

Chapter-VIII

Towards Inclusive Justice – Legal reforms, community-based alternatives, and strategies for reimagining law as an instrument of social inclusion

By

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Abstract

This paper explores the evolving landscape of legal reforms and community-based alternatives aimed at reimagining law as an instrument of social inclusion. Employing a doctrinal research approach, it critically examines how legal systems can transcend traditional punitive models and adopt restorative and rehabilitative paradigms that address systemic inequalities ensuring equitable access to justice. Through landmark case studies (*Bandhu Mukti Morcha v. Union of India*, *Olega Tellis v. Bombay Municipal Corporation*), this paper aims in analyzing towards the social inclusion of marginalized communities by studying contemporary legal reforms, community justice initiatives, and participatory legal mechanisms which highlights the pivotal role of law in bridging socio-economic divides and safeguarding the rights of marginalized communities. The research ultimately proposes a multidimensional framework that integrates legal reform, social awareness, and community participation as essential pillars for realizing a justice system that is not only accessible but also inclusive and transformative.

Keywords: Inclusive justice, legal reforms, community participation, social inclusion, access to justice

Living in a democratic nation like India, where equality and justice are enshrined as constitutional ideals, discrimination based on caste, gender, and social status continues to persist as a deeply rooted challenge. Despite significant legal and policy measures aimed at promoting inclusivity, many individuals from marginalized communities still face systemic barriers that limit their access to opportunities, justice, and dignity. Such discrimination not only undermines the principles of democracy but also contributes to the social exclusion of vulnerable groups, reinforcing cycles of poverty and inequality. This ongoing marginalization highlights the pressing need for legal reforms, awareness, and community-based interventions that can help transform India's democratic framework into a truly inclusive and equitable system for all.¹⁸² Achieving justice for marginalized and indigenous communities involves addressing barriers like lack of awareness, financial inaccessibility, and a perceived alien legal system. Key strategies include empowering these communities through self-determination, recognizing and integrating traditional justice systems, improving access to courts and legal aid, and implementing state-led initiatives like affirmative action and educational programs. The term '*inclusive justice*' promotes the concept of equal access to justice. It goes beyond simply enforcing laws; it focuses on making justice participatory, equitable, and humane. According to the 2025 India Justice Report, nearly 42 percent of all undertrial prisoners in India originate from just three states—Uttar Pradesh, Bihar, and Maharashtra. Notably, Bihar ranks second in the country in terms of its prison population, with an overwhelming 66 percent of inmates belonging to marginalized communities.¹⁸³ Bihar is one of the states in India that continues to experience a high degree of social exclusion rooted in the caste system. Deeply entrenched caste-based hierarchies have historically influenced social, economic, and political structures in the region, leading to persistent inequalities and limited access to opportunities for marginalized communities.¹⁸⁴ The discrimination of the marginalized section of the society has not only grabbed a major issue today but during the colonial era, The **Criminal Tribes Act of 1871** holds a significant place in the history of discrimination and social exclusion of

¹⁸² Justice P.S. Narasimha, '*Justice for the Marginalized in a Constitutional Democracy*' 5 Global Journal on Social Exclusion, 2024

¹⁸³ *Indian Justice Report, 2025, India*, available at: <https://indiajusticereport.org/rankings/ijr-4/overall/large-states/map> (last visited on October 18, 2025)

¹⁸⁴ *Ibid.*

marginalized communities in India. Enacted by the British colonial government, the Act classified several nomadic and tribal communities as “*criminal by birth*”, branding entire groups as inherently inclined toward criminal activity. The British notions of inherent criminality and caste hierarchy formed the foundation of the **Criminal Tribes Act**. These prejudiced assumptions were echoed by **James Fitzjames Stephen**, the architect of the **Indian Penal Code (IPC)** and the **Indian Evidence Act**, who introduced the Criminal Tribes Act based on the belief that certain communities were criminal by birth and I quote:

“...when we speak of ‘professional criminals,’ we...[mean] a tribe whose ancestors were criminals from time immemorial, who are themselves destined by the usages of caste to commit crime, and whose descendants will be offenders against the law, until the whole tribe is exterminated or accounted for in the manner of thugs.”

This is what his perception was. These words show a deep-rooted bias of British and Indian society in criminalizing these communities.¹⁸⁵ Therefore criminalizing marginalized community and discrimination is nothing new it has been a system that has been carried out since a very long time. However, in the 21st century, the situation has significantly changed with the enactment of progressive laws and constitutional safeguards aimed at promoting equality and social justice. Various legal measures now focus on protecting the rights of marginalized communities, ensuring their social, economic, and political inclusion, and dismantling the remnants of discriminatory colonial policies. These reforms reflect India’s commitment to transforming its legal framework from one of exclusion and control to one that upholds dignity, empowerment, and equal opportunity for all citizens. Today these traditional punitive measures have resulted in a reformative and restorative justice system for all.

Reimagining Law as an Instrument of Social Inclusion

Today in the 21st century it marks a major transformation in promoting the inclusion of marginalized community in the society. Starting from the end of the colonial era till today, the Indian Justice System has focused in promoting social inclusion of the marginalized and indigenous community people. Although the Criminal Tribes Act, 1871 was made on the

¹⁸⁵ Kamble, Kumar and Chowdhury, ‘Ostracized by law’: The sociopolitical and juridical construction of the ‘criminal tribe’ in Colonial India’ 35 History and Anthropology, 2024

basis of caste-based discrimination, it was repealed in 1952 and the affected communities were officially “*De notified*”, the legacy of this colonial policy continues to shape their social realities. Later, the enactment of the Constitution of India served as the cornerstone for promoting equality, social justice, and inclusion, laying down comprehensive safeguards to protect the rights of marginalized communities. At the heart of the Indian constitutional framework is the principle of equality before the law, enshrined in **Article 14**, which ensures that every individual, irrespective of their social or economic background, receives equal treatment under the law. This fundamental right forms the basis for all subsequent provisions aimed at preventing discrimination and promoting social inclusion. **Article 15** explicitly prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth, highlighting the Indian State’s commitment to eradicating structural and systemic biases that have historically marginalized certain communities. Complementing this, Article 16 guarantees equality of opportunity in matters of public employment, thereby enabling marginalized groups to access state services and positions without facing prejudice or exclusion.

A particularly significant constitutional safeguard is **Article 17**, which abolishes untouchability and forbids its practice in any form. This provision not only addresses the historical social stigma attached to certain castes but also provides a legal mechanism for their protection against societal discrimination.¹⁸⁶ **Article 46**, falling under the Directive Principles of State Policy, further strengthens these measures by directing the State to promote the educational and economic interests of Scheduled Castes (SCs), Scheduled Tribes (STs), and other weaker sections of society. This provision underscores the importance of proactive state intervention to create conditions that enable historically disadvantaged communities to achieve social mobility and participate fully in national life.¹⁸⁷ Moreover, **Articles 338 and 338A** establish the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes, respectively, tasked with monitoring the implementation of protective measures and safeguarding the rights of these

¹⁸⁶ *Constitution Of India*, Arts. 14-17, Fundamental Rights

¹⁸⁷ *Constitution Of India*, Arts. 46, Directive Principles of State Policy

communities, thereby institutionalizing oversight and accountability in the promotion of social justice.¹⁸⁸

In addition to constitutional guarantees, India has enacted robust legislative measures to address social exclusion and protect marginalized communities. **The SC and ST Act, 1989** stands as one of the most significant laws in this regard. This Act seeks to protect SCs and STs from caste-based discrimination, violence, and social humiliation. Recognizing the deeply entrenched nature of social prejudice, the legislation provides for special courts, stringent punishments, and monitoring mechanisms to ensure that offenders are held accountable. By criminalizing acts of discrimination and violence against these communities, the Act not only safeguards individual rights but also challenges the structural inequalities that perpetuate social exclusion.¹⁸⁹

Similarly, the **Protection of Civil Rights Act**, plays a pivotal role in enforcing the constitutional abolition of untouchability. This law penalizes any form of discrimination based on caste, ensuring that marginalized groups can access public spaces, services, and opportunities without fear of exclusion or humiliation. Together, these legislative measures complement the constitutional framework by translating the principles of equality and inclusion into actionable legal provisions.¹⁹⁰

Beyond these measures, the combination of constitutional directives and legislative initiatives reflects a comprehensive legal strategy aimed at dismantling systemic barriers to social inclusion. By addressing both historical injustices and contemporary forms of discrimination, India's legal framework seeks to empower marginalized communities socially, economically, and politically. These laws recognize that inclusion is not merely a theoretical concept but requires tangible mechanisms for protection, participation, and empowerment. They also underscore the State's dual role as both a protector of rights and a facilitator of opportunities, ensuring that marginalized communities are not merely shielded from harm but are also enabled to participate fully in society.

¹⁸⁸ *Constitution Of India*, Arts. 338 & 338A, Special provisions relating to certain classes

¹⁸⁹ *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989*

¹⁹⁰ *Protection of Civil Rights Act, 1955*

Bridging Socio-Economic Divides: Case Studies on Inclusive Legal Mechanisms

The legal scenarios play a very important role in promoting social inclusion of the marginalized communities in the society. To understand this present scenario one must look into the real life scenarios through different case studies. It examines selected case laws that illustrate the role of legal mechanisms in bridging socio-economic gaps, highlighting how courts have addressed historical injustices, safeguarded marginalized communities, and promoted inclusive development. In the case of **National Campaign on Dalit Human Rights v. Union of India**, the petition was filed by NCDHR, a coalition of civil society organizations and Dalit activists, in response to the persistent and systemic caste-based discrimination and atrocities faced by Dalits in India where the Supreme Court acknowledged the persistent challenges faced by Dalits despite the existence of legal safeguards. The Court emphasized the need for a comprehensive and effective implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and other related laws. It highlighted the importance of proactive measures by the State to ensure the protection of Dalit rights and the prevention of caste-based discrimination and atrocities.¹⁹¹ In the case of **Olega Tellis**, The Supreme Court held that the **right to livelihood** is an integral part of the **right to life under Article 21** of the Constitution. This case concerned the eviction of pavement dwellers in Mumbai. The Court recognized that evicting them without providing alternative shelter violated their fundamental rights.¹⁹²

The case laws demonstrate that how these constitutional frameworks have played a pivotal role in bridging the gap of the socio-economic divides among the marginalized communities and the common people and these landmark judgements and constitutional frameworks have been a game changer towards the inclusion of marginalized communities in the society. It demonstrates how legal interpretation can protect the poor and homeless, bridging socio-economic divides through constitutional justice.

In the landmark case of **Bandhua Mukti Morcha v. Union of India**, the petition was based on a letter sent to the Supreme Court, alleging that workers employed in stone quarries in Faridabad, Haryana, were being subjected to inhuman and exploitative conditions,

¹⁹¹ National Campaign on Dalit Human Rights and Ors. vs. Union of India (UOI) and Ors (2017) 2 SCC 432

¹⁹² Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545

amounting to bonded labour. Justice Bhagwati, delivered a landmark judgment reinforcing the constitutional vision of social and economic justice. The Court held that the quarry workers in Faridabad were indeed bonded labourers within the meaning of the Bonded Labour System (Abolition) Act, 1976, and that their deplorable working and living conditions amounted to forced labour prohibited under Article 23 of the Constitution. It further ruled that such conditions violated the right to life and dignity guaranteed under Article 21, as the right to live does not merely mean animal existence but includes the right to live with human dignity, free from exploitation and oppression.¹⁹³

This landmark judgement proved that the state bears a constitutional responsibility to ensure that the fundamental rights of the vulnerable and marginalized citizens are protected. This resulted as a milestone in using Public Interest Litigation (PIL) as an inclusive legal mechanism to empower marginalized workers and enforce socio-economic rights.

Therefore, the above case studies collectively demonstrate how the Indian judiciary has played a transformative role in bridging socio-economic divides and ensuring inclusive justice for marginalized communities. Through progressive interpretations of constitutional provisions, particularly Articles 14, 21, and 23, the courts have expanded the scope of fundamental rights to encompass dignity, equality, and livelihood. These landmark judgments highlights the judiciary's commitment to upholding the rights of the oppressed and enforcing social welfare obligations on the State. These decisions underscore that true justice extends beyond legal formalities—it embodies social, economic, and human development. By strengthening Public Interest Litigation (PIL) as a tool for social reform, the courts have established inclusive legal mechanisms that transform constitutional ideals into living realities for the disadvantaged, thus fostering a more equitable and humane society.

The pursuit of inclusive justice in India represents an ongoing journey toward realizing the constitutional ideals of equality, dignity, and social welfare. Legal reforms, progressive judicial pronouncements, and community-based interventions collectively signify a transformative shift from a punitive to a restorative model of justice—one that seeks to empower rather than merely punish. The judiciary, through landmark cases such as *Bandhua*

¹⁹³ *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161

Mukti Morcha v. Union of India, *Olga Tellis v. Bombay Municipal Corporation*, and *National Campaign on Dalit Human Rights v. Union of India*, has played a pivotal role in interpreting the Constitution as a living instrument for social change, ensuring that the voices of the marginalized find representation within the legal framework. However, achieving true inclusivity demands continuous collaboration among the State, judiciary, civil society, and communities themselves. Strengthening legal literacy, expanding access to justice, and integrating participatory and community-based mechanisms are essential steps in transforming law into a tool of empowerment. Ultimately, inclusive justice is not confined to courtroom victories—it thrives in the lived experiences of equality, social harmony, and human dignity for all, marking the true realization of India’s democratic and constitutional vision.
