exposed all the existing inequities in our society, the study of COVID-related policing has revealed structural injustices against marginalised communities in the regular operation of the criminal justice system. Our study therefore, fills important gaps in broader discourses of ensuring a fairer criminal justice system.

We approach this with the hope that we can move towards decriminalisation and decarceration, possible only through the subversion of brahmanical and capitalist social order.

Ameya Bokil, Nikita Sonavane & Srujana Bej  
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# SUMMARY OF FINDINGS

We observed that lockdown related FIRs were more an urban phenomenon than a rural one. 68.9% of FIRs in urban areas were related to the lockdown, against 32.6% FIRs in semi-urban and rural areas. However, urban pandemic policing is not uniform in its breadth. For instance, Gwalior filed 4% lockdown related FIRs while Indore, Bhopal and Ujjain had over 80% lockdown related FIRs. A majority of FIRs filed (58.4%) were also the result of the police's patrolling, check point, market management and other generic duties. Information from Mukhbirs (police informants) and soochna accounted for the police scrutiny of 19.13% of the individuals accused in FIRs. In some districts, government officials submitted written complaints (10.3%) while fulfilling their lockdown patrol duties.

Most of the FIRs were filed against people on the streets - pedestrians and persons on two wheelers. The proportion of FIRs against pedestrians increased from 50.28% in the first and second lockdown to 89% during the third lockdown. A majority of these FIRs were a result of police patrols (48.34%) and complaints by government, village or police officials (22.27%). The case of public officials registering FIRs against pedestrians is most prominent in Ujjain.

Shopkeepers and street vendors, accounting for every fifth person against whom an FIR was filed, were the second largest category of 'offenders'. Of the 139 shopkeepers and street vendors against whom FIRs were filed, over 45% were providing essential services and goods such as groceries (15.82%), vegetables and fruits (17.26%); and meat and dairy products (12.23%). Of the 45 individuals, 70% were street vendors and 34% shopkeepers, highlighting that even during the lockdown, street vendors faced more unjust criminalisation.

Of the total arrests in MP during the first two lockdowns 19.2% were solely for violating the lockdown. Furthermore, resources continued to be allocated to investigating victim-less, no/low harm activities throughout the lockdown. In the first two lockdowns, low level crimes or 'infractions' constituted 82.5% of all arrests. In the third lockdown, they contributed to 79.4% of all arrests. Bailable IPC offences constituted the largest proportion of crimes at 29.1% and 46.2% respectively during the two time periods of our study.

A reported two-third of prison inmates in the country are Dalits, tribals and from Other Backward Classes (OBCs). Muslims, across all caste categories, constitute 19% of all inmates. Our findings suggest that the disproportionate representation of certain communities in arrest data is the result of them being over-policed under specific anti-poor legislations such as the Public Gambling Act.

Under the Public Gambling Act, 29.73% and 20.59% of identified individuals arrested belonged to SC communities and minority communities, respectively. Among those arrested for excise offences, SC, ST and DNT communities were overrepresented at 27.71%, 23.65% and 10.15% respectively. Individuals belonging to SC, ST and OBC communities together account for over 72% of all arrested persons. 10.85% of arrested persons were women - 39.8% of whom belonged to DNT/Nomadic communities, and 57.3% of whom belonged to SC, ST and OBC communities. Our findings demonstrate the presence of bias against marginalised communities. They also suggest that women from marginalised communities are severely policed at the intersection of gender, caste and class.

During the lockdown, 24.45% of all arrested persons were Muslims. 21.5% of the accused persons in FIRs were also Muslims. Given that Muslims account for a mere 6.57% of the population in MP, it is clear that Muslims were the “proper object of policing” during the pandemic. Hateful media campaigns and public prejudice are likely to have exacerbated such institutional bias. For instance, following the gathering of Tablighi Jamaat in New Delhi, 64 members of the Jamaat were arrested in Bhopal, and 23 in Agar Malwa district. An additional 24 arrests from Chhindwara, Rewa, Sehore and Sheopur districts under the Foreigners Act are also likely to be connected to the gathering. Most of these arrests invoked sections 188, 269 and 270 of IPC, sections 51 or 56 of Disaster Management Act and sections 7, 13 and 14 of the Foreigners Act, 1946. An FIR against 37 members of the Muslim community gathered to offer namaz at a mosque was filed in Shahdol district. The 37 individuals were arrested and later released on personal bond.

The police actively monitored social media during the lockdown. They were empowered by state regulations to take actions against “misinformation”. The police appear to have abused this power by filing absurd FIRs and then accusing persons of spreading false and misleading information. For instance, an FIR was filed against an individual for making their WhatsApp display picture read ‘*Hum Markaz Nizamuddin ke saath hain*’ (I/We are with

Markaz Nizamuddin). The FIR stated that the Tablighi Jamaat has been responsible for the spread of COVID-19 and this had led to a general dissatisfaction against a religious community, and that despite knowing this, the accused had publicly supported the Jamaat. Each of the FIRs relating to 'misinformation' stated that the accused's social media posts were either likely to disrupt public tranquility by creating an atmosphere of fear or incited hatred, in addition to spreading false and misleading information about COVID-19.

Wide discretion is the sine qua non of policing in India, although it is often characterised as an asset allowing officers to evaluate different situations in their context and accordingly choose the best course of action. However, discretion enabled the police in MP to uniformly resort to deliberately vague responses to the accused person's justification - "unsatisfactory", "unnecessary", "inappropriate", "unclear" and "invalid". In particular, the term "unsatisfactory" is used as a reason for accusing 143 of the 258 pedestrians. Nearly 60% FIRs provided inadequate or no factual information on why the police officer made the judgment of accusing individuals, confiscating their assets or arresting them.

The High Powered Committee formed in Madhya Pradesh, following a Suo Motu intervention by the Supreme Court in March 2020 to decongest prisons, made inadequate progress. Less than 7,000 inmates have been released, despite over 15,000 inmates being held in excess capacity (153% occupancy).

In the time since the release of prisoners, 6497 new undertrial inmates have been added to the overall prison population in MP (as of August). Undertrials constituted 53.4% of the prison population in February and by August they accounted for 65.9% of the population. At the end of June, 109 of the 131 Jails in MP were over their capacities. 23 jails held populations more than 200% of their capacities, and one even at 647%. The increase in the prison population is a result of policing practices that have constructed a pipeline from the streets to the prison through the police lockups and courthouse.



# Chapter 1:

# INTRODUCTION

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On 22 March 2020, a nationwide lockdown was announced to contain the spread of COVID-19. A legal regime comprising of the penal provisions under the Epidemic Diseases Act (EDA), 1897 and attendant State Regulations, the Disaster Management Act (DMA), 2005 and section 144 orders passed by the individual District Magistrates or the Police Superintendents/Commissioners under the Code of Criminal Procedure (CrPC), 1973, was put in place as a response to the pandemic.

The police were consequently deployed across the country to enforce this lockdown. This carceral approach to the pandemic increasingly relies on strict criminal laws, especially after the 2012 Delhi gangrape and murder, and has become an intuitive response of the Indian State to address the challenges and gaps in governance. It is in this context of increasing reliance on criminal law, and omnipresence of the police during COVID-19 lockdowns that we seek to examine the trends in policing that have emerged during this period, including several instances of police brutality. The most notable incident is the custodial murders of Jayraj and Bennicks (Gorringer and Damodaran, 2020, July 2) in Tamil Nadu, which, once again, thrust questions of police excess and accountability into the public domain. Videos recordings of violence against pedestrians and street vendors across the country also helped in bringing this into the imagination of those who seemed to be oblivious.

However, no concerted research and documentation efforts have been made to systematically and comprehensively study the wide discretionary powers wielded by the police in the wake of the enforcement of lockdown orders. Furthermore, the Black Lives Matter and the abolitionist movements in the United States of America (USA) have raised global civil society concerns about police violence and criminal justice reforms (Felber, 2020, June 25), and established a link between slavery and mass incarceration of black population at the behest of capitalist interests (Davis, 2003). It is therefore necessary to locate the institution of police within the prison-industrial complex (PIC) (Schlosser, 1998, December) and extend our inquiry beyond just studying the undertrial populations in prison, making it necessary and expedient to situate policing as a site for intervention in the criminal justice system.

The central Indian state of Madhya Pradesh (MP) is selected as the site for conducting this research given our prior work within its criminal justice system. We approach this study in the larger context of two realities of policing in India - disproportionate focus on marginalised communities and the issue of over-arresting.

## The Police's History of Colonial and Casteist Dispositions

The Black Lives Matter and the abolitionist movements have underscored that mass incarceration in the US is not simply a result of racial prejudices in the criminal justice system, but is in fact an intentionally designed system of racialised social control (Alexander, 2020, April 29). Similarly in India, we see the colonial system of policing camouflaging and adapting itself to reify the caste system. Just as the policing system in India evolved under the British imperial government to *control, coerce and surveil* its Indian subjects (Arnold, 1986), the police has fully evolved into a system of casteist social control targeted at people from bahujan and minority communities.

Targeted policing was a practice evolved under the British (Chandravarkar, 1998). Against a failure to control the population as a whole, it proceeded selectively against some social groups within the working class, who were identified as the 'proper objects of policing' upon a consensus built to make its job easier.

An example of this practice was the Criminal Tribes Act (CTA), 1870 (repealed in 1952) that characterised several nomadic and semi-nomadic tribes as hereditary criminals. Radhika Singha too writes about the utility of labelling communities as criminals for the British, '*It was far easier to prosecute a prisoner on a charge of belonging to some ill-defined criminal collectivity than to establish individual responsibility for a specific criminal offence* (Singha, 1998).'

While the CTA has been repealed, the system of identification, control and surveillance has continued through the various provisions related to Habitual Offenders, a system reinforced by the colonial hangover of the law enforcement agencies. The caste system also acted as a fertile ground for attributing criminality to certain communities.

Mass incarceration may not statistically be as significant a problem in India as in the US, but the issue of policing represents a system of casteist social control which is similar in magnitude, both in terms of prejudice (caste prejudice) and violence. The entrenchment of the police within the caste system can be seen in the composition of the prison population which primarily consists of members belonging to the marginalised communities.



Incidentally, as the Death Penalty India Report (Surendranath et. al, 2016), noted that 76% of the prisoners on death row belong to backward classes and religious minorities. Further, each of the 12 female prisoners sentenced to death penalty belonged to a backward class or religious minority. The proportion of Scheduled Castes and Scheduled Tribes prisoners sentenced to death penalty is 24.5%, with states such as Maharashtra and Madhya Pradesh having as high proportions of these communities as 50% and 36% respectively. Religious minorities represented a disproportionately high 79% and 60% share of prisoners sentenced to death in Gujarat and Kerala, respectively.

The targeting of marginalised communities is also reflected in the rate of incarceration. Thus, the arrest rate is much higher for people from certain groups: Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Castes (OBCs) and Muslims, besides other minority communities.

Secondly, far too many people in India, as a practice, are arrested during the investigation stage. The police in India arrest over 14 people for every person added to the prison population (Crimes in India, NCRB, 2016). Although even a vast majority of the detained spend less than six months as undertrials, those arrested become permanent subjects of the criminal justice system.

Through analysis of FIRs and arrest data of the MP Police during the lockdown period from 22 March 2020 to 17 May 2020, we seek to contribute to the discourse on policing in India.



# Chapter 2:

## BACKGROUND



## Caste Demographics in Madhya Pradesh

An analysis of policing patterns during the pandemic is incomplete without an understanding of the state's demography, the human capacities and financial resources of the police force.

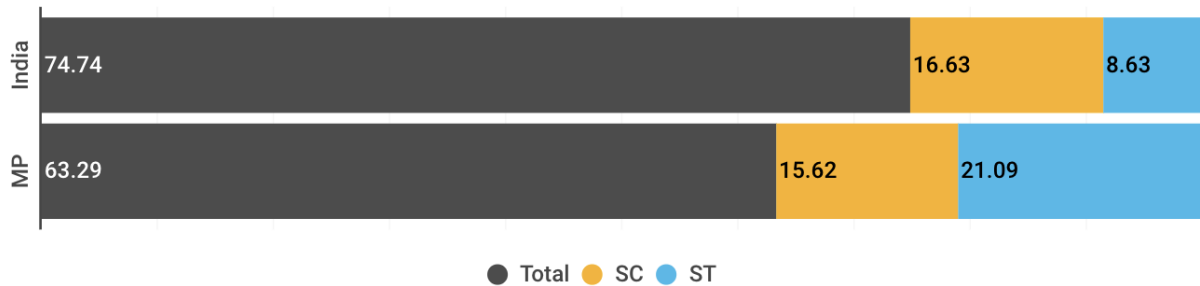


Figure 1: The proportion of SC and ST communities in the populations of India and Madhya Pradesh (Census of India, 2011)

The percentage of SC and ST population is 16.63% and 8.63% in India, and 15.62% and 21.09% in MP, respectively. According to the 2011-12 NSSO Report on Employment and Unemployment Situation among Social Groups, the percentage of Other Backward Classes (OBCs) is 44% in India and 41.5% in MP (Ministry of Social Justice & Empowerment, September, 2018). Muslims constitute 14.23% of the total population in India, they stand at 6.57% of that in MP (Census of India, 2011).

## The Police in Madhya Pradesh

The MP State Police is controlled by the Department of Home Affairs, Government of MP. It has allocated 3.4% of its total expenditure on police (PRS Legislative Research, 2019, July 17). The sanctioned strength of the MP police force (civil and armed) is 1,09,495 of which 22,736 positions are vacant (Data on Police Organisations 2016, Bureau of Police Research and Development; PRS Legislative Research, 2018, May 15). The civil arm of the police undertakes maintenance of law and order, and crime control. MP is divided into different field units for the purpose of efficient policing: zones, ranges, districts, sub-divisions or circles, police stations and outposts (PRS Legislative Research, 2018, May 15).

The hierarchy of the civil police is detailed below (Bureau of Police Research and Development; Commonwealth Human Rights Initiative; PRS Legislative Research, 2018, May 15):

<b>1% of the total force</b>	<p><b>Officer Ranks</b></p> <p>Director General of Police (DGP) (heads the State Police Force)          Additional Director General of Police (ADGP)          Inspector General of Police (IGP) (Heads Zone)          Deputy Inspector General of Police (DIG) (heads Range)          Senior Superintendent of Police (heads larger Police Districts)          Superintendent of Police (SP) (heads Police District)          Additional SP (heads Police Zones)          City SP (heads Police Circles)          Deputy SP</p>
<b>13%</b>	<p><b>Upper Subordinates</b></p> <ul style="list-style-type: none"> <li>• Inspector (heads Police Stations in urban areas)</li> <li>• Sub-Inspector (SI) (heads Police Stations in rural areas)</li> <li>• Assistant SI</li> </ul>
<b>86%</b>	<p><b>Lower Subordinates/constabulary</b></p> <ul style="list-style-type: none"> <li>• Head Constable</li> <li>• Constable</li> </ul>

Figure 2: The Hierarchy and Cadre Proportions of Civil Police

## Global Policing in Response to COVID-19

States all over the world have resorted to curbing civil liberties in a bid to control the spread of COVID-19. Responses include imposing fines, locking people in temporary detentions and making arrests. For example, the UK passed an emergency legislation that enabled the police to issue instant £30 fines upon people leaving their houses for ‘non-essential’ activities or gathering in groups. Reports suggest police using drones to spy on people in public spaces (Al Jazeera, 2020, March 31). France deployed about 100,000 police officers to enforce the lockdown and imposed a hefty fine of €135 on anyone who broke the rules (Gostoli, Al Jazeera, 2020, March 17). In Italy, residents were required to furnish self-declarations detailing reasons for being in public while confirming that they were not infected by the virus. To add to that, a fine of €206 and imprisonment upto three months would have been applicable if persons were found guilty of lying (Gostoli, Al Jazeera, 2020, March 17). In Spain, the military was deployed for quarantine enforcement (Felbab-Brown, Brookings, 2020, April 07).

## **Police Violence in Post-Colonial Countries**

In many African countries whose modern policing can also be traced back to colonialism, the police resorted to violence in order to impose the lockdown. Bujakera reports that in the Democratic Republic of Congo, a taxi driver was beaten by the police for breaking the one passenger rule. In Senegal, videos surfaced of the police 'swiping at fleeing civilians with batons'. In Uganda, the police broke down the doors of informal settlements and dragged out occupants to reduce crowding, injuring several people. In South Africa, the security forces beat people with whips and forced them to squat for violating lockdown rules (Bujakera, 2020, April 10). The UN has received reports of police using rubber bullets, tear gas and water bombs to impose social distancing, mostly in poor neighbourhoods (Al Jazeera, 2020, April 28). In Kenya, the role of police-enforced curfew is being investigated in instances of 20 deaths (Al Jazeera, 2020, April 28). A 13 year old boy suffered a fatal bullet wound while playing on a balcony in Nairobi (Bujakera, 2020, April 10). In Nigeria, at least 18 people were killed in relation to police enforced COVID-19 lockdown measures (Al Jazeera, 2020, April 28).

All these reports of excesses and brutality indicate the inherent violent and oppressive nature of the police forces. The police work as an extension of the State, criminalising certain communities when the State fails to provide just governance and adequate support to communities at the margins. Subsequently, the response of the carceral state has been to penalise persons from impoverished and marginalised communities with impunity.

## **The Legal Framework of Disaster Legislations & Ubiquitous Surveillance**

The State machinery has implemented the lockdown in MP in a quasi-federal manner by using various combination of sections 188 and 269, 270 and 271 of the IPC, section 144 of the CrPC, 1973, sections 51-60 of the DMA as well as the EDA and MP Epidemic Diseases Regulations, 2020.

On 14 March 2020, the Central Government notified the COVID-19 pandemic as a disaster under the DMA, 2005, invoking it for the first time since its enactment following the 2004

Tsunami (Chauhan, 2020, March 25). The Act empowers both the union and the state governments to enforce a lockdown and restrict public movement. It also defines specific offences for obstruction, refusal to comply with directions of the authorities under the Act, and for making false claims or circulating false warnings etc. in relation to the disaster. Specifically, section 51 punishes the refusal to comply with directions of the central, state governments, and other authorities under the Act with imprisonment for one year and/or with fine. When such refusal results in the loss of lives, or creates imminent danger of it, the imprisonment is enhanced to two years.

Additionally, the EDA, 1897, empowers a state government 'to take special measures and prescribe regulations as to dangerous epidemic disease' (Sec. 2, EDA). The Act was promulgated during the colonial era to control the outbreak of the Bubonic plague. In effect, the powers of the state government to prevent an outbreak of an epidemic notified under this Act are limitless (Bhatia, 2020a, March 27). Not only can the government inspect persons with travel history, and quarantine and segregate persons suspected of being infected; but any person found violating the regulations or orders made under this Act can be prosecuted under section 188 of the IPC (sec. 3, EDA).

In exercise of the powers conferred to it under this Act, MP promulgated its Epidemic Diseases Regulations, 2020 on 23 March 2020. The regulations put restrictions on what may be published in print, electronic or social media in relation to COVID-19; specify the powers and protocol for hospitals treating COVID-19 patients; authorise coercive action against persons refusing quarantine or for otherwise securing compliance with the directions of Surveillance Personnel and concerned District Magistrates/Commissioners of Police; and, make punishable any non-compliance under sections 187, 188, 269, 270 and 271 of the IPC (Regs. 5-7 and 10, MP Epidemic Diseases Regulations).

Along with these two Acts, MP also had section 144 of the CrPC invoked in each District. Individual magistrates prohibited gatherings of four or more persons and restricted the operational hours for grocery stores and restaurants among other services to control crowding. The exact nature and scope of all the 144 orders passed in MP during the period of study is not known as several of these orders have not been made public. However, the violation of such orders is still punishable under section 188 of the IPC.

## Criminalising Movement

In addition to the specific offences defined under the DMA, various provisions of the IPC were also invoked to implement the EDA, MP Epidemic Diseases Regulations and local section 144 orders. The health emergency and humanitarian crises are unfortunately treated as a law and order problem, damaging the scope of individual rights and rule-of-law values (Sharafi, 2020, April 20). While sections 269-271 of the IPC criminalise acts affecting public safety, specifically, acts likely to spread infections and disobedience with quarantining directions, sections 187 and 188 criminalise omission to assist, or disobedience with the orders of public servants. Section 269 punishes negligent acts likely to spread infections, section 270 punishes acts done malignantly that are likely to spread infections and section 271 punishes disobedience of quarantine rules. Both sections 269 and 271 prescribe a maximum punishment of six months while section 270 prescribes a maximum punishment of two years. Section 188 is the corresponding penal provision for violations of the EDA, MP Epidemic Diseases Regulations and the 144 orders; and, while the prescribed punishment does not exceed six months, the offences under section 188 are non-bailable in MP. It must be highlighted that section 188 is procedurally bound by section 195(1) of the CrPC that requires a public servant who has passed an order under section 188 or their administrative subordinate to submit a written complaint to the Magistrate for cognisance to be taken. The Supreme Court has upheld this mandatory requirement under Section 195(1) in the case of *C Muniappan and Ors v. State of Tamil Nadu* [(2010) 9 SCC 567]. However, ambiguity over whether an FIR can be registered still remains. The Bombay High Court in its recent order dated 21st September, 2020, quashed all FIRs registered under Section 188 against members of the *Tablighi Jamaat* holding that section 195(1) precluded the filing of FIRs under this provision. It is thus likely that a lot of the FIRs registered solely under section 188 will be dropped by the police during investigation. Yet, the accused might have already seen the prison because of its non-bailable nature in MP.

It is also important to note that the intended effect of the DMA orders is to enforce a lockdown. However, the excessively vague wording has resulted in local authorities implementing conditions of a complete curfew. The initial orders of the DMA did not prohibit the movement of individuals per se. They only placed restrictions in relation to mass movement because it was violating the norms of social distancing. However, several states and local authorities have prohibited any and all movement on roads, turning the lockdown into a curfew (Bhatia, 2020b, March 30).

EDA's history of colonial control renders its implementation equally sinister. Enacted during the Bubonic plague, EDA enabled the British to impose coercive state measures for 'aggressive house, body and corpse inspections, the segregation and hospitalisation of suspected cases, and even the use of troops' (Sharafi, 2020, April 20). Even then, the motives of these draconian and selective policing measures were called into question - whether they were directed at the plague or the 'natives'. (Rai, 2020, April 2 & Sriraman 2020, March 22). More recently, the EDA has been used to fight dengue and malaria in Chandigarh (2015) and Vadodara (2018), and now the COVID-19 pandemic throughout the country, continuing the colonial legacy of medical surveillance.

The MP Epidemic Diseases Regulations, as in several other states, prohibited "the use of any print or electronic or social media for dissemination of any information regarding COVID-19 without ascertaining the facts and prior clearance of [specified authorities]." This was clearly an unreasonable restriction on speech and press, both overbroad and vague, and we will see how this was used to target communities.

## **Absolute Executive Powers and Constitutional Concerns**

The section 144 orders are the final nail in the discretionary and disproportionate nature of the State's pandemic response. However, these 144 orders, unavailable in the public domain, are neither unexpected nor an unusual response by the state machinery. One only needs to look back to December 2019 when this loosely worded law was being used to suppress protests against the Citizenship Amendment Act, 2019 to understand that 144 orders are a catchall to suit all seasons.

An important facet of the legal regime required to facilitate the imposition of the lockdown has been Section 144 of the CrPC. This provision empowers the District Magistrate to pass an order. All orders relied on by the police for violating the lockdown imposed by the district administration are not available in the public domain. For the purpose of this section, only those orders that were available in the public domain have been relied upon to analyse if the standard for prosecution laid down under section 144 has been fulfilled. The first order under section 144 was passed on 22 March 2020 by various districts to impose the lockdown.



The maximum duration for an order of this kind to remain in effect is two months which can be extended up to six months in instances of 'preventing danger to human life, health or safety or for preventing a riot or any affray'. The orders effective in different districts were modified and re-promulgated after brief periods.

A prerequisite for passing such an order is "the existence of present danger, but also when there is an apprehension of danger" and for reasons to be recorded for the same in the order. In Bhopal, vide its order no *495/AGD/2020* dated 5 April 2020 the district administration imposed restrictions on the sale of all items including fruits, vegetables and grocery items. Only the sale of milk and medicines was permitted by the order. Preceding the passage of this 5th April order, the sale of fruits, vegetables and groceries had been permitted. This order restricts the sale of such items to home delivery only. The first order dated 22 March 2020 had permitted the opening of grocery stores, milk parlours and sale of vegetables and milk through vendors. It does not specify any reasons or state the change in material facts that precluded the passage of such an order. This particular order is part of the annexures.

In Gwalior, this trend of restricting the sale of essential items continues vide the order *Q/Steno/ADM/345/2020* dated 24 April 2020. It mandated the shutdown of the wholesale grocery stores along with PDS shops and Community Healthcare Centers (CHCs). None of the orders passed in Gwalior specified the reasons for shutting down grocery stores, and for including them in the same category as non-essential services such as malls, restaurants, hotels and entertainment centers. This order has also been annexed.

Additionally, Gwalior permitted home delivery from 6 AM to 12 PM through online portals such as the State designed Serve Gwalior App and other private apps such as Zomato and Swiggy. Reliance on the mechanism of home delivery, particularly through online delivery, means that the section of the population that consists primarily of marginalised communities has no access to food. This is shocking, given that India ranks 102nd among 117 countries in the Global Hunger Index (2019 Global Hunger Index) and suffers from a serious level of hunger, with marginalised communities being the most food insecure.

In Ujjain vide its order *1284/ADM/Reader-1/2020* dated 14 April 2020, the sale of grocery was restricted to stores in apartment complexes that do not have an entrance facing the

road. The order does not specify the reason for permitting only those grocery stores that face the road to remain open nor do they specify why this particular requirement is tied to the objective of the said order.

None of these aforementioned orders ground the restriction imposed in any specific reasoning that would indicate application of mind for the inclusion of these restrictions. In the case of *Babulal Parate v. State of Maharashtra* [AIR 1960 SC 510], the Supreme Court stated that 'the language of section 144 is somewhat different. The test laid down in the section is not merely "likelihood" or "tendency". The section says that the magistrate must be satisfied that immediate prevention of particular acts is necessary to counteract danger to public safety etc.'

In none of the aforementioned orders, do we see a link being established between the restriction and its relationship with the harm it seeks to curtail. The Supreme Court has reiterated on multiple occasions that any administrative order or action that seeks to impede fundamental rights needs to be tested against the anvil of the theory of proportionality. This theory required 'a restriction to be tailored in accordance with the territorial extent of the restriction, the stage of emergency, nature of urgency, duration of such restrictive measure and nature of such restriction. The triangulation of a restriction requires the consideration of appropriateness, necessity and the least restrictive measure before being imposed' [(2020) 3 SCC 637]. Proportionality, therefore, requires for the restraint imposed to be balanced against the fundamental rights of an individual.

The Apex Court has repeatedly stated that an order under section 144 CrPC, on account of having a direct consequence of placing a restriction on the right to freedom of speech and expression and right to assemble peacefully, should be an order in writing and based upon material facts.

Most recently in its judgment in *Anuradha Bhasin v. Union of India* [(2020) 3 SCC 637] the Court reiterated the standards for application of section 144. They are listed as follows:

1. While exercising the power under section 144, CrPC the Magistrate is duty bound to balance the rights and restrictions based on the principles of proportionality and thereafter apply the least intrusive measure.
2. Repetitive orders under section 144, CrPC would be an abuse of power.
3. An order passed under section 144, CrPC should state the material facts to enable

judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order.

Over the course of the last six months, fundamental rights, particularly those under articles 19(d) and 19(f) have been curtailed due to orders passed under section 144. While the pandemic needed to be responded to, it is necessary to view these extraordinary measures and their disparate impact on certain lives in light of the constitutional framework laid down for the exercise of such powers. Coupled with section 188 IPC being non-bailable in MP, we attempt to highlight the end result of this vast and symbiotic constellation of unjust laws.



# Chapter 3:

# METHODOLOGY



The usage of data by the criminal justice system is intrinsically linked to the nature and use of force by State authorities, and the criminalisation of marginalised communities. Early criminology made 'criminal' individuals the 'objects' of its study and used numerical measurements of physiology to pronounce criminality on individuals and communities. In recent years, criminal justice systems in various jurisdictions are processing the identity background of individuals as 'data' to 'predict' criminal behaviour and recidivism.

The challenges to over-criminalisation and excessive use of force by criminal justice processes against marginalised communities are also being mounted through such data-driven evidence. In our study (like other research pursuing the goal of non-discrimination in the criminal justice process), we challenge and reverse the vertical relation of data analysis prevalent in the criminal justice system between the State and marginalised communities. We use both quantitative and qualitative data to centre the lives of individuals belonging to over-policed communities in MP vis-a-vis the operation of the criminal justice system during a state-instituted and pandemic-triggered lockdown. State records that document the occurrences or alleged occurrences of 'criminal' behaviour form the basis of our study. We have tried to meticulously examine them in order to understand whether the use of force, which is directed towards individuals implicated in them is just, principled, and non-discriminatory.

First, we studied arrest records data from 22 March 2020 to 31 May 2020. These were collected from the arrest records published on the Citizens' Portal of the MP Police website. Although the police stations do not upload the data uniformly on all dates, our dataset captures the information from all the districts and almost all police stations to give us an adequate glimpse of the overall policing trends in the State. The data consists of 34,152 arrests and contains the details such as the name of the police station, the name of the Investigating Officer, the name of the arrested person and the offences for which they were arrested. These offences have been categorised based on their nature/cluster to which they belong, so that we can logically correlate the utilisation of any two or more kinds of provisions.

While there is no way to determine the percentage that our data set represents in the total arrests that were made in the state during this period, it is still possible for us to understand how common an arrest is under any given offence by analysing the 34,152 arrest records.

It has helped us gain an insight on the macro trends in policing and provides a thorough secondary analysis of the communities to which the arrested persons belong to (surnames and expressly stated 'caste' where available also help identify targeting of these communities under specific legislations). On account of the dataset being extremely large, we decided to only empirically study the identity backgrounds of the persons accused of three kinds of offences: those under the Public Gambling Act of 1867, those under the Madhya Pradesh Excise Act of 1915, and those under various lockdown related related offences.

The categorisation of the data with regards to the communities - SC, ST, OBC, General, Muslim and Christian - is imperfect given the lack of information recorded at the time of the arrest. Several arrest records do not list surnames and so these have been excluded from the scope of our study, unless the first name is undeniably identifiable as either belonging to Muslim or Christian communities. Besides, some surnames can be identified as belonging to multiple communities. For instance, persons with surnames such as Jayaswal, Lodhi, Kushwah and Pal may likely be a member of the OBC castes, but they may also be members of Savarna (dominant) castes. Such arrest records have also been excluded from the analysis. This has likely resulted in an undercounting of members of OBC, SC, and ST communities; but the limited records in our study are still telling.

In order to have a fuller understanding of the expansive reach of the criminal justice system, we looked beyond imprisonment to also examine the initiation of the criminal justice process through First Information Reports (FIRs).

We chose to focus on FIRs for two reasons. First, FIRs reveal the structural power dynamics between the police authorities and the marginalised communities in the criminal justice process. The initiation of the criminal justice process through FIR filing is often subject to the dictates of social hierarchies with police authorities registering or refusing to register FIRs after considering the nature of the alleged offence along with gender, caste, religious, and socio-political identities of the alleged victims and alleged offenders. Furthermore, there exists the issue of frivolous filing of FIRs to abuse the attendant powers of arrest for cognisable offences, to intimidate persons and to inflict legitimised, State sanctioned violence on the accused. In cases, where the nature of offence is at a low or questionable

level of criminality, FIRs are themselves instruments of police brutality which map structural power dynamics and attest to the abuse of power in the criminal justice process.

Second, FIRs are written records containing details about the reasons for suspicion against an accused and the complainant's version of the facts. The accusations made and sections used in the FIR determine the scope and the confines of the consequent police investigation and prosecution. They initiate the criminal justice process and, importantly, draw the boundaries for the State's powers of surveillance, criminalisation, detention, prosecution and incarceration of alleged accused individuals. Therefore, FIRs may only be the first piece of the oppressive maze that is the criminal justice system; but in effect they determine the path adopted by the police and officers of the law, as well as the punitive consequences that befall the accused upon conviction. Furthermore, the narrative and language in FIRs is the key to unravel the psychology of policing as well as the attitudes of the criminal justice system towards accused individuals belonging to marginalised communities. This is because FIRs, as First Information Reports, are required to be filed to report the occurrence of an alleged offence. Therefore, they contain information that helps make inquiries about the alleged commission of a crime but may also contain the complainant's conjectures about what transpired. The information that is present as well as that which is missing both provide key insight into police officers' (the complainants for nearly all lockdown-related FIRs) rationale about which information is critical to carry forward the investigation process.

Our study sample consisted of 500 FIRs filed in MP between 22 March 2020 and 17 May 2020. Our time period of study reflects the first, second and third lockdown imposed by the MP government on all districts of the state. The FIRs were gathered from the open and publicly accessible online MP Police Citizen Portal website. To select the FIRs for our study, we developed the following process. MP has 50 districts grouped into 10 administrative divisions. Our first step was to select the district with the largest number of police stations in each of the 10 administrative divisions for inclusion in our study. Then in the second stage, through random sampling, we selected 3 police stations from the selected districts. We excluded the special unit police stations (Anusuchit Jati Janjati Kalyan Branch, Crime Branch, Mahila Branch and Yatayat Thana) as well as those police stations which failed to upload more than 10% of the FIRs that were registered with them, on the Police Citizen Portal. For two districts (Betul and Jabalpur), we had to set the rate of exclusion at 45% of

the FIRs registered since nearly all the police stations in these two districts had high exclusion rates. For instance, the average percentage of exclusion for FIRs uploaded is over 40% in Jabalpur. The high exclusion rates are a limitation to our study, and we have analysed only those FIRs which were duly uploaded on the portal.

During the time period of our study, a total of 2581 FIRs were uploaded by the 30 selected police stations. Of these 1542 FIRs (59.7%) were filed in relation to the lockdown and violation of lockdown orders. Of the 1542 FIRs, we randomly selected 500 FIRs for our study, striving to maintain an equal proportion of FIRs from each district across the three lockdowns. Each of these FIRs was analysed to gather the following details: the sections and Acts under which the accusation was made; information about the complainant and their source, demographic details of the accused; police's stated reason for the accusation, orders relied upon to cite the abrogation of lockdown orders; whether the accused's goods or vehicles were confiscated and details about arrests; and the issue of notice of appearance. When analysing the reasons stated for accusing alleged individuals, as well as the attitudes of the complainant towards any reasons or justification offered by the accused, we culled out key words and phrases which work as colloquial terms for phrases such as 'unreasonable', 'unsatisfactory', 'inappropriate', and 'invalid'.

In Chapter I of our study, we draw a broad analysis from all 500 FIRs of our sample. We then highlight particular trends from observable groups of FIRs analysed under the following categories (based on the nature and site of the alleged offence) - pedestrians, two-wheelers and four-wheelers; street vendors and shopkeepers; persons accused of gambling and unlicensed alcohol possession/sale; persons implicated as members of gatherings (groups of five or more persons); and persons accused of offences committed on social media networks.

While the qualitative data from the FIRs often speak for themselves, we attempted to further corroborate the findings by interviewing accused persons. We interviewed 7 persons, two of whom spent substantial time in prisons. Their narratives run in complete counter to the narratives built by the police in the respective FIRs, giving us further reasons to be concerned about the vague and discretionary decisions made by the police while policing the pandemic.



In the portion of our study entitled 'Street to Prison Pipeline', we rely on the official data sourced from the Prison Department website. The Department periodically publishes prison population data for every month, providing details about jail capacity and population for each of the 131 jails in Madhya Pradesh. It also provides disaggregated data on the basis of gender and details whether the person is a convict or an undertrial.



# Chapter 4:

## A PROFILE OF THE MODES OF POLICING

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As detailed earlier, the police were deployed as the first line of response to the pandemic across the country. The public domain was awash with hundreds of videos capturing the violent ways in which the lockdowns came to be enforced. At the same time, the number of cases registered with respect to lockdown related offences also skyrocketed.

As per our arrest data set, which gives a comprehensive picture of the state wide pattern of policing in MP, about 19.2% of the total arrests were made on account of lockdown rule violations. This percentage excludes the cases in which the crux of the offence was a non-lockdown related act such as gambling, hurt, alcohol possession etc. If these cases are to be included, then the percentage of arrests for lockdown rule violations would increase to 31%.

## **Urban-Rural Variance**

59.7% of all FIRs were lockdown related. Lockdown enforcement through criminal law also appears to be more an urban trend, as the proportion of lockdown-related FIRs in the total number of FIRs is consistently higher for police stations situated in urban areas. For instance, in urban police stations, 68.9% of all FIRs were lockdown related, while the percentage for semi-urban and rural police stations is 32.6%.

There were however regional variances. Gwalior Police appears to have exercised significant restraint in cracking down against lockdown violations with the force of law. Urban police stations of Janakganj and Morar in Gwalior show a mere 4.2% and 4.1% of lockdown cases filed, respectively. The FIRs filed by Gwalior Police also appear to be more closely tailored to the lockdown violations, as they described the exact violation with greater precision than other districts.

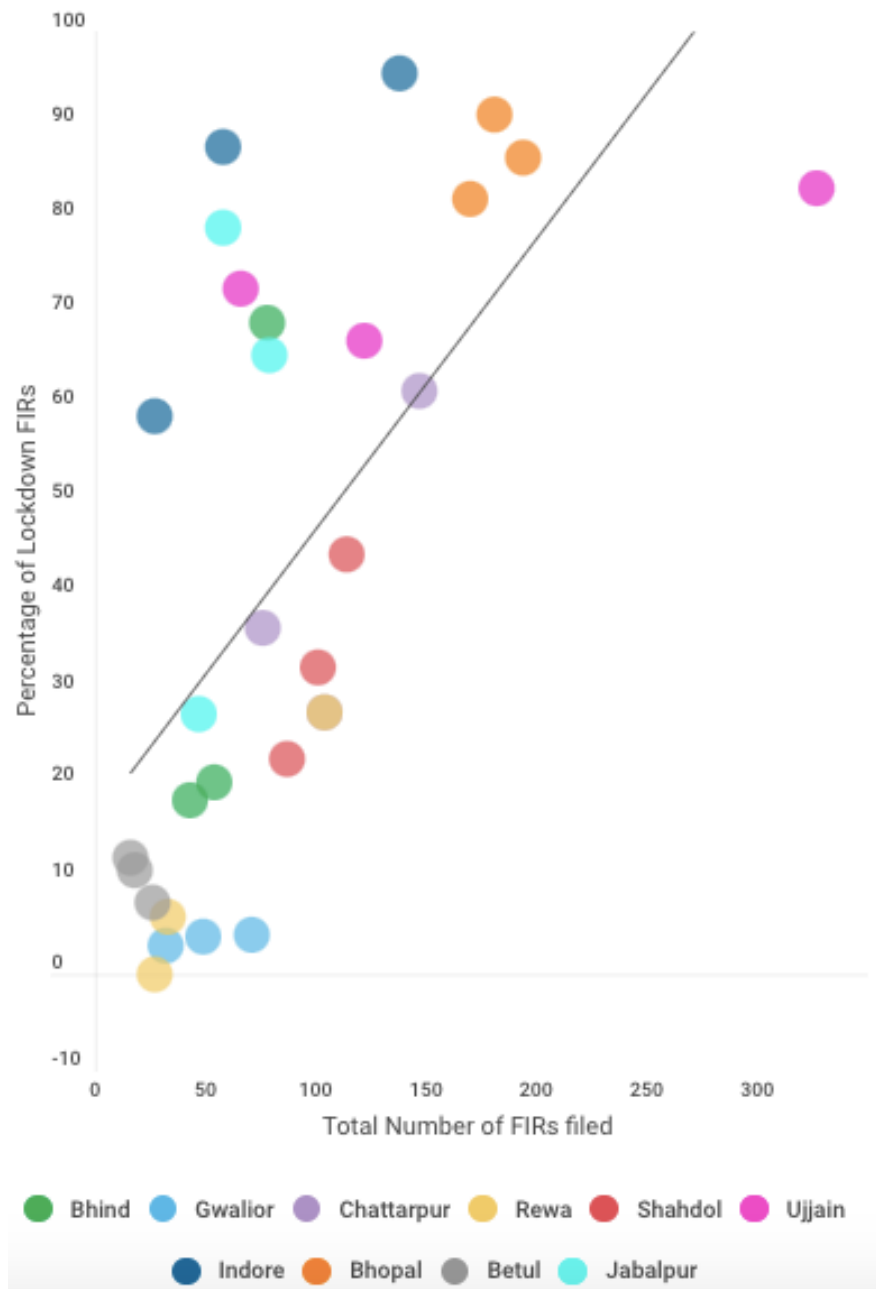


Figure 3: Percentage of Lockdown-related FIRs across 10 districts in Madhya Pradesh

Bhopal, Indore, Jabalpur and Ujjain stand out. They are among the bigger cities in the state and feature as four of the six districts with the most COVID-19 positive cases. Of the Police Stations examined in these districts, the proportions of lockdown FIR are extremely high - 95.7% for Juni Indore PS and 91.2% for Govindpura PS. Other stations in Bhopal, Indore and Ujjain also unrestrainedly enforced the lockdown. Note that these percentages include the FIRs in which sections 188, 269, and 270 were tagged in addition to the offences which otherwise would have lay at the core of the cases.

## The Priorities of Policing

The frivolity and zeal of lockdown related police work is one part of the policing story, and will be addressed in following sections. The other story is business per usual for the MP Police. Even without COVID-19 the biggest chunk of policing work falls within the category of order maintenance. As a result, order maintenance related FIRs and arrests form the biggest proportion of all FIRs and arrests. For instance, MP has the highest number of offences charged under excise law and public gambling law at 110.2 per 1,00,000 population and 34.4 per 1,00,000 population respectively. The national averages for offences charged under the two laws are 20.2 and 11.8 respectively. MP is the only state with such three-figure excise offence charges (Crimes in India, Vol. I, NCRB, 2018).

The trend of allocating resources against largely victim-less, no harm/low harm 'crimes' seemingly continued during the lockdown. This is evident from the graph below depicting all arrests made under various laws during our periods of study. In the first two phases of the lockdown, the low level crimes or 'infractions' contributed to approximately 82.5% of all arrests, and in the third phase, they contributed to 79.4% of all arrests. These infractions are typically crimes that are punishable by less than three years and are often bailable. Certainly, most of the arrests made for infractions will not lead the accused to the prison, but the lockup conditions are known to be unsanitary and interactions with the police remain unsafe. Additionally, such arrests increase the financial burden on families when they are required to furnish sureties or pay bribes.

The largest proportion of offences are low level bailable IPC offences. Within the ambit of low level offences, the most common offences are those which arise out of small disputes booked under a combination of IPC sections 294 (obscene words, etc.), 323 (voluntarily causing hurt) and 506 (criminal intimidation). On the other hand, a small proportion of arrests were for sexual offences (sections 354, 354A, 376 of IPC and sections of POCSO Act, etc.) and serious crimes punishable by over seven years such as those under IPC sections 302 (murder), 304 (culpable homicide not amounting to murder), 307 (attempt to murder), 392 (robbery), and 457 (housebreaking at night for theft) etc.

There are some differences in policing under the first two lockdowns when compared with the third lockdown. In the first two lockdowns, most police resources appear to be allocated to enforcing the lockdown, whereas during the third lockdown fewer resources were allocated to enforcing the lockdown. This is likely because lockdown conditions were less stringent during the third lockdown.

The arrest data for these two separate periods is depicted in the graph below. The first and second lockdowns were ordered for 43 days and the third lockdown was ordered for 28 days. The data has been analysed and categorised in distinct categories based on the nature of the offence.

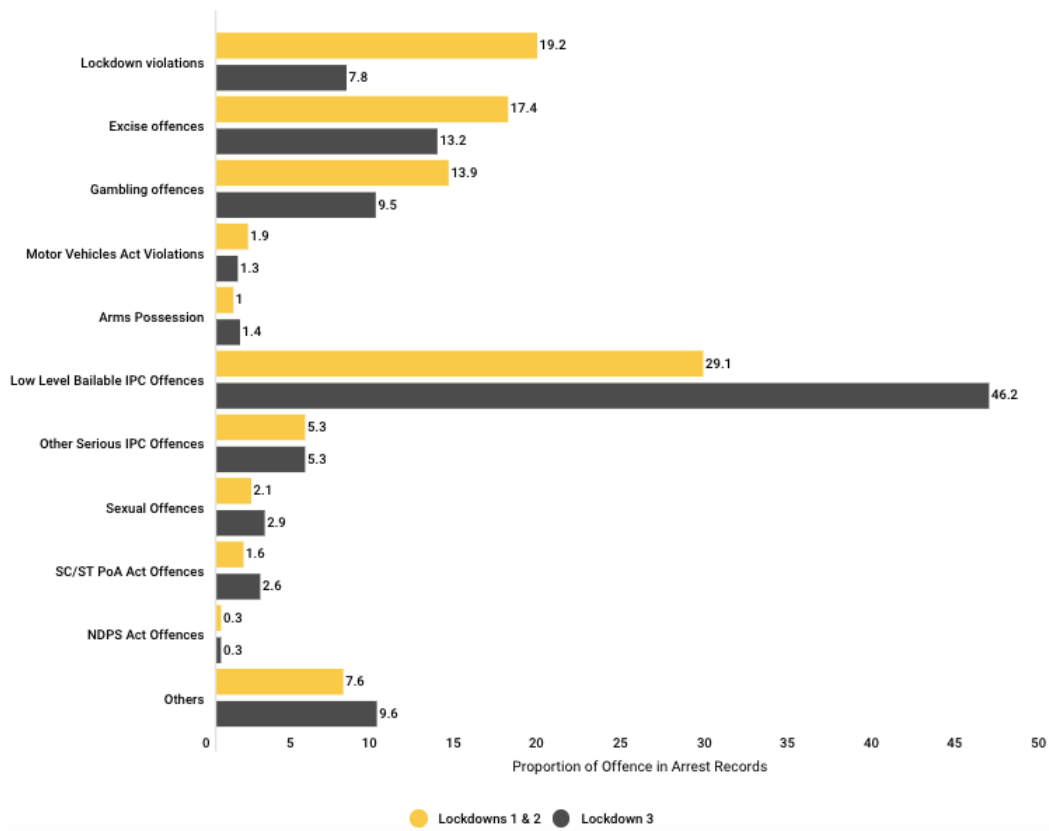


Figure 4: Proportion of Arrests made for various offences between 22 March and 31 May 2020

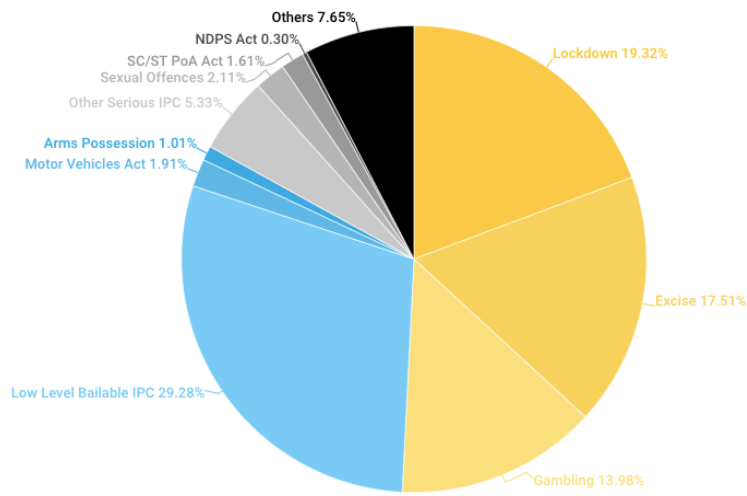


Figure 5: Offence-based categories of arrests made between 22 March and 3 May 2020

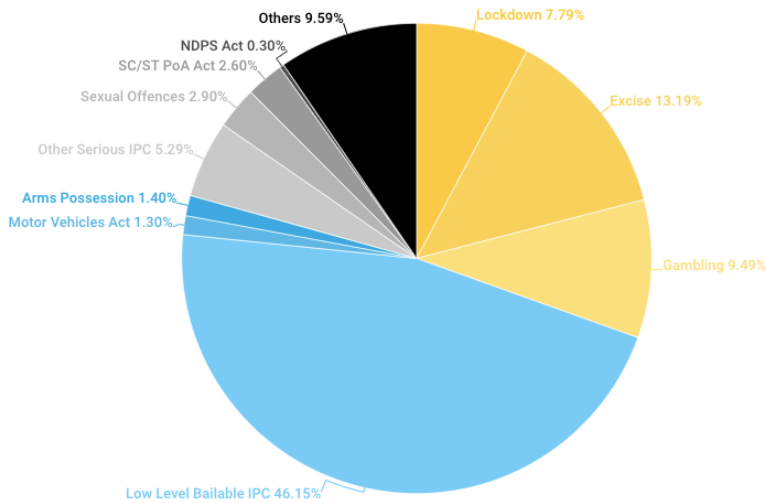


Figure 6: Offence-based categories of arrests made between 4 May and 17 May 2020

The most significant difference in the pattern of policing in the two periods is the percentage increase for Low Level Bailable IPC Offences in the third lockdown. During the first and second lockdowns, arrests for low level bailable IPC offences (although not an insignificant number) seem to have been displaced by lockdown related offences and arrests under the gambling and excise acts - criminalising two of the most low harm activities. In fact, lockdown related offences, gambling offences and excise offences seem to have displaced all other offences. Only the percentages for serious offences (which are usually well reported) and offences under the NDPS Act seem unchanged. Sexual offences, offences under SC/ST PoA Act and most other offences were all registered marginally lower while the police was preoccupied with lockdown violations.

It has been widely reported that the number of complaints to the National Commission for Women with respect to domestic violence and sexual violence increased during the lockdown, since women were being forced to cohabit with their abuser for longer durations. At least one report also noted that the number of complaints of police apathy had also risen in this period (Chandra, The Hindu, 2020, April 2).

Low Level Bailable Offences form the largest proportion of offences under the third lockdown at 46.2%. Although this data is on arrests and not for the registration of offences, the trends may be a closer representation of the latter.

Notably, the trend also corroborates the exceptionally high crime rate in MP for offences of obscenity (IPC section 294) and simple hurt (IPC sections 323, 324, 332, etc.). Offences of simple hurt in MP, according to the NCRB's Crime in India Report for 2018, is 6 times the national average at 3.6 (the national average is 0.6) and is the highest in the country (Crimes in India, Vol. I, NCRB, 2018). Only four other States have a rate higher than 1 (Chhattisgarh, Mizoram, Kerala and Sikkim). The offence under IPC section 294 has a rate of 9.3 in MP, second only to Tamil Nadu (10.6); nearly five times the national average of 1.9. MP's rate is also more than twice that of the third highest state for offence under IPC section 294 - Maharashtra has a rate of 3.6. The offences of obscenity, simple hurt and criminal intimidation are seemingly unnecessary escalations of small conflicts and fall squarely into the police's order maintenance functions.



It can be argued that the policing resources are better allocated to investigate more serious crimes. However, as is apparent, (social) order maintenance is an inseparable part of our policing and State control. It is also notable that policing of gambling and alcohol possession, sale and trade have become a part of social order maintenance during the implementation of the lockdowns. We continue this discussion in the following chapters.

## Public Spaces as Sites of Criminalisation

Most of the FIRs were filed against individuals found on the streets, whether pedestrians or persons on two or four wheelers. This was followed by retailers, both owners of established shops and street vendors. We address both these categories of accused in the following sections.

It is worth mentioning here that we noted a significant increase in the number of FIRs registered against pedestrians and persons on two or four wheelers during Lockdown Three, i.e., of over 20%. Ujjain District made the most noticeable use of this form of policing; of the 81 FIRs from that District, 77 fell in this category (95%) during Lockdown Three.

One FIR alone accounts for 37 accused persons found allegedly praying at a mosque, and there were up to 6 accused persons booked for protesting or social media activities.

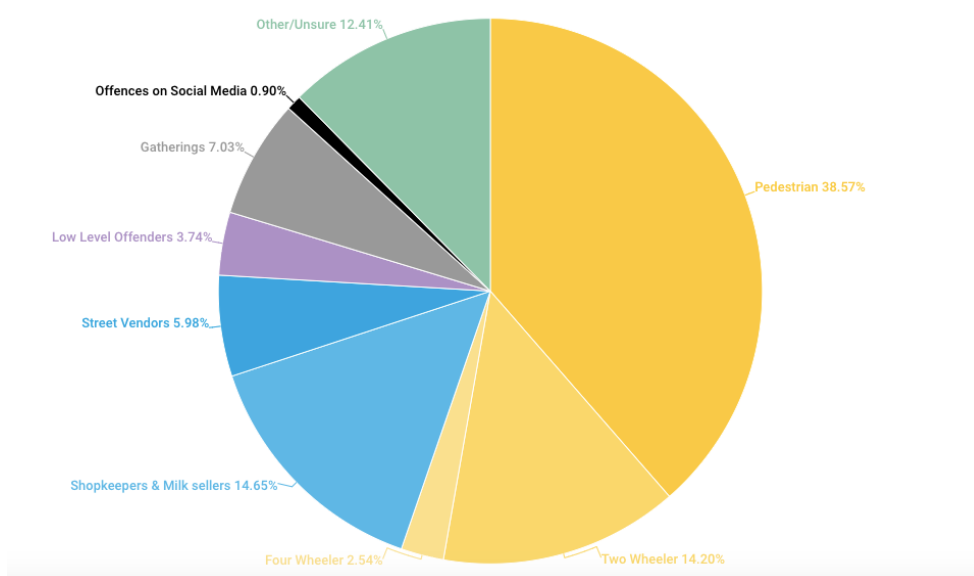


Figure 7: Categories of people against whom FIRs were filed between 22 March and 17 May 2020

## Physical Surveillance and Information Networks

With the high number of accused persons in the category of those found on streets and retailers, expectedly most sources of FIRs were the police personnel themselves. Patrolling, check point duty, market management duty and more general 'duty', together account for 58.4% of the source of information for the offences based on the persons policed. Yet, the number for vague and unnamed sources is not negligible. For 21.5% of the persons referred to in FIRs, the source of information was *mukhbirs* or police informants, *soochna* (information), or did not mention any source. Generally speaking, such vague reference to the sources allows some degree of arbitrariness. Police informants are notoriously used when the narrative in the FIR, and often the allegation, are both false.

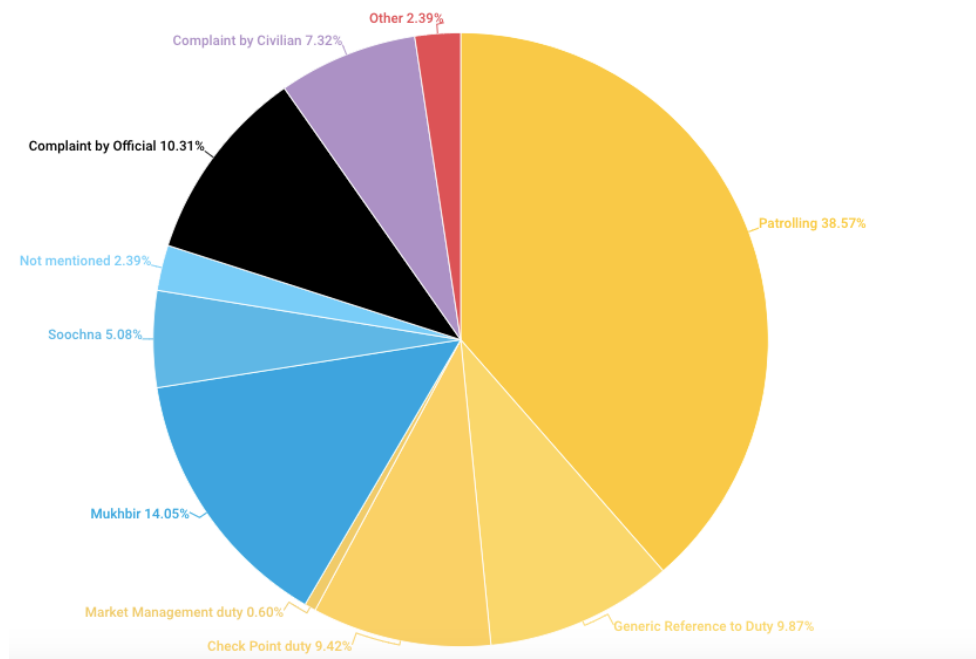


Figure 8: Sources of information relied upon in FIRs

In some districts, the government officials have performed policing duties by submitting written complaints of lockdown violations while patrolling. For instance, the Patwari (Revenue Officer) in Ujjain is the source of 34 of the 42 FIRs filed in the district. In Chattarpur, the Naib Tehsildar, Junior Supply Officer, Patwari and the Revenue Inspector were a significant source for the FIRs filed in the district.

Similarly, between 11 May 2020 to 16 May 2020, all the FIRs from Birla Gram PS (Ujjain) were made pursuant to written complaints by the Naib Tehsildar. Lastly, in some jurisdictions, the police have been assisted by Nagar Suraksha Samiti members, who serve as witnesses (*samaksh gavahan*), while the police enforce lockdown orders. For instance, a noteworthy portion of the FIRs filed in Bairagarh police station in Bhopal mention that the police were accompanied by the Nagar Suraksha Samiti members on police patrols.

## **A Portrait of the Policed**

Most of the people subject to the lockdown policing belong to the Hindu community. This is unsurprising, considering that approximately 90.89% of the people in MP are Hindus (Census of India, 2011). However, while Muslims comprise 6.57% of the total population in MP (Census of India, 2011), they comprise 21.5% of the population policed in our dataset. This large representation cannot be merely justified by arguing that singular anomalous FIRs have booked large numbers of Muslim men, and that such policing is not practiced in other districts. Because, even after completely deducting these apparent dog-whistle FIRs, Muslims still account for over 16% of the population policed during the pandemic. Our arrest data set also presents a similar picture with 24.45% of purely lockdown related arrests were of Muslims. *Prima facie*, this raises concerns about the need to address stereotypical attitudes and check prejudices in policing institutions. We talk more about this in the following chapter.

Around 98% of the people policed are men and women comprise less than 1% of the individuals accused in our FIR dataset. The sex of over 1% of the people policed is undecipherable. In our arrest dataset, only 2.1% of the individuals arrested were women. There are likely two reasons for this gender-based discrepancy. First, the Indian society continues to place extensive restrictions on women's mobility, and these are likely to have compounded given the restrictive orders during the lockdown and the closure of public transport services. Females are also far less likely than males to have access to, or ownership, of any more of private transportation (Census of India, 2011). Second, it is likely that a police, moulded by and operating, in a patriarchal society is more lenient towards the non-threatening, minor transgressions by women.

Lastly, over 13% of the persons policed during the lockdown were 45 years of age or older and likely to be more vulnerable to the pandemic.

In these 500 FIRs, of the 669 persons policed, 379 (56.7%) were accused of roaming around unnecessarily without a valid reason and for roaming around unnecessarily without a mask. The second recurrent reason for filing FIRs against individuals was the running of shops and practice of trade for both essential and non-essential goods and services. This is in congruence with the fact that pedestrians or people on motor vehicles, and shopkeepers and street vendors are the two largest categories of individuals who have been policed. Although we found no narratives or justifications of the 211 accused in the pedestrian-related FIRs included in our study, it is pertinent to consider that during the time period of our study, the largest humanitarian crisis unfolded in our country as millions of inter-state and intra-state migrant workers travelled back, often on foot, to their homes and native villages.



# Chapter 5:

## THE DISPROPORTIONATE IMPACT OF BROKEN WINDOW POLICING

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The implicit social bias against the poor in India also unfortunately translates to 'law and order' enforcement. Under the garb of maintaining 'public order', the police systematically targets persons belonging to marginalised communities like SC, ST, OBC, and religious minorities like Muslims. These communities, much like the African American community in the US are criminalised using the 1980's era broken windows theory (Childress, 2016, June 28) and vice policing (Fischer, Boston Review, 2020, July 21). Both kinds of policing rest on the idea that in order to maintain public order, and prevent commission of serious crimes; it is necessary to police low level offenses and misdemeanours. In Childress'(2016) article, David Thacher is quoted as stating, 'Broken Windows frames trivial misbehavior as the beginning of something much more serious'. There is no evidence whatsoever of these techniques leading to lower crime rates or 'safer' neighbourhoods. On the contrary, we have seen that excess policing leads to exploitation and further marginalisation of certain communities (Sonavane and Bokil, 2020b, May 30).

The criminal justice system in India is a casteist system created and perpetually bolstered by brahmanical values that have pervaded the society, and all its structures. It builds a narrative of criminality of certain communities which serves to further the oppression and bias they have faced over the years, in order to maintain the status quo and the political economy of criminality for the dominant gender, castes and class. The NCRB's Prisons' report for 2018 observes that, 'Two-third of prisoners in Indian jails are Dalits, tribals and from Other Backward Classes (OBCs), 19% are Muslims and 66% of 4.66 lakh inmates are either illiterate or have not studied beyond Class X' (Joy, DHNS, 2020, January 1). It also reported that MP had the highest population of inmates belonging to STs.

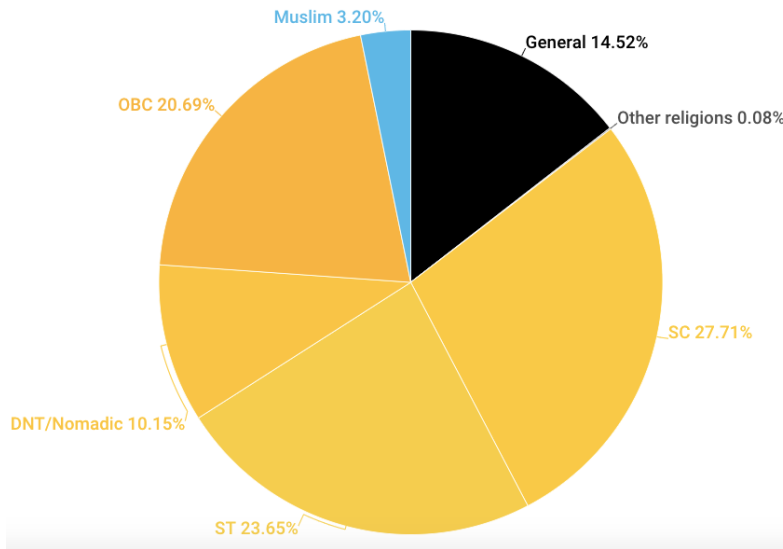


Figure 9: Caste backgrounds of individuals criminalised under the MP Excise Act (1915)

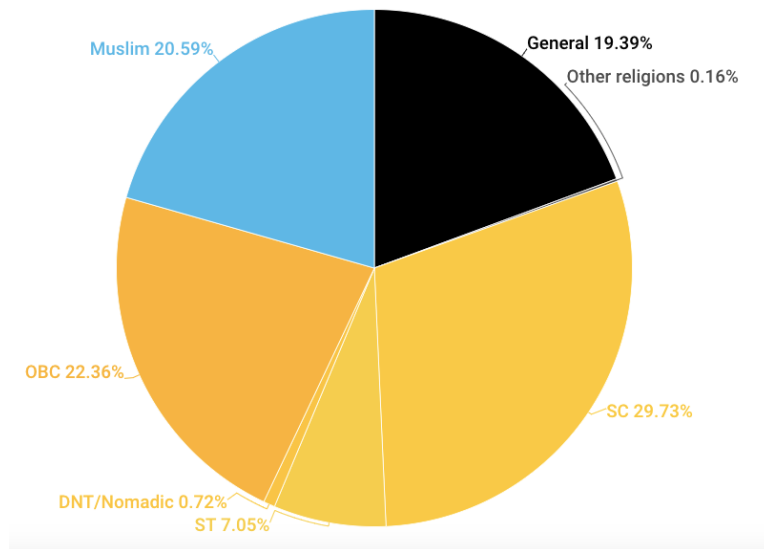


Figure 10: Caste backgrounds of individuals criminalised under the Public Gambling Act (1867)

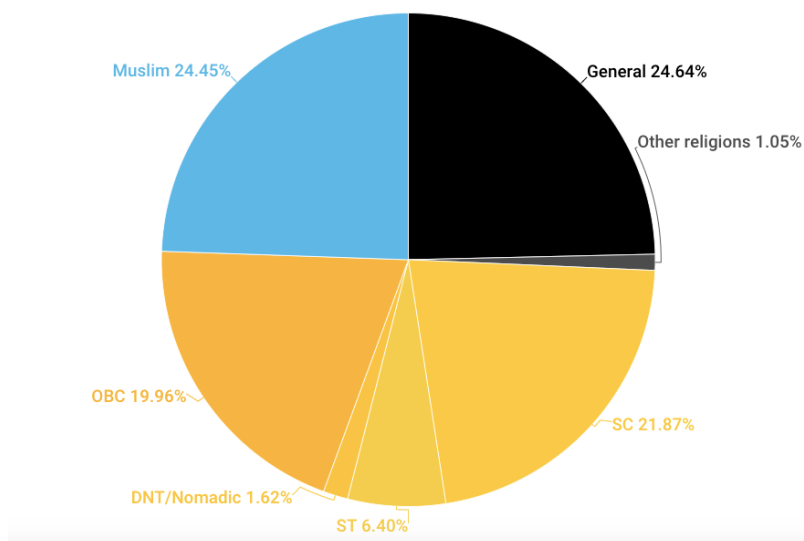
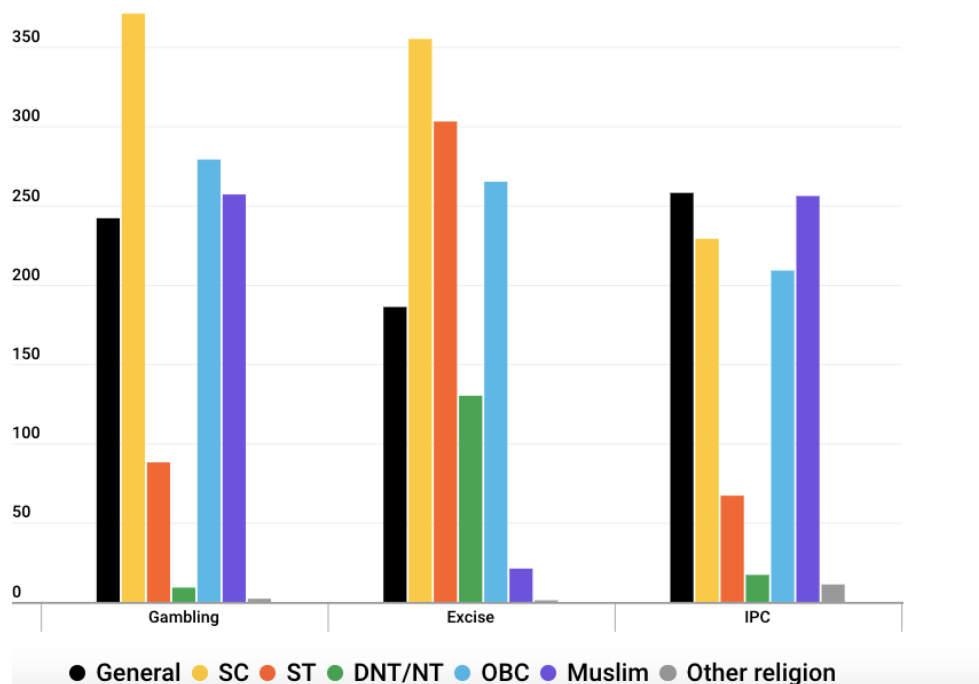


Figure 11: Caste backgrounds of individuals criminalised under lockdown related IPC offences (1860)



**Figure 12:** Comparative community representation of offenders criminalised under the Public Gambling Act (1867), MP Excise Act (1915) and lockdown related offences under the Indian Penal Code (1860). (Note: These are overlapping categories, thus the total exceeds 100%.)

For violation of lockdown conditions, out of a total of 1047 arrests made, 229 (21.87%) were from the SC community, 67 (6.40%) were from the ST community, 209 (19.96%) were from the OBC community, 17 (1.62%) were from the DNT/Nomadic community, and 256 (24.45%) were from the Muslim community. The data for arrests under the Public Gambling Act shows that out of 1248 people arrested, 371 (29.73%) were from the SC community, 88 (7.052%) were from the ST community, 279 (22.36%) were from the OBC community, 9 (0.72%) were from the DNT/Nomadic community, and 257 (20.59%) were from the Muslim community. For the 1281 arrests made under the excise laws, 355 (27.71%) were from the SC community, 303 (23.65%) were from the ST community, 265 (20.69%) were from the OBC community, 130 (10.15%) were from the DNT community, and 41 (3.20%) were from the Muslim community. Another significant finding was of 139 (10.85%) women being arrested under the excise laws. Of the 103 with identifiable surnames, 59 (57.3%) women belonged to the SC, ST and OBC communities collectively and 41 (39.8%) women belonged to DNT/Nomadic communities mostly Kuchbandiya, Kanjar communities.



This can be juxtaposed with the overall percentage of women arrested in India (5.32%) and in MP (4.78%) (Crimes in India, Vol. III, NCRB, 2018). These statistics have to be understood within the backdrop of the total population of these communities in Madhya Pradesh.

The state's SC population is 15.62%, ST population is 21.09% and Muslim population is 6.57% (Census of India, 2011). The OBC population in MP is estimated at 41.5%, according to the NSSO Report No. 563 (Ministry of Social Justice & Empowerment, September, 2018). There's no official data regarding the total population of denotified, nomadic and semi nomadic tribes but formal estimations pin this population in MP somewhere between 50-60 lakhs (Kakvi, Newsclick, 2019, December 27). Like mentioned in the methodology, many of the names excluded from the list are those that have neutral surnames or surnames shared by castes, thus this might have resulted in undercounting of the number of individuals who belong to SC, ST, OBC and DNT groups.

The data analysed clearly shows the presence of a bias against marginalised communities furthers and perpetuates the vicious cycle of impoverishment and incarceration. It is amply clear that these communities are disproportionately imprisoned as opposed to the general population. The arrests under excise laws also showcase how women from marginalised backgrounds are severely policed at the intersection of gender, caste and class. They are far more vulnerable to oppression at the hands of the police than women belonging to dominant castes.

An important finding is the overrepresentation of Muslims under the lockdown related offences (24.45% vs 6.57% of the State population). This has much to do with Muslims being deemed *proper objects of policing* of the pandemic in the words of Rajnarayan Chandavarkar (1998) contributed significantly by the rabid campaign run by the media.

In three FIRs of our study, ten individuals were accused of gambling in violation of curfew orders. These individuals were all accused under section 188 of the IPC along with section 13 of the Public Gambling Act, 1867. Section 13 of the Public Gambling Act authorises the police to apprehend any person found gambling in any public street, without a warrant. The punishment for being liable under the section is either a simple or a rigorous imprisonment of upto one month or a maximum fine of ₹50. One FIR, filed in Athner PS (Betul) on 16 April 2020, listed the caste of each of the four accused individuals even though no section of the standard FIR format requires (or provides for) the information about one's caste. Every caste listed in this FIR is enumerated as belonging to the OBC category in MP.

Another FIR, filed in Bhopal's Bairagarh on 12 April 2020, records that the three accused were found gambling in the town's *basti* (Basti No. 2, Amrekha Road, Bairagarh), thus giving us some insight about their socio-economic status.

A pack of cards and cash totaling ₹3,180 was confiscated by the police from the alleged ten individuals and in all three instances, the policing was based on the information provided by *mukhbirs*. All of the ten individuals, four of whom are not older than 25 years in age and at least eight of whom are aged below 30 years, were issued a notice of appearance.

Additionally, the four persons were accused under section 188 of the IPC and section 34 of the MP Excise Act (1915) for the unlawful sale of alcohol without valid license and permits. Just as in the case of gamblers, all the four individuals in this case were also accused by the police after they received information from *mukhbirs*. During the third lockdown, the number of persons accused under the MP Excise Act increased to ten, out of whom five had been accused based on the *soochna* received by the police, three were accused based on the information provided by *mukhbirs*; and two were accused while the police were inspecting vehicles. Two of these persons belonged to the Muslim community, two belonged to the OBC community, two belonged to the dominant caste and for the rest their caste locations were unclear.

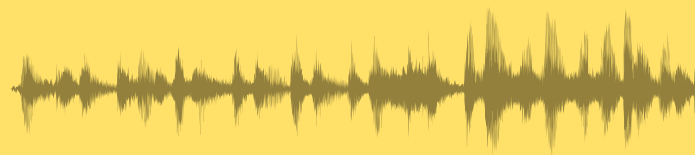
A 19 year old from Gadha, Jabalpur, was accused for alleged possession and attempted sale of *desi* alcohol worth mere ₹500. In another instance, from the same police station, an individual was accused under sections 34 and 36 of the MP Excise Act for allegedly selling *desi* alcohol without a license worth a paltry sum of ₹100. Two individuals from Bairagarh PS (Bhopal) were accused on similar grounds for allegedly attempting to sell alcohol worth ₹1,615. A similar trend was observed in the FIRs filed during the third lockdown in Bhopal and Bhind, wherein six individuals were accused for allegedly selling alcohol, its worth ranged from ₹1950 to 4050. These FIRs must be examined after considering that the punishment for a first time offender under section 34 of the Act is imprisonment for 2-24 months and a minimum fine of ₹2,000 which may extend to ₹10,000.

Out of these, there was one instance wherein the accused who belonged to the SC community was arrested by the Bairagarh PS (Bhopal), for selling alcohol without a license, without wearing a mask, at four am in the morning. The quantity in this case was larger, at 27 litres, yet outside the criterion of 50 litres and up which carries a higher punishment.

During the third lockdown, the number of arrests increased to three, all of which took place in Indore for allegedly selling whiskey ranging between ₹3950 - ₹6000. The other accused persons were let off with a notice issued under section 41-A of the CrPC for similar offences in Bhopal, Bhand and Jabalpur.

A fundamental problem is, of course, the need of criminalising offences such as these and the disproportionate impact of such a law on the poor and marginalised communities. On one hand, the police criminalises possession of alcohol that is worth Rs. 500 and gambling on a pool of mere hundreds of Rupees; and on the other hand, it permits access to foreign liquor even during the lockdown and allows online gambling. This makes the objective of policing clearer.

There is also blatant stereotyping and stigmatisation of DNTs, nomadic and semi nomadic tribes along with the Adivasi, Dalit and minority communities. The clear prejudice espoused by the criminal justice system is what leads to criminalization of poverty wherein even acts of earning a livelihood are subject to penal sanctions.



## Kamla Nagar Police Station, Bhopal

### **Sadiq Khan**

On 29th April, 2020 slightly over a month after the Indian government imposed one of the harshest lockdowns in the world to control the spread of the pandemic, Sadiq Khan (\*name changed), aged 28 years, was charged for illegal possession of possession of five liters of spurious country liquor by Kamla Nagar Police Station in Bhopal. He was charged with section 34 and section 49-A of the MP Excise Act. The police station picked him up claiming that he had a previous criminal record.

Sadiq said that he was sleeping at home when he was called to the police station around 2 pm. While the FIR stated that he was found in a public place carrying liquor. The family was informed by a friend who had accompanied him to the police station about his arrest . Following which he was detained for two hours, and subsequently arrested. He was detained at the Police Station overnight and produced before the Magistrate the following day. He was thereafter remanded to judicial custody. At no point, following arrest or after being remanded to judicial custody was the accused tested for COVID-19. Sadiq's bail application was rejected by both the JMFC and the Sessions Court. He was incarcerated for 2.5 months, and at no point was tested for COVID despite each jail cell housing 30/40 inmates. All inmates were provided a bar of soap required to be utilized for bathing and washing clothes.

A driver by profession, Sadiq is one of the two earning members of an eight member family. He was granted bail by the MPHC in July on furnishing a surety of Rs. 50,000. Sadiq or his family does not own any assets and ended up paying Rs 5000 to a middleman in order to produce a fake surety. This cost of paying the lawyer was borne through a loan.

### **Rakesh Pardhi**

Rakesh Pardhi, a 20 year old farmer, from the Pardhi community (erstwhile Criminal Tribe) was arrested by the police on 3rd May for illegal possession of raw country liquor and charged under section 34 (2) of the MP Excise Act in the first week of April. This offence is punishable by a maximum three years of imprisonment for a first-time offender. He had no prior criminal record, and was suffering from tuberculosis at the time of commission of the alleged offence. He was arrested and sent to judicial custody and was incarcerated for nearly three months. Despite meeting the interim bail parameters and suffering from tuberculosis, he was not considered for the same. Since both the Excise Act and Tuberculosis are excluded from the eligibility criteria of release by the High-Powered Committee (HPC) by the State government to decongest prisons.



# Chapter 6:

## ENFORCEMENT OF LOCKDOWN AGAINST PEDESTRIANS & TRAFFIC



The imposition of lockdowns saw various groups of persons being accused for violation of lockdown conditions. A major subset of this category comprises pedestrians, two-wheeler drivers and four-wheelers drivers. Most of the FIRs (87.57%) against this subset have been registered either under section 188 of the IPC or its combination with sections 269 or 270 of the IPC. We have observed an upward trend in reliance on these provisions in Lockdown Three from 81.92% for Lockdowns One and Two cumulatively to 94.89% for Lockdown Three.

While these three categories of person(s) were all pulled up by the police for transgressing the lockdown restrictions, it is interesting to note that almost 94% of the FIRs were registered against pedestrians and persons on two-wheelers while a paltry 6% were registered against those on four-wheelers.

This figure reveals an interesting contrast given that one can suppose a reasonable class divide between pedestrians, persons on two-wheelers and those on four wheelers. Official figures released from December, 2018 have calculated the ratio of merely 22 cars per thousand individuals in the country (Abbas, 2018). Given this miniscule figure, it is evident that only a small percentage of the population in the country have ownership of four-wheelers. It might be argued that fewer four-wheeler owners might have accessed public spaces than the others during this period; given their heightened visibility this paltry figure across nine districts suggests that the number of FIRs registered against such persons with four-wheelers is still considerably low. Especially when juxtaposed with the figures of pedestrians and persons on two-wheelers. It is also worth noting that the proportion of FIRs against pedestrians increased considerably in Lockdown Three; going up from 50.28% to 89% of the total registered in this subset.

It is also crucial to corroborate this with the arrest trends which emerge from this category. Of the total six arrests that were made in this subset, five (83.33%) were for FIRs against pedestrians or persons on two-wheelers and only one (16.67%) was for a person in a four-wheeler. However, we also noted a general downward trend in the arrest data for this subset; in Lockdown Three the proportion of arrests in this subset came down from 2.82% to 0.72%.

That said, the arrested persons in these cases could still have been let off with a notice issued under section 41-A of the CrPC; the Supreme Court in *Arnesh Kumar v. State of Bihar*, ((2014) 8 SCC 273) has reiterated that no arrest shall be made unnecessarily by the police and magistrate shall not authorise detention casually and mechanically and in particular, in relation offences punishable by an imprisonment of seven years or less. Therefore, the accused persons in this case could have been let off with a notice under the aforementioned provision of the CrPC without arresting them. Arresting accused persons for minor offences, is not only in contravention to the decision in *Arnesh Kumar*, but is also in violation of the Supreme Court's order dated 23 March 2020 in *Re: Contagion of Covid-19 Virus in Prisons*. In this order, the Court directed decongestion of prisons in light of the pandemic through setting up of High-Powered Committees (HPC) in various States and Union Territories to release prison inmates who have been convicted or are under trial for offences for which the prescribed punishment is up to seven years or less. While doing so, the Court also reiterated its position of avoiding arrests unless required.

The notice of appearance was issued to merely 54.75% of the pedestrians accused while the remaining FIRs bear no mention about the issuance of such a notice. This is in a stark contrast to the four-wheeler drivers where about 80.83% of the four-wheeler drivers were issued notices under section 41-A. In one instance a four-wheeler driver was arrested while trying to travel to Rewa District from Jabalpur district without a pass or 'vaidh prapatra' (valid form) while carrying 1376 bottles of 100 ml cough syrup each, without the valid permit; therefore violating the conditions of the 144 order leading to him being accused under section 188 and sections 5 and 13 of the MP Drug Control Act, 1949 by the Gohalpur PS.

The registration of an FIR about the commission of an offence which sets criminal law into motion requires a complainant to inform the police about the alleged offence. On tracing the source of the information about the alleged violation in this category, we found that primarily FIRs were being registered against pedestrians through patrolling (48.34%), complaints by government, village or police officials (22.27%) or during checking/checkpost duty (16.11%). The trend of public officials registering FIRs against pedestrians is prominently visible in the case of Chimanganj Mandi police station of Ujjain, where 34 FIRs have been registered against pedestrians for roaming around in public space by the same complainant - a certain Patwari named Dhiraj Nigam.

This is the most common reason for lodging FIRs against pedestrians (63%) followed by loitering in public place without a mask (34%). Roaming around is also the main cause for invoking criminal law against two-wheeler drivers (61%) followed by roaming around without a mask (23%). Though, it must be noted that this trend is replicated in case of four-wheeler drivers as well.

The justification provided by the accused is not mentioned in any of the FIRs in this category, except in nine (2.8%). This point becomes crucial to understanding whether an opportunity was given to the accused persons at all to offer an explanation for the allegation made against them. Most of the FIRs in this category use a combination of the words 'unnecessary', 'unsatisfactory' or 'invalid' to describe the presence of the accused at the place of incident. In the absence of any stated explanation from the accused, the FIRs in this category carefully construct a narrative of criminality of the accused with cherry picking of facts to bolster it. As per usual, police discretion remains the underlying determinant of criminality.





# Chapter 7:

## CRIMINALISING ESSENTIAL SERVICES: STREET VENDORS & SMALL SHOPKEEPERS

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India's street vendors are deemed as "encroachers on public land" despite providing affordable food and other products to the urban poor and thus being critical to the supply chain. (Kumar, 2019). Their livelihoods are haunted by unjust criminalisation and police harassment (including extortion) (National Commission for Enterprises in the Unorganised Sector, 2006). In urban centres, a fifth of street vendors' earnings are taken by authorities (National Alliance of Street Vendors in India, 2000). However, street vendors play a crucial role in providing access to food for low income populations and are key agents for securing universal food security. The pandemic-induced lockdowns disrupted street vendors' meagre incomes, imperiled their food security and imposed new dimensions of police control and surveillance. Small shopkeepers occupy more political and economic power than street vendors, and are not subject to similar degrees of policing in their livelihood. However, small shopkeepers are just as much subjects of arbitrary police power and expansive discretionary sanctions as the marginalised citizenry.

Every fifth individual accused by the police within the temporal and spatial scope of our study was either a street vendor, shopkeeper, or milk seller. Over 45% of the 139 individuals accused were providing essential services and goods such as groceries (15.82%), vegetables and fruits (17.26%); and meat and dairy products (12.238%). The guidelines issued by the Ministry of Home Affairs (Order No. 40-3/2020-DM-I[A] dated 24 March 2020) listed all shops selling these products as essential services, thereby exempting them from the lockdown restrictions. Additionally, the guidelines directed that district authorities 'may encourage and facilitate' home delivery to minimise the movement of individuals outside their house. Over 70% of the street vendors accused were providing essential services while the proportion of shopkeepers accused who were catering essential services was 34% (considerably lower than the percentage of the street vendors), highlighting that even during the lockdown, street vendors faced more unjust criminalisation than the shopkeepers. Furthermore, it is significant that such a large number of individuals accused were engaged in the trade of essential goods and services. It is uncertain why the police accused these persons at all, given that they had limited powers except in specific districts during the third lockdown (4 May-17 May) where all traders were required to wear masks and gloves, and enforce the practice of social distancing. Even when the police have encountered individuals violating administrative orders during the lockdown, there is some evidence to suggest that the police have exercised mercy in imposing section 188.

For instance, one FIR registered in Bhopal's Govindpura PS during the first (and most stringent) lockdown documents that the accused was let off by the police with a warning when he was first found to have violated lockdown orders by roaming around the streets without a mask and for no valid reason. If individuals trading in essential goods and services were not enforcing social distancing measures, considering their role in fulfilling food security needs and their own low incomes, perhaps an approach that is grounded in assisting them enforce such measures would be productive and lawful over filing criminal law charges against them. A large number of these street vendors and shopkeepers were policed during patrolling or other policing duties and networks. Over 40% of the street vendors, shopkeepers, and milk sellers accused were found by the police during patrols of their jurisdiction and another 26% of the sellers and shopkeepers were found by the police during the course of their duty or from *mukhbirs* (informants).

Over 70% of the shopkeepers and street vendors arrested were Hindus while 20% were Muslims. The caste of most shopkeepers and street vendors was unclear. These numbers appear reassuring as they do not by themselves indicate a disproportionate targeting of Muslim or lower caste traders. However, anecdotal FIRs from our study suggest that it is important to carry out a deeper examination into whether shopkeepers and street vendors from marginalised communities were treated differently by the police. Consider, for example, the treatment of the two shopkeepers accused by the police in Bhopal's Bairagarh PS. A 55 year old OBC Muslim man was working at his meat shop (protected as an essential good according to central government guidelines) in Sehore Naka on 9 April 2020, when patrolling officers, accompanied by *Nagar Suraksha Samiti* members, shut his shop down after deeming it to be in violation of the total lockdown orders. A *panchnama* (witness testimony) was made about the shop being open and unlike most other individuals he was brought to the police station for the registration of the FIR by the Head Constable. Two days later, on 11 April 2020, the police received *soochna* (information) that a 40 year old Hindu man had opened his tent shop (a non-essential service by any central or state government guideline) on Aara Machine Road. Accompanied by *Nagar Suraksha Samiti* members, police arrived at the shop and had the *panchnama* (witness testimony) prepared. However, there is no mention of the shop itself being shut down by the police or of the accused being brought to the police station for registering an FIR for the trade of non-essential services. Similarly, 100% of the Muslim street vendors accused were trading in essential goods and services, while 75% of the non-Muslim street vendors accused were in the trade of non-essential goods and services.

A fourth of the street vendors, shopkeepers and milk sellers were accused of violating administrative orders such as keeping their shop open beyond permissible hours, selling without wearing masks, selling without obtaining permission and selling in prohibited areas such as containment zones. These FIRs state specific administrative reasons for the traders being accused. However, over 75% of all street vendors, shopkeepers and milk sellers were accused primarily on the grounds that they had opened their shop or continued their trade and gathered crowds, increasing the risk of spreading the virus. 41 of these 105 individuals were involved in the trade of essential goods and services.

During the first and second lockdown (23 March - 2 April), over 50% of street vendors' goods, carts or two-wheelers used for trade were confiscated by the police. However, merely 8% of shopkeepers had their goods confiscated. Of the 16 street vendors whose goods, cart or two-wheeler was confiscated, five were engaged in the trade of essential goods and services. Lastly, of the five milk sellers, only the sole Muslim milk seller had his goods confiscated.

The findings of our study confirm relatively higher rates of criminalisation of the street vendors and indicate a concerning trend of accusing individuals otherwise exempted by central government guidelines, on account of providing essential goods and services. However, this does not preclude a critical analysis of the rationale and justness of the categorisation of essential goods and services as well as the specific district-level administrative orders that *mandated* the home delivery of essential services, even as the Ministry of Home Affairs guidelines only *recommended* that district authorities encourage and *facilitate* home delivery of services. In a food insecure society, why should traders selling fruits and vegetables in establishments be considered any more 'essential' than kirana stores, hawkers and small eateries selling packaged foods or prepared foods at low prices? News reports have documented the survival of migrant workers on low price packaged foods alone, as a result of the retraction of their income during the lockdown (Allana 2020; The Hindu 2020). Large factories producing biscuits were eventually considered to be providing essential goods and services by the central government (Allana 2020), perhaps given their ubiquity and role in increasing access to food for all sections of Indian society during the pandemic. However, it must be examined whether such reconsiderations and exemptions were made in local areas for vendors and hawkers who also meet critical low priced food needs.

It is important to further study district administrations' processes and performance in issuing permits to shopkeepers and street vendors engaged in the trade of essential goods and services, where such permits were required.

We must also examine whether the mandatory district administrative orders of home delivery are reasonable and just. Street vendors and small shopkeepers predominantly belong from, and provide essential goods and services to, the lower economic sections of the Indian society. When widespread hunger and malnutrition continue to be endemic in these classes of Indian society, and are exacerbated by a pandemic that cripples purchasing power and physical access to food, and mobile phone access is significantly low in low income households, we must examine which traders and citizens these mandatory guidelines serves, and who they marginalised.



# **Chapter 8:**

## **BUILDING FALSE NARRATIVES: POLICING OF GATHERINGS AND SOCIAL MEDIA**

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For this study, we separately examined those FIRs where five or more individuals were named as accused, to observe whether these groups or gatherings of persons were dealt with differently. Most lockdown related orders prohibited gatherings of five or more persons, with the exception of funerals which enhanced the limit to 20 persons. It is unclear whether social ceremonies that are observed after the funeral also fall under this exception.

At the beginning of our analysis, we noticed an obvious difference resulting from the nature of the gatherings. Accordingly, the gatherings were segregated by their purpose: religious and non-religious. There were a total of 10 FIRs of which seven (70%) pertained to non-religious gatherings and the remaining three (30%) dealt with religious gatherings. While studied separately, it is interesting to compare and contrast the sources of information in all these specific cases. For all three religious gatherings, the source was *mukhbir* (100%); whereas in the case of non-religious gatherings, three were a result of police patrols (43%), two were through 'Soochna'/Information (28.5%) and the remaining two through complainants (28.5%).

For religious gatherings specifically, we observed that of the three, two were social ceremonies following a death in their families (Hindu) and only two persons each, all hosts, were named as accused in both the FIRs despite the fact that the gatherings concerned were of 20-25 and 40-50 persons respectively. Interestingly, in one FIR, even the priest was named as an accused in addition to the host of the gathering. The third FIR was registered against the members of the Muslim community who had gathered to offer *namaz* at a Mosque in Shahdol district. This FIR was registered against 37 persons who had, as per the accusation, assembled against the lockdown orders to offer their prayers at the Mosque. It is important to note that this was the only FIR where arrests were carried out in the combined section of religious and non-religious gatherings. All the 37 persons were arrested and then later released on personal bonds.

For non-religious gatherings, the size of the groups was much smaller with 14 being the highest, albeit one case where the FIR was registered against one named person 'aur anya' (and others). None of the accused persons were arrested in any of these FIRs and where the accused had been apprehended (71%); we found that their justifications were not recorded. The religious demographic was mixed with 43% Hindus, 28.5% Muslims and 28.5% mixed (Hindus and Muslims).

To varying degrees, the FIRs recorded that these persons were either not wearing masks and or not practising social distancing; therefore increasing the likelihood of infecting both themselves and others with COVID-19. In one particular instance from Habibganj PS (Bhopal), a Muslim person was accused of gathering a crowd by distributing his birthday cake from his two-wheeler while a band played in the background. Upon the arrival of police, the crowd dispersed immediately and the FIR was registered after collecting information from the people nearby. The two-wheeler in this case was also taken into custody even though the accused had fled. Overall, there were three cases which involved persons with vehicles (all two-wheelers) and in each, the vehicle was confiscated.

The communal colour of lockdown enforcement bears being highlighted here. This began with the hate filled and libelous media campaign against Muslims following a particular but not exceptional religious gathering held by Tablighi Jamaat in New Delhi, at a time when the Central Government kept underplaying the threat of COVID-19 and culminated into disproportionate targeting of Muslims across the country by the Police and dozens of reported instances of discrimination against Muslims.

In MP, 64 members of the Jamaat were arrested in Bhopal and 23 from Agar Malwa districts. Arrest records show another 24 arrests from Chhindwara, Rewa, Sehore and Sheopur districts under the Foreigners Act, 1946 that are likely to be connected to the gathering. There were a total 87 arrest recorded in MP under the Act in our review period, vast majority involving sections 188, 269 and 280 of IPC, sections 51 or 56 of Disaster Management Act and sections 7 (presumably against premises owners where some foreigners might have stayed), 13 and 14 of the Foreigners Act. This might not be reflective of all the cases filed in MP in relation to Tablighi Jamaat members. When we tried to access these FIRs on the MP Police online FIR Portal, we found these particular FIRs to be suppressed.

Importantly on 21 August 2020, the Aurangabad bench of the Bombay High Court quashed similar FIRs filed against foreign members of Tablighi Jamaat by the Maharashtra Police noting that the registration of cases reeked of malice and discrimination based on religion [Cr. WP 548/2020, Aug 21 2020]. A bench of Nalawade and Sewlikar JJ., also said this was a case in which the political government tried to make these foreigners scapegoats in an effort to be seen handling a calamity. Other courts have been less outspoken about this injustice, but foreign members of the Jamaat have received some degree of relief from the Madras High Court and the Supreme Court.



Yet, there is no end to the targeting of Muslims by the state and the police. Recently, Indore District Administration detained five persons under the National Security Act (NSA), 1980 and arrested 23 others for a Muharram Procession on 30 August 2020. The Wire has reported how Ramesh Mendola, a BJP Legislator from Indore organised a crowded event to mark the end of Ganesh Utsav, a Hindu religious festival on 02 September 2020, but this was not deemed worthy of any punitive or preventive action by the police and the District administration (Singh R.R., 2020).

## **Criminalising Speech on Social Media**

In our study, we also observed that there were six FIRs where the place of offence was social media. In five (83.3%) of these FIRs, the source of information was a third person, that is, either a complainant or a *mukhbir*. Three of these FIRs were about information shared via WhatsApp and three were about information posted on Facebook.

In one instance the police took action on the basis of a message they received on their staff WhatsApp group. Interestingly, the message that had been forwarded to their group showed a news anchor reporting that Jabalpur District Administration had issued shoot-at-sight orders for lockdown violators. The FIR recorded that this was not so and the reporter was broadcasting unverified rumours.

Four of the FIRs including the one described above accused persons of spreading false and misleading information. Apart from the rumour about the shoot-at-sight orders, another FIR accused one person of falsely spreading information about the death of a COVID-19 positive patient while they were still alive.

Two distinct FIRs were registered at Birla Gram Police Station in Ujjain against an individual posting on social media against Congress President Sonia Gandhi (one of these is part of our study). It was also reported that in July 2020, Bhopal Police arrested a 22 year old for questioning the MP Chief Minister Shivraj Singh Chauhan's COVID-19 test result on accusations of spreading rumours under section 188 and others (Singh R.R., 2020b).

All these FIRs said that these posts on social media were either likely to disrupt the public tranquility by creating an atmosphere of fear or were inciting hate, in addition to spreading false and misleading information regarding COVID-19. This is naturally a high burden to discharge for the police and misinformation does not equate with a public disorder. Yet, at least two of the FIRs are sketchy in a single detail about what the information was, let alone how it threatened public tranquillity. Both these FIRs are against young Muslim men and filed in Shahdol District. Parts of both of these have been annexed as Sample FIRs 1 and 2.

In one case concerning a WhatsApp message, the accusation was that a person had put up a WhatsApp display picture with "*Hum Markaz Nizamuddin ke saath hain*" (I/We are with Markaz Nizamuddin). The FIR registered by Chimanganj Mandi PS said, '*Nai Dilli sthit nizamuddin ke tablighi jamaat markaz ke logo ke dwaara corona namak bimari ke sankraman ko failane ka karya kiya gaya hai jiski pure desh mein bharsana ki ja rahi hai aur barg vishesh ke logon ke prati aamjan mein aakrosh vyaapt hai* (the Tablighi Jamaat has been responsible for the spread of COVID-19,.. which has led to a general dissatisfaction against a community.)" and yet the accused has put such a status up supporting the Jamaat. This tells us the State seemed keen on finding ways to blame Muslims, and it sought to punish them for the atmosphere of hatred against them, one that the State itself created.

There is another FIR at the same station against a person who criticised the police for their actions during the lockdown and this is filed against the person as well as the administrator of the WhatsApp group such a message was posted on.

This account tells us that the police have also been active in monitoring social media during lockdown. The police approach seems rather arbitrary in law; they rely on receiving messages themselves or sent by mukhbirs or complainants. Half of the accused, the three implicated in outrightly absurd FIRs were ostensibly all Muslims. The exercise of these powers by the police is aided by bringing news and information dissemination within the purview of epidemic control, done through including these are punishable wrongdoings in the MP Epidemic Diseases Regulations. MP was not the only State to do this but this speaks to the executive's perception of threat and its need to control information.



# Chapter 9:

## DISCRETION AS DE- FACTO RULE OF PANDEMIC POLICING

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Discretion is the sine qua non of policing in the country, and it is often characterised in public imagination as an asset that allows officers to evaluate different situations after considering them in context and choosing the best course of action from among a set of alternatives. While corruption and the abuse of power by police is widely understood and recognised, the link to abuse of discretion embedded into 'routine', 'template' and official or customary police procedures, is often missing in civic imagination.

Police officers are routinely required to make official decisions about which laws have been broken, who must be searched and who ought to be arrested for breaking laws. Constitutional and criminal procedural laws attempt to define and regulate the basis on which police officers can make these decisions. However, a great leeway is allowed to police officers in the broad generalities and ambiguities of these laws. Unlike other government organisations, police discretion increases as one moves down the organisational hierarchy (Seron et al. 2004). Therefore, low ranking police officers such as Constables, Assistant Sub Inspectors and Sub-Inspectors exercise the maximum amount of discretionary power in their policing.

During the imposition of central, state and district lockdown rules, the police in MP, as elsewhere in India, made routine decisions about which citizens possessed legitimate reasons for being exempted from the lockdown regulations and which citizens did not. Therefore, it would be reasonable to assume that the FIRs, an overwhelming majority of which have been filed by police officials against alleged violators of the lockdown rules, will contain some information about the police officer's decision making process in initiating criminal justice proceedings and arresting individuals.

In our study of 500 FIRs which accused 669 individuals of breaking the law, we found that nearly 60% FIRs provided inadequate or no factual information as to why the police officer made the judgment of accusing individuals, confiscating their assets or arresting them. While FIRs contained details about the accused, the site of the alleged offence, how the police first received information of the alleged violation and the specific rules under which individuals were being accused, there is near complete absence of information on how the police officers arrived at their judgment after asking individuals why they ought to be considered as exempt from the lockdown regulations.

The lockdown FIRs read as police pronouncements since a majority of the FIRs themselves

state that the accused were asked to provide their reason for violating the lockdown (so that the police may make a judgment after exercising discretion over whether they had a legitimate reason that was exempt from the regulations). However, the FIRs categorically fail to state the accused's justification and immediately advance to police judgments on the accused's reasons – 'unsatisfactory', 'unnecessary', 'inappropriate', 'unclear' and 'invalid'. For instance, the term 'unsatisfactory' is used in the decision of the reason offered by 143 of the 258 pedestrians accused of violating lockdown rules. This word is used to decide on 41 pedestrians' reasons, "invalid" in deciding 21 pedestrians' justifications and "unsuitable" in deciding 20 pedestrians' reasons. Therefore, the police made unexplained decisions, after exercising their discretion, about 225 of the 258 pedestrians and deemed them to not be exempted from the lockdown rules and regulations. These unexplained police decisions, after exercising discretion, are prevalent across the categories of individuals accused as well as districts.

In total, among the 669 individuals accused, only the reasons stated by 12 individuals were present in the respective FIRs. This is particularly concerning given that the police also exercise most discretion when filing FIRs against pedestrians, two-wheeler or four-wheeler riders and other individuals in civic spaces. For alleged abrogations by street vendors, shopkeepers, public gatherings, persons found gambling or selling alcohol illegally and for alleged inflammatory exercise of free speech on social media; there exist fewer regulatory exemptions and consequently less scope for the exercise of police discretion. Therefore, the FIRs filed against individuals falling under these categories often do not present the police responses or the accused's justifications. They often merely only contain information that appears to prima facie demonstrate the violation of lockdown regulations. However, a significant number of individuals against whom FIRs were filed under these categories also appear to be subjects of police discretion - recall that over 70% of the street vendors accused were traders of essential goods and service, and therefore ought to not have been accused of violating lockdown rules and regulations at all.

One may argue that the police only file FIRs against such individuals who are clearly in violation of laws and regulations, and are likely to have let off those individuals whose reasons they did find satisfactory of being exempt from lockdown regulations.

First, given that there is no information about how many individuals the police stopped and questioned, there is no reason to assume that the police indeed did let off individuals whose

reasons they deemed satisfactory of, and necessary for, being exempt from lockdown regulations.

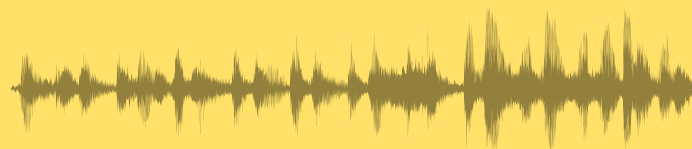
Second, concerns about the abuse of discretion arise due to the lack of transparency and accountability in the official decision making process. Police decisions about whether one ought to be exempted from lockdown rules and regulations were, in a majority of FIRs, made after hearing the reasons offered by the alleged offenders. However, this crucial information which ensures some degree of transparency to the police's exercise of discretionary powers is absent in the FIRs while other information regarding the alleged offence and the police's accusation is stated in the FIR. On FIRs alone it is impossible to determine whether the police's decision making process was free of any form of internal or external bias; and given their wide discretionary powers, this is itself concerning.

Third, the police are not rational decision makers who exercise their powers legitimately and without bias. Their choices both reflect and constitute the historical or political casteist and classist contexts in which they operate. In 2002, after carrying out an investigation into caste based atrocities in Varanasi and surrounding areas in UP, Justice K Sukumaran described the police as 'the mafia in uniform', after discovering that they had colluded with upper caste communities to commit atrocities against dalits (Justice Sukumaran, 2002). News reports have documented police atrocities specifically targeted against the poor, the minorities, the dalits and the tribal people. Several studies also highlight police prejudice in implementing social justice laws that seek to protect and empower marginalised communities (Teltumbde, 2010). Academic studies also document extrajudicial exercises of power by the police to inflict irrational violence on individuals implicated in the criminal justice system (Surendranath et. al, 2016).

The undertrial population in the country, which primarily includes members from various marginalised communities shows which people or communities are the focus and targets of policing in the country. The rampant application of the broken windows theory (mentioned above) in policing wherein cracking down on minor street disorder would avert spikes in more serious crimes is reflected in the manner in which certain communities are targeted. In the following section, we will focus on how this 'discretionary targeting' of certain communities is replicated in the prison population. Through the use of discretion, police determine who will be the subject of the criminal justice system. They use discretionary powers to determine the nature of the complaint, to maintain order, settle disputes,

determine arrest, determine laws to enforce thus effectively acting as policy makers (Verma, 1997).

We have tried to exemplify the three concerns with the help of the case study of Chimanganj Mandi Police Station. Whereas, the FIRs themselves provide sketchy and oft-identical details of the offence, we have tried to verify the police's accounts through interviews with some of the accused persons named in the FIR.



## Chimanganj Mandi Police Station, Ujjain City

No other Police Station seemed to take the task of arbitrary policing as seriously as the Chimanganj Mandi Police Station in Ujjain City. In our survey period, 273 of the 327 FIRs (83.5%) filed at the station were Lockdown related. These FIRs can be categorized more or less into 4 different templates. 150 of the 159 lockdown related FIRs filed between 08 April and 9 May used an identical template and were all filed upon complaints by the Patwari, Dheeraj Nigam, who apparently went around the area for the entire month, catching pedestrians for lockdown violations. All of these are registered because the accused could not provide a “satisfactory” ground. Relevant portion of one of these 150 FIRs has been annexed as Sample FIR 4.

We looked at 42 of these FIRs closely, and could ascertain the communities of 30 of the 43 named accused. Ten or 33.3% of these were Dalits and 9 or 30% of these were Muslims. This against a District population percentage of 26.4% and 11.7%, respectively for these groups. More arbitrariness in filing FIR now also seemed to disproportionately affect some communities. Six of the rest in this period were also identical and filed against violation of quarantine rule.

After 9 May, all the lockdown FIRs belong to one of two distinct templates: one that comes out of police patrolling and other out of complaints by citizens. All of the templates rely on vague and subjective grounds of FIR. One FIR of the first kind is annexed as Sample FIR 3.



Among these is an FIR filed on 10 May against six different people (of which 3 were Muslims, 2 were Dalits and One was from a DNT community). We spoke to two of the named accused. Their versions are completely contrary to the version of the police. The FIR appears to say they were roaming around together but the two had no relation to each other or any of their other co-accused. The first was a young son of a bullock cart driver out to feed his family's cattle and the other out to refill the gas cylinder at his house, having run out of it, both quite reasonable reasons that they claim they had stated to the police but neither of which found their way into the FIR. Neither of them were served any notice nor were aware of the FIR filed against them. Among the FIRs upon complaints by citizens, the oddest is a set of 7 FIRs for offences that took place with an interval of exactly every 10 minutes between 4 pm and 5pm on 14 May, upon complaints made by the same person.

We also spoke to two other persons accused of lockdown violation upon a citizen's complaint. The first person, a Dalit man, worked as a driver for a pharmaceutical company, carrying out essential duties but was not provided a pass by the administration until he was stopped that day. The second, a Muslim man, was a technician who worked at a COVID testing lab and who had forgotten his pass at home. We interviewed another person arrested for patrolling who said he had stepped out to go to the Tractor repair garage he works at and had his face covered. He said he saw about a number of people in a similar situation as him being let off by the police at the checkpoint. Notably, this person was also Dalit. None of their versions match the FIR and none of them were aware of the existence of the FIR.

The scheme of things ranging from arbitrary stoppages and selective enforcements to copy and pasted FIRs vague on details (pointing to inadequate application of mind), and biased enforcement against some communities, best reflected in the FIRs filed at Chimanganj Mandi but uniformly found across the State, points to the overall abuse of discretion that was part of the police campaign against lockdown violations.



This exercise of discretion in defining and applying legal categories is doubtlessly deeply contextual, and often subject to the behaviour of individual police personnel. But we argue, it is equally a product of larger systemic problems in policing (Bhat et al., 2020).

This study shows that most of the offences for which arrests have been made during this period in fact consisted of low level infractions which are bailable by the law. Heinous offences such as sexual violence formed only a small proportion of the overall number of offences prosecuted during this period. Patrolling, investigating, detaining, questioning, searching for evidence of criminal conduct all deemed as essential functions of policing are therefore focused on the 'streets'. This selective enforcement is therefore characteristic of the targeted nature that is inimical to policing in India. In the following section, we will focus on how this 'discretionary targeting' of certain communities is replicated in the prison population.



# Chapter 10:

THE STREETS

TO PRISON

PIPELINE

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The suo motu intervention by the Supreme Court of India to address the threat of the pandemic in India's overcrowded prisons, directed the formulation of HPC in each State and UT under the supervision of the respective High Courts, to come up with the parameters for the release of convicts and undertrials [Suo Motu Writ (Civil) No. 1 of 2020].

Steps taken by the HPCs to decongest prisons, particularly in MP were wholly inadequate. MP released only about 6500 to 7000 inmates, in a system with the capacity of 28,718 persons and housing 43,977, at an excess of 53% or 15,259.

Yet this figure concealed the fact that in the immediate months following the pandemic, it added about as many people as it released. These were mainly those arrested in this period and in custody as undertrials. It was shocking to note that in fact the undertrial population increased at such a rate that by the end of May, there were more undertrials in prisons than there were before the pandemic began. The numbers below tell us that the MP Prisons have added 6497 new undertrial inmates to its overall population in between April and August, a number close to the prison inmates MP was said to have released. Whereas undertrials amounted to 53.4% of the prison population in February, by August they amounted to 65.9%. This does not even take into account those that entered and exited within this period, which itself is expected to be quite high.

The table below shows this change in the prison population. If this trend were to continue, by September or October 2020, we will return to the overall overcrowding rate prior to the pandemic. Already in District Jails and Sub-Jails, the categories of prisons housing the bulk of the State's undertrials is much higher (by 7% and 28%, respectively).

At the end of June '20, 109 of a total of 131 Jails in the State were over their capacities and 23 of the jails had over a population of more than 200% of their capacities. These included Maihar Sub-jail at 647%, Anuppur District Jail at 356% and Waidhan District Jail at 355% of their capacities.

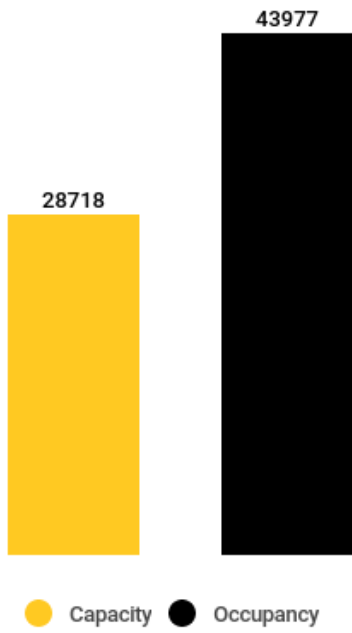


Figure 13: Capacity v. Occupancy in MP Jails in February 2020

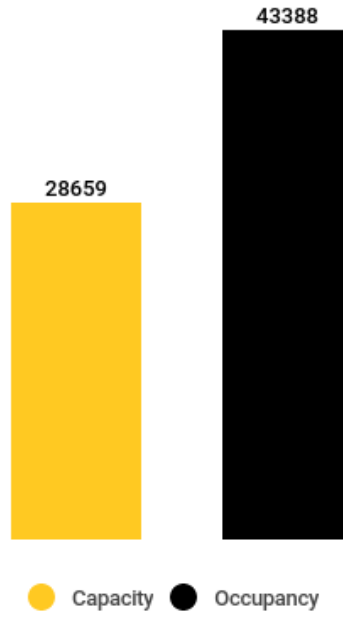


Figure 14: Capacity v. Occupancy in MP Jails in August 2020

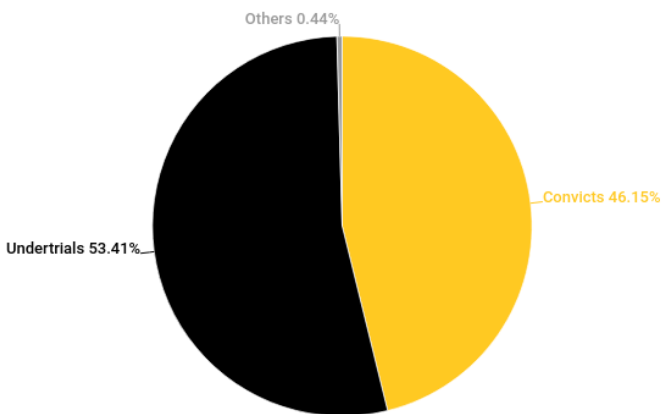


Figure 15: Proportion of different categories of prisoners held in MP Jails in February 2020

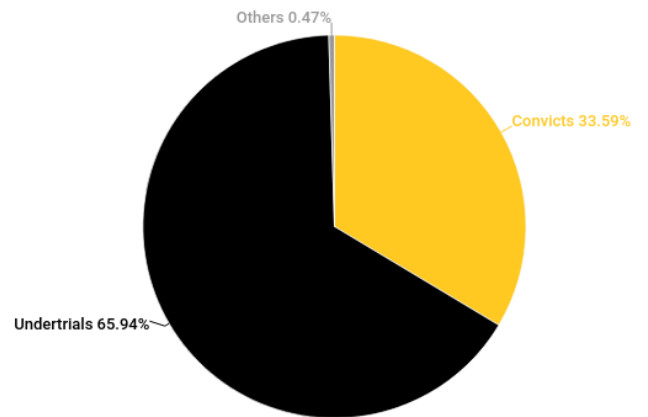


Figure 16: Proportion of different categories of prisoners held in MP Jails in August 2020

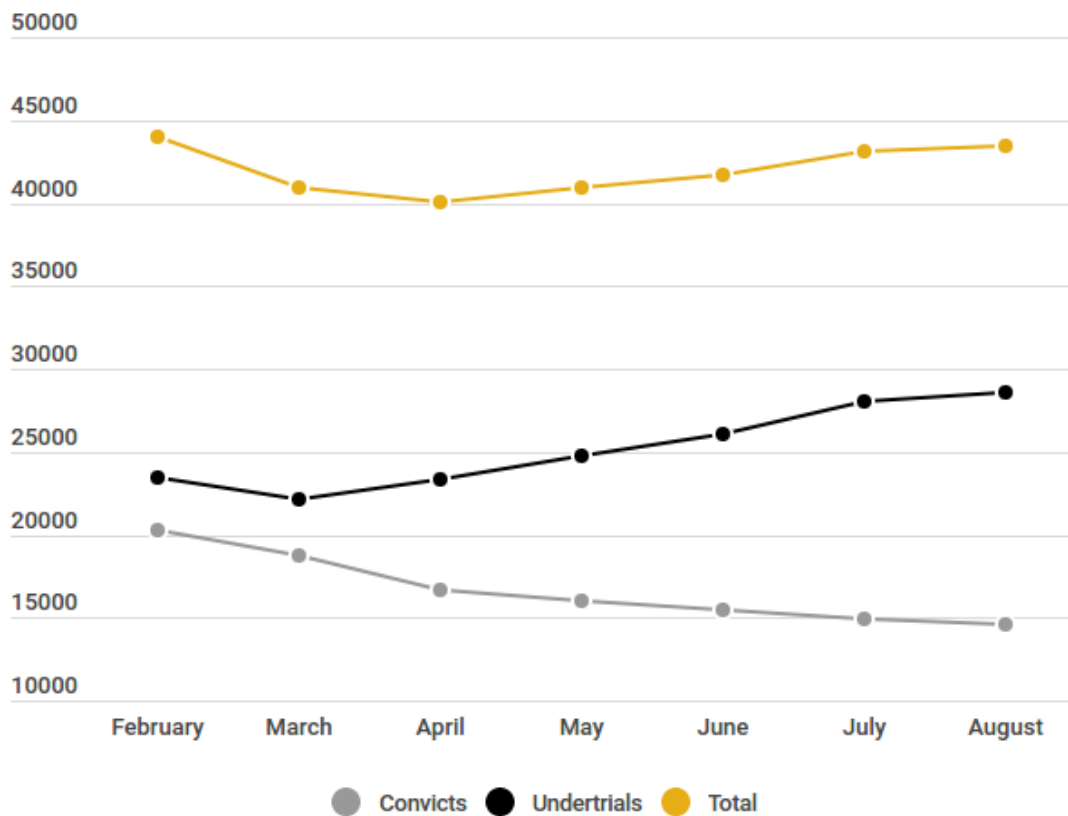


Figure 17: Population of various categories of prison inmates in MP Jails between February and August 2020

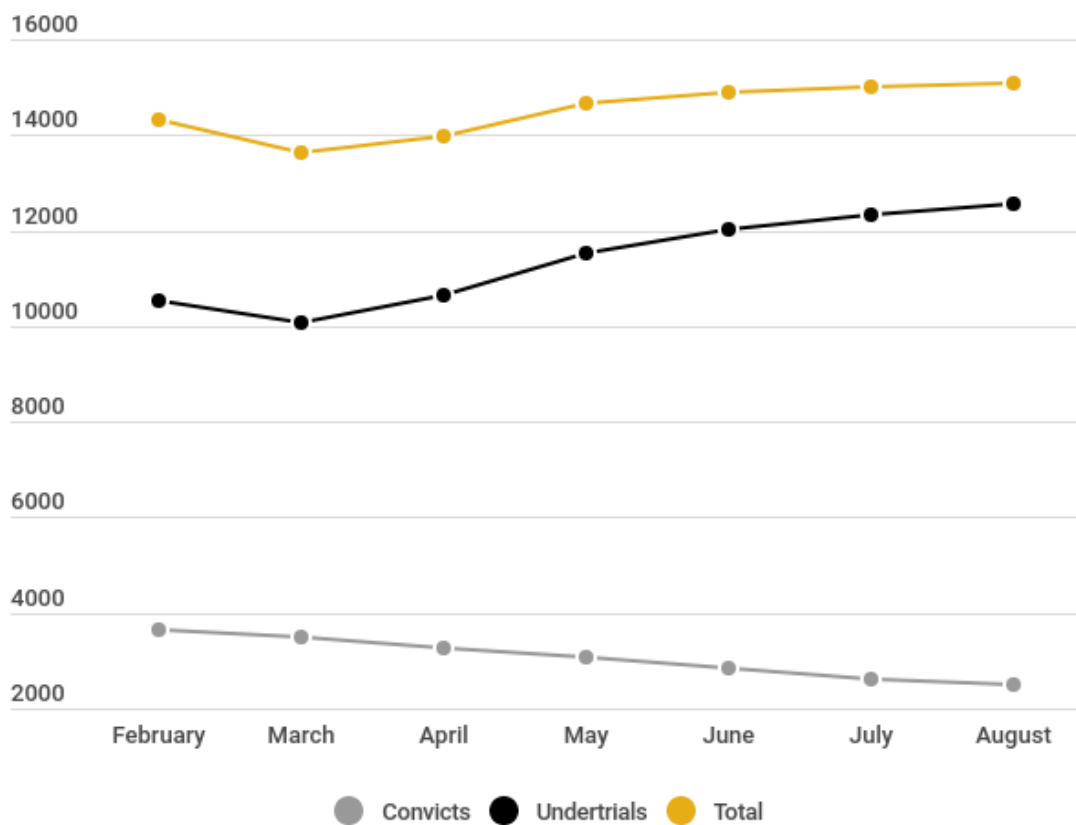


Figure 18: Population of various categories of prison inmates District Jails of MP between February and August 2020

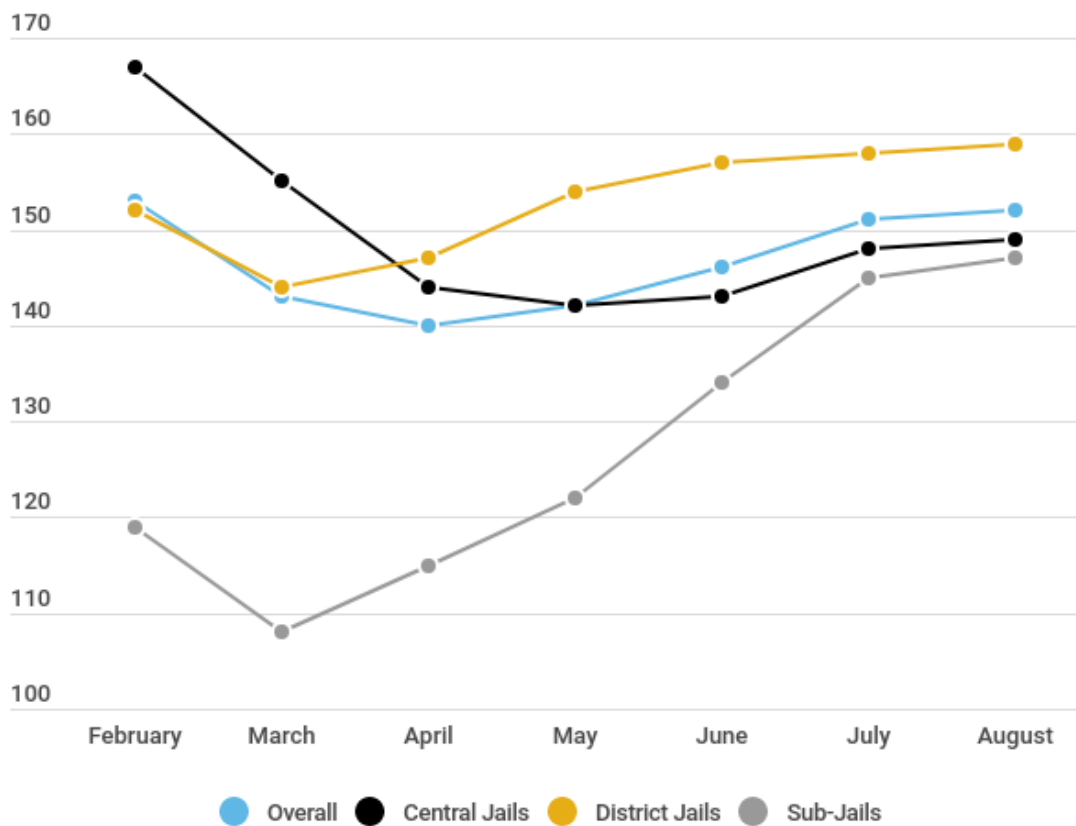


Figure 19: Occupancy in all MP Jails between February and August 2020

The increase in the prison population is not incidental but is in fact a direct product of the policing practices in the country, and specifically in MP. This can be attributed to the street to prison pipeline constructed by the State through the police lockups and courthouse. MP is one of the few states in the country in which section 188 is non-bailable, and an arrest under this should lead to the production of the accused before a Magistrate. The fact that some police stations seem to be unaware of this rule, is another thing. This arrest data tells us the high number of arrests for the violation of lockdown.

There is quite a bit of documentation of this practice. In one judicial order involving bail which was published online- a Magistrate in Indore sent a vegetable vendor to judicial custody for the violation of the lockdown, despite recognising the fact that vegetables are essential goods. In three of our own cases, two involving excise law violations and one involving a child in conflict with law in a small quarrel; the accused were ordered to be taken into judicial custody.

The adults accused of excise law violation, for offences punishable by less than three years, had to spend over three months in prisons. This also speaks to a non-functioning judicial system in which the lower courts treat minor offences such as possession of alcohol harshly.

The unceasing influx of inmates and existing poor health infrastructure in prison (spending on healthcare is a mere 4.3% of the total prison spending in the country according to official 2018 figures) (Lamba and Dhanuka, 2020) has naturally meant an unprecedented rise in the number of COVID-19 positive cases. Granted that the crisis has yet to reach the levels of Maharashtra, but MP seems to be closing in on an uncontrollable pandemic in prisons. In July '20, 64 of the 82 inmates in Bareilly Sub-Jail of Raebareilly District tested positive for COVID-19, in addition to three prison officials (Sarkar, 2020). Later, 14 women prison inmates in Shahdol tested positive in a week in which dozens in several other jails were also detected positive. In August '20, over 50 inmates in Jabalpur Central Jail were infected. Last reported was the case of 24 prison inmates testing positive in Indore Central Jail (PTI, 2020, May 7).

The Kerala High Court took cognisance of the problem of influx and bail in its orders passed way back in March 2020, ordering release of the majority of undertrials on interim bail who were in prison for offences punishable by seven years or less [WP [C] No. 9400 of 2020, Order dt. Mar 25 2020]. It also asked the police department to exercise restraint and the Magistrate to exercise leniency when considering bail.

It is important to note that a Public Interest Litigation filed before the Madhya Pradesh High Court- *Madhuri Krishnaswami v. State of Madhya Pradesh* [WP. No. 8391 of 2020] for similar reliefs and with the above research into prisons, has been kept pending since May, without substantial orders, with the bench of the Court showing little urgency as the number of COVID-19 positive inmates rises by the dozens every week. The authors of this report have been part of the research and litigation team.

A moratorium on arrests for low-level offences would be a critical step to confront this crisis, but changes to our criminal justice system addressing questions of arrests, bail and necessity of criminalisation are long overdue. Movements for police accountability and reform must look not to "reform" police, but to reduce their scope and power; at the same time, they should also be working toward restorative justice practices as well as jobs, education and health care for our youth (Vitale, 2017).



# Chapter 11:

## CONCLUSION





The COVID-19 pandemic has exposed and exacerbated the economic, political, social, and environmental fault lines in our country, revealing deep cleavages between the securities of the privileged and the constructed fragilities of millions of marginalised persons. As a shrinking State further retracts from its responsibilities of providing social security, and the pandemic accelerates unchecked; it may be tempting to buy into the notion that policing and criminalisation of citizens is therefore necessary to enforce public discipline and ensure public safety.

However, reaching for public health, even during emergencies, by enabling the criminalisation of vulnerable persons and inflicting untold State sanctioned violence upon their lives, through the harsh might of the criminal justice system is inherently unjust. It also reflects a colonial and casteist contempt unbecoming of a democratic republic striving for economic and social justice.

Moreover, emergency legal measures and administrative processes inevitably become fixtures of State mechanisms. The origins of increased State power and adoption of criminalisation during this pandemic lie in the plague of the 19th century. This pattern repeats itself every time there is an 'emergency' situation, itself often manufactured. The formal state of emergency between 1975 and 1977 mainstreamed the practice of long preventive detentions, insurgency in Punjab led to draconian anti-terror laws; and more than a century prior to that, the Thuggee Campaigns (1830s onwards) and CTA brought the notion of hereditary criminals. While the lockdown and the policing during the lockdown may appear to have existed for only a brief few weeks, their imprints will carry on in the criminal justice system for centuries until they are challenged, opposed, and reversed. In a way, therefore, we operate in a permanent state of emergency. It is also predicted that in the future, countries around the world will face increased and more frequent threats of epidemics and pandemics. It is necessary to document the injustices of State actions during the COVID-19 pandemic, so that we may prevent these from becoming permanent fixtures of our already broken criminal justice system and mitigate against their use in future health emergencies. In particular the most obvious injustice was Muslims becoming the proper objects of pandemic policing, aided by the media and the Hindu majoritarian interests represented deeply in the State.

Our study is a modest attempt at documenting the profiles of individuals policed during the pandemic in MP, and also at understanding the power granted to, and exercised by, the police. The findings and analysis documented in our study are grounded in the point of view of the individuals policed. Our study suggests that the police (the first gatekeepers of the criminal justice system) are themselves neither equitable nor efficient in the forms and attitudes of policing they have cultivated and followed. This is especially true during a public health and economic emergency which requires both additional vigilance (not violence) and great compassion. The findings of our study also show that the burden of policing during the pandemic has disproportionately been imposed on marginalised groups on the axes of religion, caste and class. While our study cannot be described as evidence of direct discrimination in the criminal justice system, its findings plainly highlight the structural attitudes of the criminal justice system that marginalises the very people it ought to protect. Criminalisation and police institution of criminal justice proceedings have deep ripple effects on the economic status and mental well-being of individuals and their families, and may sometimes result in physical, verbal or sexual abuse matching the thresholds of torture. When these individuals are forced into overcrowded jails, the State machinery also actively endangers their health and lives.

The concerns that arise from our report highlight the need for constitutional safeguards and legislative reforms against extensive powers to administrative authorities. However, they also strike at the structures of our criminal justice institutions and help build the case for demanding an immediate overhaul.



# Chapter 12:

# RECOMMENDATIONS

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This study has underscored the abuse of discretion and targeting of marginalised communities. The pandemic has exacerbated the fault lines in the system of policing as evidenced through various instances of police brutality and has thrown up many lessons that we need to imbibe moving forward. We hope that the results of our study provide a deeper understanding of the policing and the criminal justice system in our country and inform future discussions.

In light of this, we make the following recommendations:

### **1. Revisiting the police culture or practice of arresting for low level offences**

One of the major findings of this study has been the large number of arrests made for low level, no harm/low harm offences such as- those under the gambling act, excise acts, or simple hurt, obscenity, etc under the IPC punishable by less than seven years of imprisonment.

The Supreme Court on numerous occasions has reiterated that arrest ought not to be the norm for petty offences. The guidelines in *Arnesh Kumar v. State of Bihar*, [(2014) 8 SCC 273] states that casual or unnecessary arrests cannot be made by the police. Further, in *Re: Contagion of Covid-19 virus in prisons*, the apex court ordered the decongestion of overcrowded prisons to curb the spread of the COVID-19 infection amongst the prison population. The Court directed that prisoners be released in accordance with the guidelines in the *Arnesh Kumar* judgment. There needs to be a stricter adherence to these guidelines by the police officers which in turn would reduce the burgeoning undertrial population in our prisons.

### **2. Need for disaggregated data within the SC, ST and OBC categories to better understand policing**

This study has mapped the socio-economic background of individuals arrested during this period and concluded that there is an over-representation of marginalised communities such as SCs, STs, OBCs within the arrested population. A major facet of this finding has also been the disproportionate representations of certain communities such as Denotified tribes, nomadic or semi-nomadic tribes within each of these categories for several offences. The records maintained by our law enforcement agencies at present need to be

disaggregated according to the offences committed as well as by sub-classifying SC, ST, OBC and Muslim communities. At present the records do not do so and therefore are not aware at an institutional level of the problem of over policing within these sub-classifications of the marginalised communities. The sub-classification within the aforementioned communities will help us understand the true magnitude of the problem of over policing and the nature of targeting of communities like the denotified tribes, nomadic or semi nomadic tribes under various laws.

### **3. Decentering the focus on prisons**

It is important to expand our focus beyond prison as a site for bringing about change within the criminal justice system. This report has shown that as gatekeepers of the criminal justice system the police have the power to determine who become subjects of this system. Investing in structures of building police accountability would be a crucial step forward in making a dent in the culture of impunity that has become synonymous with policing in the country and influencing positive change within the criminal justice system.

### **4. Re-imagine State reliance on criminal law and moving towards decarceration and decriminalisation**

As mentioned above, our study also highlighted this trend in MP where a large proportion of arrests made are for low level, no harm/low harm offences. The decriminalisation of victimless and low harm offences would be the first step in dismantling the casteist and classist policing system that exists in India which polices certain bodies and certain activities that disrupt its social order, but it must also move much beyond it.

We believe that questioning the need for incarceration and criminalisation, and reducing our reliance on criminal law is imperative going forward. Reliance on restorative justice practices instead and the demand for stronger education and healthcare institutions and social safety net are far useful. The Indian state places excessive reliance on stringent criminal laws to respond to a variety of crisis situations. Even when not in crises, we place heavy reliance on vice policing, criminalising activities that the society deems 'improper' or 'unsavoury'.

Our response to the pandemic, which is perhaps the biggest public health crises in recent times, has been through a national lockdown and heavy deployment of police officials using brutal force. Ordinary citizens, most poor and/or from marginalised/minority communities have faced their brunt and this has exacerbated the already disproportionate impact of the crisis on them. Challenging our punitive impulse while responding to structural problems is a key learning to imbibe moving forward and requires us to expand our legal imagination beyond the realm of criminal law.

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# ANNEXURES

## Examples of Orders under section 144 of CrPC by Executive Magistrates

### कार्यालय कलेक्टर एवं जिला दण्डाधिकारी भोपाल

क्रमांक - 495/अजिद/2020

भोपाल, दिनांक 05/04/2020

--: आदेश :-

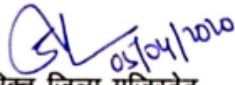
(अंतर्गत धारा 144 दण्ड प्रक्रिया संहिता 1973)

कार्यालय कलेक्टर एवं जिला दण्डाधिकारी, भोपाल का आदेश क्र. 382, दिनांक 30 मार्च 2020 के माध्यम से दण्ड प्रक्रिया संहिता 1973 की धारा 144 के तहत आदेश जारी किया गया था।

उक्त आदेश में आंशिक संशोधन करते हुए दुध एवं दवाई दुकानों को छोड़कर शेष समस्त प्रकार की दुकानें आगामी आदेश तक बंद रहेगी। आम नागरिक को सिर्फ निकटतम दुध और दवाई दुकान तक स्वयं/अकेले जाने हेतु अनुमति रहेगी। उपरोक्त स्थिति में नगर निगम द्वारा खाना वितरण प्रणाली एवं केवल होम डिलेवरी प्रणाली जो सक्षम प्राधिकारी द्वारा इस हेतु अधिकृत किया गया हो, वह चालू रहेगी। उपरोक्त उल्लेखित आदेश में शेष कण्डिकाएं यथावत रहेंगी।

यह आदेश आज रात्रि 12:00 बजे से आगामी आदेश तक लागू रहेगा।

(कलेक्टर महोदय द्वारा आदेशित)

  
अतिरिक्त जिला मजिस्ट्रेट,  
जिला भोपाल

भोपाल, दिनांक 05/04/2020

पृष्ठा.क्र. - 496/अजिद/2020

प्रतिलिपि :- सूचनार्थ एवं आवश्यक कार्यवाही हेतु -

- 1- प्रमुख सचिव, लोक स्वास्थ्य एवं परिवार कल्याण विभाग, मंत्रालय भोपाल।
- 2- आयुक्त, भोपाल संभाग भोपाल।

Sample Order 1: Order 495/ AGD/ 2020 dated 05 April 2020 passed by  
Addl. District Magistrate, Bhopal

## कार्यालय कलेक्टर एवं जिला मजिस्ट्रेट, जिला ग्वालियर (म0प्र0)

क्रमांक: वयू/स्टेनो/एडीएम/345/2020

ग्वालियर, दिनांक: 24.04.2020

॥ आ दे श ॥

(अन्तर्गत धारा 144 दंड प्रक्रिया संहिता)

ग्वालियर जिले सहित सम्पूर्ण भारतवर्ष में दिनांक 03.05.2020 तक लॉक डाउन है, इस संबंध में भारत सरकार गृह मंत्रालय के पत्र क्रमांक: 40-3/2020/डीएम-1(ए) दिनांक 15.04.2020 द्वारा निर्देश जारी किये गये हैं, जिसके परिपेक्ष्य में दण्ड प्रक्रिया संहिता की धारा 144 के तहत सम संख्यक आदेश क्रमांक 344 दिनांक 23.04.2020 जारी किया गया था।

2/ आज दिनांक 24.04.2020 को ग्वालियर जिले की समीक्षा उपरांत उक्तादेश में निम्नानुसार जोड़ा जाता है:-

### प्रतिबंध

- शहरी क्षेत्र में पीडीएस की दुकानें बंद रहेंगी।
- थोक मेडीकल की दुकानें बंद रहेंगी।
- थोक किराने की दुकानें पूर्ववत् बंद रहेंगी।
- स्मिथसरी सेंटर बंद रहेंगे।

### शिथिलता/छूट

- खेरीज किराने की दुकानें दिनांक 25.04.2020, 26.04.2020 (शनिवार एवं रविवार) को प्रातः 07.00 बजे से सांयकाल 06.00 बजे तक प्रतिबंध से मुक्त रहेंगी अर्थात् खोली जा सकेंगी।
- बैंक एटीएम चालू रहेंगे।
- हनुमान चौराहा जीवाजीगंज स्थित सिमड्रया की थोक दुकानें दिनांक 25.04.2020, 26.04.2020 (शनिवार एवं रविवार) को प्रातः 07.00 बजे से सांयकाल 06.00 बजे तक प्रतिबंध से मुक्त रहेंगी। थोक दुकानदार सीधे ग्राहकों को विक्रय नहीं कर सकेंगे केवल खेरीज दुकानदारों को विक्रय कर सकेंगे और खेरीज दुकानदार ग्राहकों को विक्रय कर सकेंगे।

रिमार्क-उक्त शिथिलता एवं छूट अनुभाग डबरा एवं अनुभाग ग्वालियर सिटी के कन्टेनमेंट जोन के लिए लागू नहीं होंगी।

- 3/ उक्तादेश दिनांक 24.4.2020 की रात्रि 12.00 बजे से आगामी आदेश तक प्रभावी रहेगा।
- 4/ शेष आदेश दिनांक 23.04.2020 यथावत् रहेगा।
- 5/ आदेश का उल्लंघन भादवि की धारा 188 एवं अन्य सुसंगत अधिनियमों के तहत दण्डनीय होगा।
- 6/ यह आदेश ग्वालियर जिले में निवासरत प्रत्येक नागरिक को सम्यक् रूप से व्यक्तिशः तामील कराया जाना संभव नहीं है अतः सार्वजनिक माध्यमों, इलेक्ट्रॉनिक मीडिया एवं समाचार पत्रों के माध्यम से सर्व साधारण को अवगत कराया जा रहा है। मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी एवं सिविल सर्जन ग्वालियर अपने-अपने विभागीय माध्यमों से उक्त आदेश का व्यापक प्रचार-प्रसार कराना सुनिश्चित करें। अपर संचालक जन संपर्क जिले से प्रकाशित सभी समाचार पत्रों एवं इलेक्ट्रॉनिक मीडिया में निशुल्क प्रकाशन और प्रसारण कराया जाना सुनिश्चित करें।

(कौशलेंद्र विक्रम सिंह)  
जिला मजिस्ट्रेट  
जिला ग्वालियर, म0प्र0

Sample Order 2: Order Q/Steno/ADM/345/2020 dated 24 April 2020 passed by District Magistrate, Gwalior

# ANNEXURES

## Examples of FIRs

### 12. First Information contents (प्रथम सूचना तथ्य):

में [REDACTED] का रहने वाला हूँ। एक लिखित आवेदन पेश कर रहा हूँ। जो कि [REDACTED] के द्वारा फेशबुक पर आपत्ति जनक टिप्पणी तथा कोरोना वायरस बीमारी को धार्मिक आधार पर जोड़कर भ्रामक तथा गैर तथ्यात्मक पोस्ट करने संबंधी है। आवेदन पत्र का मजमून अक्षरशः हस्व जैल है सेवा में, श्रीमान् थाना प्रभारी महोदय जी थाना धनपुरी जिला शहडोल (म.प्र.), विषय सोसलमीडिया में ब्रमांक पोस्ट डालने व कारोना जैसे महामारी को लेकर भ्रम,आपत्तीजन पोस्ट करने की सिकायत हेतु। मान्यवर कारोना जैसे भयानक महामारी से पूरा देश परेशान है इस संकट की घडी में [REDACTED] नाम के व्यक्ति की आई.डी से लोगो के बीच फेसबुक शोसल मीडिया के माध्यम से भ्रान्ति फैलाया जा रहा है व आपत्ति जनक पोस्ट कर रहा है व नगर की शानिति व्यवस्था को भंग करने में कोई कसर नहीं छोड रहे है जब कि श्रीमान कलेक्टर महोदय के निर्देशानुसार जिले में 144 धारा लागू की गई है उसके बाद भी निर्देशो का पालन न करते हुए उल्लघन कर रहे है जो नगर व्यवस्ता को भंग करने का प्रयास कर रहे है अतः श्रीमान थाना प्रभारी महोदय जी से निवेदन है कि ऐसे लोगो के विरुद्ध कडी से कडी कार्यवाही करने की कृपा करें दिनांक 15.04.20 सलग्न स्क्रीन शार्ट [REDACTED] द्वारा श्रीमान् कलेक्टर महोदय द्वारा जारी आदेश क्र.पृष्ठा 0 क्रमांक / आर.डी.एम./2020/2246 शहडोल दिनांक 31.03.20 के प्रतिबन्धात्मक आदेश का उल्लघन्न किया गया है। आरोपी का कृत्य लोक सेवक द्वारा सम्यक रूप से प्रख्यापित आदेश कि अवज्ञा करने का पाए जाने से आरोपी [REDACTED] के विरुद्ध अपराध धारा 188, ता.हि. का कायम कर विवेचना मे लिया गया।

जिला मजिस्ट्रेट शहडोल (म.प्र.) व्दारा द.प्र.स.1973 की धारा 144 के तहत प्रतिबंधात्मक आदेश जारी किये गये है जो दिनांक 14/04/2020 तक के लिये प्रभावशील होगा, उक्त आदेश को लगातार एनाउन्स कर सभी दुकानदारो एवं आम नागरिको को सूचित कर समझाईस दी गई कि घर से बाहर न निकले तथा कोई भी कम्प्यूटर संचार, इलेक्ट्रानिक मीडिया, प्रिन्ट मीडिया या अन्य कोई संचार माध्यम से कोविड-19 संक्रमण के संबंध मे कोई भी अपुष्टि या भ्रामक जानकारी या वक्तव्य,रिपोर्ट, जनश्रुति या संदेश,आदि का प्रचार प्रसार करना पूर्णतःप्रतिबंधित रहेगा ,प्रतिबंधात्मक आदेश के अन्तर्गत सभी प्रकार का पाठ (TEXT)आकृति, आडियो-वीडियो व अन्य सभी अभिलेख जो संदेश सूचना के साथ संलग्न किये गये है सामिल होंगे. उक्त सूचना की तस्दीक हेतु हमराह स्टाफ

Sample FIRs 1 and 2 from Shahdol for posts made on social media



12. First Information contents (प्रथम सूचना तथ्य):

में थाना चिमनगंजमंडी पर सउनि के पद पर पदस्थ हूँ थाने से मय प्र आर [REDACTED] के लाकडाउन इंतजाम हेतु भ्रमण कर रहा था दरगाह [REDACTED] जाति [REDACTED] का रोड पर घूमते फिरते मिला जिससे घर से बाहर निकलने का कारण पूछा तो आकाश ने कोई संतोषजनक जबाव नहीं दिया इसलिये उक्त आरोपी का कृत्य जिला दण्डाधिकारी महोदय के आदेश क्रमांक 1195/ए. डी.एम./रीडर-1/2020 उज्जैन दिनांक 05.04.2020 का उलंघन कर कोरोना का संक्रमण फैलाते मिला है। अतः उक्त आरोपी के विरुद्ध धारा 188,270 भादवि के तहत अपराध पंजीबद्ध कर विवेचना में लिया गया।

12. First Information contents (प्रथम सूचना तथ्य):

आज दिनांक 19.04.2020 को आवेदक धीरज पिता महेश निगम उम्र 36 साल निवासी बी-299 आर्दश नगर देवास रोड थाना नागझिरी उज्जैन पटवारी हल्का नं. 05 कस्बा उज्जैन ने थाना उपस्थित आकर एक लिखित आवेदन पत्र पेश किया। जिस पर [REDACTED] के विरुद्ध धारा 188,270 भा.द.वि. पाया जाने पर प्रकरण पंजीबद्ध कर अनुसंधान में लिया गया नकल आवेदन पत्र विवरण निम्नानुसार है- प्रति, श्रीमान थाना प्रभारी महोदय थाना चिमनगंज मंडी जिला उज्जैन विषय- प्राथमिकी दर्ज करने के संबंध में, महोदय, उपरोक्त विषय- अंतर्गत लेख है कि मैं प्रार्थी धीरज पिता महेश निगम उम्र 36 साल निवासी [REDACTED] का रहने वाला हूँ। पटवारी हल्का नं. 05 कस्बा उज्जैन में पटवारी के पद पर कार्यरत हूँ वर्तमान में मेरी इयूटी कोरोना वायरस के संक्रमण की रोकथाम एवं कानून व्यवस्था हेतु चिमनगंज मंडी क्षेत्र के अंतर्गत तहसीलदार श्रीकांत शर्मा के साथ है। आज दिनांक 19.04.2020 को दौराने क्षेत्र भ्रमण [REDACTED] का रोड पर घूमते-फिरते मिला जिससे घर से बाहर निकलने का कारण पूछा तो कोई संतोष जनक जबाव नहीं दिया इसलिये [REDACTED] का कृत्य जिला दण्डाधिकारी महोदय के आदेश क्रमांक 1195/ए. डी.एम./रीडर-1/2020 उज्जैन दिनांक 05.04.2020 का उलंघन कर कोरोना का संक्रमण फैलाते मिला है। अतः [REDACTED] के विरुद्ध धारा 188,270 भादवि के अंतर्गत प्रकरण दर्ज कर वैधानिक कार्यवाही की जावे। दिनांक 19.04.2020 प्रार्थी धीरज निगम पटवारी हल्का नं.05 कस्बा उज्जैन [REDACTED]।

Sample FIRs 3 and 4 from Ujjain against pedestrians

# DISTRICTS AT A GLANCE

## Gohad, Bhind Kotwali and Raun PS

Population - 17,03,005 individuals

22% SC

0.4% ST

3.92% Muslims

## BHIND

73/175

FIRs related to lockdown

Common phrases the police used to dismiss the accused's reasons: **bewajah, anavashyak, anuchit rup se ghoomna**

## GWALIOR

6/152

FIRs related to lockdown

## Janakganj, Morar and Hazira PS

Population - 20,32,036 individuals

19.3% SC

3.5% ST

6.98% Muslims

None of the FIRs analysed had any record of the accused's justification for the alleged offence. All of these were filed against shopkeepers by the police. One of the reasons stated for filing the FIR was: **mahamari ke sankraman ki sambhavna/ashanka**

## Alipura, Chhatarpur Kotwali and Civil Lines PS

Population - 17,62,375 individuals

23% SC

4.2% ST

3.99% Muslims

## CHHATARPUR

136/261

FIRs related to lockdown

Common phrases the police used to dismiss the accused's reasons: **aakaran/ anuchit/ anavashyak ghoomna koi samuchit karan nahi bataya**



## Jawa, Rewa Kotwali and Sohagi PS

Population - 23,65,106 individuals

16.2% SC

13.2% ST

3.61% Muslims

# REWA

## 31/164

FIRs related to lockdown

Most FIRs were filed against shopkeepers without citing any administrative order allegedly violated. Common phrases- **anavashyak karya/ bheedh ikhatti kari sankraman prabhawit ho sakta hai jile mein**

## SHAHDOL

## 104/302

FIRs related to lockdown

## Gohparu, Dhanpuri and Sohagpur PS

Population - 10,66,063 individuals

8.4% SC

44.7% ST

3.98% Muslims

Most of the FIRs analysed were filed against shopkeepers by the Gohparu police and summons under S. 91 of CrPC (summons to produce document) were issued, FIRs contained no clarification regarding which document was required.

## Chimanganji Mandi, Birla Gram and Makdon PS

Population - 19,86,864 individuals

26.4% SC

2.5% ST

11.73% Muslims

# UJJAIN

## 403/515

FIRs related to lockdown

Ujjain had the second highest number of FIRs registered after Bhopal. Chimanganj Mandi PS accounted for 60% of FIRs. 90% of FIRs were registered against pedestrians and over 80% were a result of police patrolling or complaints by other government officials. Birla Gram PS did not use the discretionary phrases used elsewhere in the third lockdown. Makdon PS gave everyone **makool samajh/avashyak samjhayish**. Others frequently used phrases were - **apattijanak/asantoshjanak/anuchit and anavashyak rup se ghumna**

## Juni Indore, Mahatma Gandhi Road and MIG Colony PS

Population - 32,76,697 individuals

16.6% SC

6.6% ST

12.67% Muslims

## INDORE

199/223

FIRs related to lockdown

None of the FIRs analysed (except one) had any record of the accused's justification for the alleged offence. Common phrases the police used to dismiss the accused's reasons -

***aakaran ghoomna, santoshprad / santoshjanak jawab nahi diya***

## BHOPAL

473/545

FIRs related to lockdown

## Govindpura, Bairagarh and Habibganj PS

Population - 23,71,061 individuals

15.1% SC

2.9% ST

22.16% Muslims

Common phrases the police used to dismiss the accused's reasons - ***anavashyak ghoomna koi uchit/vaidh/santoshjanak uttar nahi diya***. On many occasions, the Bairagarh police was accompanied by members of the Nagar Suraksha Samiti to the site of the alleged offence.

## Jhallar, Bordehi and Aathner PS

Population - 15,75,362 individuals

10.1% SC

42.3% ST

2.39% Muslims

## BETUL

6/60

FIRs related to lockdown

Of the 4 FIRs studied from Betul, two explicitly mentioned the castes of the accused even though the FIR format has no such entry requirement. All the FIRs were filed for low level offences like obscenity, voluntarily causing hurt, criminal intimidation, public gambling etc.

# DISTRICTS AT A GLANCE

## JABALPUR

### **Gohalpur, Majhgava and Gadha PS**

Population - 24,63, 289 individuals

14.1% SC

15.2% ST

8.27% Muslims

111/184

FIRs related to lockdown

More than half the FIRs studied were registered against either a pedestrian or a two-wheeler driver, and 56% were registered on the basis of police patrolling. Gadha PS found the behaviour of all accused asantoshjanak. However, the number of FIRs for the district dropped drastically to three in the third lockdown.

Criminal Justice & Police Accountability Project is Bhopal based litigation and research intervention focused on building accountability against the criminalisation of certain communities by the Police and the criminal justice system, and pressing for decarceration.

