LAW OF THE MARGINS

EDITED BY

LAMIYA SULTANA

SWAMI VIVEKANANDA UNIVERSITY

Swami Vivekananda University, Kolkata (Institutional Publisher) Published by the Swami Vivekananda University (Institutional Publisher), Kolkata-700121, West Bengal, India No part of this publication may be reproduced or distributed in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise or stored in a database or retrieval system without the prior written permission of the publishers. The program listings (if any) may be entered, stored and executed in a computer system, but they may not be reproduced for publication. This edition can be exported from India only by the publisher. Swami Vivekananda University (Institutional Publisher), Kolkata-700121, India. ISBN: 978-81-993286-0-0 First Edition: October,2025, Publisher: Swami Vivekananda University (Institutional Publisher), Kolkata-700121, India Contact: schooloflegalstudies@svu.ac.in

Preface

The book *Law of the Margins* emerges from the collective academic spirit of the **School of Legal Studies, Swami Vivekananda University**, reflecting the institution's deep commitment to exploring how law interacts with the lived realities of marginalized communities.

Law of the Margins captures this dynamic intersection through thought-provoking chapters authored by Faculties of School of Legal Studies Swami Vivekananda University. Each contribution offers a distinct perspective on how law functions not merely as a mechanism of order but as an instrument that shapes, and is shaped by, the human condition.

The chapters traverse a wide spectrum of pressing issues — from the criminalization of poverty, gender and caste-based exclusion, and climate justice in vulnerable communities, to the informal labor sector and the challenges faced by unrecognized identities. These themes collectively illustrate the book's central argument: that understanding law at its margins is essential to realizing its promise of justice at the center.

It is hoped that *Law of the Margins* will serve as a valuable resource for students, researchers, and practitioners, inspiring deeper engagement with the evolving relationship between law, exclusion, and justice in India and beyond.

Acknowledgment

I am writing to express my heartfelt gratitude to **Swami Vivekananda University, Kolkata, India**, for their unwavering support and encouragement in the creation of this book, *"Law of the Margins."* The University's steadfast commitment to academic excellence, research innovation, and social consciousness has been instrumental in shaping the focus and spirit of this publication.

We sincerely appreciate the University's collaborative environment, intellectual guidance, and resourceful academic infrastructure that have enabled us to explore critical intersections between law, justice, and marginality. The encouragement and inspiration received from the institution have profoundly contributed to the realization of this collective scholarly endeavor.

It is our earnest hope that *"Law of the Margins"* will serve as a meaningful contribution to the School of Legal Studies and to the broader academic community — reflecting our shared dedication to knowledge, inclusivity, and the pursuit of justice for all.

Lamiya Sultana

Program Coordinator & Teaching Assistant

School of Legal Studies, Swami Vivekananda University

Contents

Chapters	**Contributors**	**Page**
Margins of Justice: Law, Exclusion and the Human Condition	Lamiya Sultana, Teaching Assistant & Program Coordinator, School of Legal Studies, Swami Vivekananda University	07-12
Poverty as Punishment: How Poverty is Criminalized and Interacts with Law, Legal Responses to Economic Vulnerability	Ankita Mukherjee & Koyel Modak, Teaching Assistants, School of Legal Studies, Swami Vivekananda University	13-31
Unrecognized Identities and Legal Frameworks: Rights of LGBTQ+, Disabled Persons and Refugee Communities	Trisha Sarkar & Priyanka Das, Teaching Assistants, & Assistant Professor School of Legal Studies, Swami Vivekananda University	32-46
Climate Justice and Marginalized Communities: A Case Study on Sundarban Coastal Area	Esita Das, Teaching Assistant, School of Legal Studies, Swami Vivekananda University	47-63
The Legal and Social Margins: The Harsh Realities of Informal Labour in India	Antu Rani Majumder, Teaching Assistant, School of Legal Studies, Swami Vivekananda University	64-82

Caste Lines in Law: Caste-based Exclusion, Untouchability, and Legal Interventions for Social Justice	Shreya Bairagi, Teaching Assistant, School of Legal Studies, Swami Vivekananda University	83-98
Gender in the Shadows of Law: Rethinking Neutrality and Justice	Debangana Gupta & Raima Roy Chowdhury, Teaching Assistants, School of Legal Studies, Swami Vivekananda University	98-113
Towards Inclusive Justice – Legal reforms, community-based alternatives, and strategies for reimagining law as an instrument of social inclusion	Modhurima Dalui Teaching Assistant, School of Legal Studies, Swami Vivekananda University	114-121

Chapter-I

Margins of Justice: Law, Exclusion and the Human Condition

By

Lamiya Sultana

Abstract

This paper explores the intersection of law and social marginality, examining how legal systems both protect and fail marginalized communities in India. While the Constitution and statutory frameworks promise equality, dignity, and justice, the lived realities of the poor, women, caste-oppressed, displaced, and unrecognized identities reveal persistent gaps between legal ideals and social experience. Through a combination of doctrinal analysis, landmark case studies (*Hussainara Khatoon v. State of Bihar*, *Maneka Gandhi v. Union of India*, *National Legal Services Authority v. Union of India*), and socio-legal commentary, the study highlights the structural and emotional dimensions of marginalization. The paper also engages with international perspectives, including human rights frameworks and comparative constitutional jurisprudence, to underscore the global resonance of legal exclusion. Ultimately, it argues that meaningful justice requires not only legal reform but also empathetic implementation, community-based interventions, and a reimagining of law as a tool for substantive inclusion.

Keywords: Marginality, Social Exclusion, Substantive Equality, Constitutional Rights, Informal Labor, Gender and Caste Discrimination, Legal Recognition, Human Rights, Access to Justice, Vulnerable Communities

"The arc of the moral universe is long, but it bends toward justice — only if we hold it steady."

— **Martin Luther King Jr.**

At the corners of every society lie those whose voices fade into the silence of systemic neglect - the poor, the outcast, the invisible. The law, in its majestic promise of equality, often stands tall and unyielding, yet its shadow sometimes fails to reach those who live beneath its gaze. For the marginalized, justice is not a guarantee; it is a distant horizon- visible, desirable, but rarely attainable.

This chapter is an invitation to walk toward that edge where law meets lived reality, where rights are whispered but not realized, and where justice becomes both a hope and a heartbreak. Marginality is not merely a social or economic condition; it is a legal experience. It is the condition of being perpetually spoken *about* but rarely *spoken for*. It is the state of standing outside the circle of legal comfort, watching others claim rights that the system denies or delays to you.

Marginality in law is both structural and symbolic. It refers not only to those excluded from the benefits of justice but also to those defined as *objects* rather than *subjects* of law. The Indian Constitution, in its **Preamble**, enshrines the goal of *justice — social, economic and political*[1]. However, the daily reality of inequality contradicts this promise.

For instance, **Articles 38 and 39**[2] of the Directive Principles of State Policy call for a social order that minimizes inequality in income and status,yet India's informal workforce — constituting over 80% of total labor — remains outside formal legal protection. Thus, marginality is not an accident; it is often the outcome of policy design and systemic neglect.[3]

Marginality in law is not a single wound; it is a network of scars — old and new. It manifests in different forms:

---

[1] *The Constitution of India*, Preamble — "Justice, social, economic and political.
[2] *The Constitution of India*, Arts. 38–39, Directive Principles of State Policy
[3] National Sample Survey Office (NSSO), *Periodic Labour Force Survey* (2022–23), Government of India

- A woman denied equal pay for her invisible labor.
- A Dalit man humiliated in the courtroom that should have been his sanctuary.
- A transgender person turned away from employment because law's recognition came too late.
- A tribal community evicted in the name of development, their lands sacrificed at the altar of progress.

Each of these stories carries the same undertone — that the law, while proclaiming equality, often replicates the very hierarchies it seeks to dismantle

Law as a Double-Edged Instrument

Law is both a sword and a shield, a means of liberation and a mechanism of control. Historically, it has served as an instrument of domination as much as emancipation. Colonial laws institutionalized hierarchy and exclusion, while post-independence reforms attempted to dismantle those very structures. Yet, as legal scholar Upendra Baxi observes, "the law continues to operate as a site of both oppression and resistance."

Even within democratic systems, the poor often find themselves trapped by legal formalities they cannot afford. In *Hussainara Khatoon v. State of Bihar* (1979)[4], the Supreme Court revealed the shocking reality of thousands of undertrial prisoners languishing in jails for years — many detained longer than the maximum sentence for their alleged crimes. The case exposed how poverty transforms the right to liberty into a privilege.

For the marginalized, the process of seeking justice becomes punishment itself. Long procedures, illiteracy, and systemic bias create a justice system that is inaccessible and intimidating. The law may promise equality, but the courtroom seldom feels equal.

Lived Realities: Between Law and Life

To understand marginality, one must move beyond the black letter of the law and look into the lived experience of those it fails to protect. Justice cannot be measured solely by judgments; it must also be heard in the silences of those who never reach the courts.

[4] *Hussainara Khatoon v. State of Bihar*, (1979) AIR 1369 (SC)

The right to life, as expansively interpreted in *Maneka Gandhi v. Union of India* (1978)[5], is not mere survival — it encompasses dignity, freedom, and the ability to live meaningfully. Yet for millions, these remain distant ideals. *Olga Tellis v. Bombay Municipal Corporation* (1985) recognized that the right to livelihood forms part of the right to life, yet pavement dwellers continue to face evictions without rehabilitation or due process.

Thus, there exists a painful dissonance between **law in the books** and **law in action**. The marginalized live in the gap between what law declares and what it delivers.

Marginality is not only material but deeply pathetic, it wounds the soul before it wounds the body. To live at the edge of justice is to carry the daily burden of invisibility: to be seen only as a statistic, never as a story. Law, with its clinical precision, often strips away emotion; it speaks in abstractions — "beneficiaries," "weaker sections," "backward classes." But behind every legal category is a life, fragile and resilient.

In *State of Uttar Pradesh v. Raj Narain* (1975), he Supreme Court reaffirmed the constitutional principle that government must be accountable to the people. Yet accountability remains hollow when those most affected by governance — the poor, the voiceless, the marginalized — are excluded from participation. Justice that does not listen is not justice; it is performance.

Reimagining Justice from the Margins

If justice is to have meaning, it must transcend courtrooms and statutes; it must reach into communities. Reimagining justice requires shifting focus from punitive law to restorative and inclusive law. It demands empathy as much as enforcement.

Grassroots movements and legal aid initiatives have shown that empowerment begins when people understand the law as *their own language*. Projects like the *Legal Services Authorities Act, 1987* and the spread of *Lok Adalats* have attempted to democratize justice by bringing it closer to those excluded from formal institutions.

But legal reform alone cannot suffice. True justice must emerge from within society — when privilege learns to listen and power learns to share. As Dr. B.R. Ambedkar warned, "Political democracy cannot last unless there lies at the base of it social democracy."[6]

[5] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[6] Dr. B.R. Ambedkar, Speech on the Draft Constitution, Constituent Assembly Debates, 25 November 1949.

This book begins at that delicate edge — where law meets human vulnerability. Each subsequent chapter will explore different dimensions of marginality: how poverty becomes punishment, how labor turns into exploitation, how caste and gender carve boundaries in the democratic space, and how identity itself becomes a battle for recognition.

Yet this is not a chronicle of despair. It is also a testament to resilience. Even at the margins, voices rise — demanding inclusion, recognition, and reform. Justice, though delayed and distorted, still flickers in the determination of those who refuse to surrender.

For at the edge of justice lies the heart of humanity — fragile, hopeful, and unyielding.

To understand justice is to look beyond courtrooms and codes, into the quiet struggles of those whom the system overlooks. The law, despite its grandeur, often reflects the same inequalities it was meant to erase. The poor, the oppressed, and the displaced continue to live in a space where rights exist in theory but fade in practice. Yet within their resistance lies the truest meaning of justice — not as a privilege reserved for the powerful, but as a collective promise of dignity and equality.

Justice, at its core, is a moral pursuit — a continuous journey of recognizing the humanity in those history has forgotten. It calls for empathy as much as enforcement, compassion as much as compliance. When the law listens to the silenced, protects the vulnerable, and restores dignity where it has been denied, it becomes more than an institution — it becomes an act of healing. The measure of a just society, therefore, is not found in how it protects its privileged, but in how it uplifts its most powerless. Only then does justice cease to be a distant dream and begin to live within the everyday lives of all.

---------- ****----------

Chapter-II

Poverty as Punishment: How Poverty is Criminalized and Interacts with Law, Legal Responses to Economic Vulnerability

By

Ankita Mukherjee & Koyel Modak

Abstract

This chapter explores how poverty in India is not merely a socioeconomic condition but is, in many ways, criminalised through legal frameworks, administrative practices, enforcement, and judicial decisions. It situates the discussion within the Sustainable Development Goals (SDGs), especially SDG 1 (No Poverty), SDG 10 (Reduced Inequalities), and SDG 16 (Peace, Justice, and Strong Institutions). Using case law, policy analysis, and lived experience, the chapter examines three primary arenas in which poverty is punished: (i) anti-begging and vagrancy laws; (ii) default sentences under penal regimes for failure to pay fines; and (iii) the interaction between poverty, caste, gender, and institutional bias in access to rights. It further analyses legal responses—legislation, judicial interventions, welfare schemes—and identifies the gaps between formal law and ground realities. The chapter concludes with insights on how legal reform and policy innovation must strengthen the dignity, agency, and protection of economically vulnerable populations.

Keywords: criminalization of poverty; default imprisonment; anti-begging laws; economic vulnerability; legal reform

Poverty remains one of the most persistent barriers to human dignity, full participation in society, and the realization of fundamental rights. In the 2030 Agenda for Sustainable Development, SDG 1 commits states to "end poverty in all its forms everywhere". India has made significant strides—reducing absolute poverty numerically over the decades—but poverty remains multidimensional, tied to caste, gender, geography, and exclusion from services. For millions in India, poverty is not merely the absence of resources; it is the presence of a penalty. Beyond deprivation, there is an often-overlooked dimension: poverty as punishment. This refers to legal rules and their enforcement that treat destitution as culpable behaviour. This chapter analyses how Indian legal systems punish poverty, both explicitly and implicitly, the legal responses attempted, and how these intersect with the goals of SDG 1, SDG 10 (inequality reduction), and SDG 16 (justice institutions)

The Criminalisation of Poverty: Laws, Practices, and Case Law

Anti-Begging / Vagrancy Laws

Poverty in India has historically been intertwined with criminalisation, Prevention of Begging Act, 1959, which was extended to Delhi via the Prevention of Begging Rules (1960), explicitly criminalised begging. The Act prescribed detention for up to three years for a first offence and up to ten years for repeat offences, with provisions for confinement in beggar homes and forced labor[7]. While originally justified as a measure to maintain public order, these provisions treated economic vulnerability as criminal behaviour, framing poverty as a moral failing rather than a structural condition.

[7] Bombay Prevention of Begging Act, No. 10 of 1959, India Code (1959).

Judicial scrutiny has recognised the punitive nature of such laws. In Harsh Mander & Karnika Sawhney & Ors. PILs, 2018, a bench of Justices Gita Mittal and C. Hari Shankar struck down key provisions of the Bombay Act as unconstitutional[8]. The Court emphasised that the right to life (Article 21), equality (Article 14), and dignity were violated when individuals were criminalised for begging. The judges noted that people often resort to begging out of compulsion and survival necessity, and prosecuting them exacerbates the deprivation already suffered due to poverty. The Court highlighted the State's failure to provide minimum essentials—shelter, food, and subsistence—which transforms legal punishment into a form of structural violence against the poor[9].

Despite this landmark ruling, several Indian states continue to retain colonial-era statutes criminalising begging and vagrancy. These laws confer sweeping powers to police and magistrates, including warrantless arrest, detention in beggar homes, and criminal sanctions for simply being in the company of beggars. Vulnerable populations—such as homeless persons, persons with mental illness, migrant laborers, and lower-caste communities—are disproportionately affected. Reports by NGOs indicate that beggars are routinely harassed, rounded up, and subjected to punitive confinement, often in facilities lacking basic hygiene and health services[10]. The continued

[8] Harsh Mander & Karnika Sawhney v. Union of India, W.P. (C) No. 10498/2009 (Delhi High Court, 2018).

[9] Code of Criminal Procedure, No. 2 of 1974, §§ 63–70, India Code (1974).

[10] Supreme Court of India. (2016). *Don't impose harsh sentence for not paying fine* [(2016) SCC OnLine SC 995].

enforcement of such laws underscores a systemic tension between formal legal reform and entrenched administrative practices.

Default Imprisonment for Non-Payment of Fines

Another mechanism through which poverty is criminalised is the imposition of default imprisonment for non-payment of fines. Courts frequently impose fines on convicted individuals, and failure to pay results in additional incarceration. For many poor defendants, inability to pay is not willful negligence but a reflection of their economic circumstances. Yet, the law effectively extends punishment based on poverty, thereby exacerbating their vulnerability. The Supreme Court of India has repeatedly emphasised the need to consider the financial condition of convicts while imposing fines or sentences. In cases such as State of Karnataka v. L. Veerappa, courts recognised that economic incapacity should inform judicial discretion in default sentencing. Similarly, in Excessive Fine Should Not Be Imposed on Convicts (2012)[11], the Court underscored that fines should not be punitive to the extent of violating constitutional protections under Articles 14 and 21.

A contemporary illustration can be seen in a Bombay High Court case (2024), where a man convicted in 14 criminal cases was fined approximately ₹265,000 and remained incarcerated after completing the substantive sentence due to non-payment. The HC, invoking its inherent powers under Section 482 of the CrPC, directed that the time already served post-substantive sentence be credited as default imprisonment and ordered his release[12]. This case highlights how procedural rules, when applied without regard to economic reality,

[11] Drèze, J., & Khera, R. (2020). *Social policy in India: Beyond entitlement*. Oxford University Press.

[12] Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, No. 7 of 2014, India Code (2014).

function as instruments of punishment rather than justice. The practice disproportionately impacts poor, marginalized individuals, particularly those lacking access to legal representation or social support networks.

Other Forms of Punishment via Legal and Administrative Means

Beyond explicit criminal laws, other legal and administrative practices indirectly punish poverty. Welfare entitlements, property rights, and mobility often require formal documentation—such as ration cards, income certificates, or municipal IDs. Many poor individuals, especially migrants, women, and persons from Scheduled Castes and Tribes, lack these documents and are consequently denied access to legal protections or subjected to administrative penalties[13].

Policing practices, including enforcement against loitering, vagrancy, or "public nuisance," are another form of structural punishment. For example, municipal laws targeting encroachment or informal labor often criminalise survival strategies like street vending or construction work without permits, disproportionately affecting the poor. Legal aid, though constitutionally guaranteed under Article 39A, is often insufficient or inaccessible, leaving economically vulnerable populations exposed to the punitive consequences of law[14].

The intersectional dimension is critical. Dalits performing manual scavenging, despite the practice being prohibited, are frequently prosecuted under labor and municipal laws, illustrating how poverty interacts with caste oppression.

[13] Indian Penal Code, No. 45 of 1860, § 268 ("Public Nuisance"), India Code (1860).

[14] Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545 (Supreme Court of India, 1985).

Women, children, migrants, and persons with disabilities are similarly at higher risk of criminalisation due to structural inequalities and socio-economic marginalisation. Bonded labor, despite being formally outlawed under the Bonded Labour System (Abolition) Act, 1976, remains a reality in parts of rural India, showing how laws alone cannot eradicate poverty-related exploitation[15].

The Criminalisation of Homelessness and Informal Settlements

The most visible manifestation of poverty in urban India is often homelessness and the proliferation of informal settlements (slums or jhuggi jhopris). While not explicitly criminalised in the way begging once was, the survival strategies of the urban poor—sleeping in public spaces, street vending, and unauthorized construction—are relentlessly targeted through a myriad of municipal and penal laws, effectively turning economic deprivation into a punishable offense.

Police and Municipal Harassment:

Homeless individuals frequently encounter punitive action under laws related to public nuisance, loitering, and trespass. The police and municipal authorities use these vague statutes to clear public areas, especially during major events or 'city beautification' drives, resulting in the routine harassment, arrests, and detention of those with nowhere else to go. This administrative cruelty is a direct consequence of the state's failure to uphold the right to shelter, which the Supreme Court has long recognized as an intrinsic part of the right to life under Article 21.

Evictions and Encroachment Laws:

Laws related to encroachment on public land are perhaps the most aggressive tool for punishing the poverty of residence. Slum dwellers, often migrant

[15] National Crime Records Bureau. (2023). *Prison statistics India 2023*. Government of India.

laborers or economically marginalised communities like Dalits and Adivasis, construct homes on public or railway land out of absolute necessity. Mass evictions, often carried out without adequate notice, consultation, or rehabilitation, render already vulnerable families instantly homeless.

The Supreme Court's ruling in Olga Tellis v. Bombay Municipal Corporation (1985) affirmed the right to livelihood, linking it to the right to life, and mandated that evictions must be fair, procedurally just, and provide for rehabilitation. Despite this landmark judgment, contemporary evictions often violate these safeguards. For instance, in a 2021 case concerning evictions along railway tracks in Delhi, while the Supreme Court initially ordered the clearance of thousands of informal homes, subsequent judicial review and public advocacy highlighted the constitutional imperative of rehabilitation, illustrating the systemic tension between infrastructure development and the right to shelter. Evictions are not just a removal of property; they are a direct attack on the economic and social security of the poor, often leading to loss of employment, displacement of children from schools, and deeper indebtedness.

Gender and Caste Dimensions:

The criminalisation of informal settlements is deeply intersectional. Poor women face unique vulnerabilities during evictions, as their informal property claims are often unrecognised, and they face increased risks of violence and loss of agency post-displacement. Similarly, Scheduled Castes (Dalits) and Scheduled Tribes (Adivasis) are disproportionately represented in both the homeless population and informal settlements, demonstrating how historical and structural inequalities determine who is exposed to punitive municipal enforcement. The targeting of these communities for 'public order' infractions

or 'encroachment' essentially criminalises the inter-generational poverty perpetuated by caste and economic exclusion.

Poverty and Punitive Pre-Trial Detention:

The Bail System:

Beyond the direct criminalisation of survival, the judicial process itself often functions as a punishment for the poor, with the bail system being a primary mechanism. For an accused individual, the period of pre-trial detention—often lasting years—is economically devastating, leading to job loss, family disintegration, and deeper debt.

The Economics of Pre-Trial Detention:

In India, bail often requires the accused to furnish a surety (a third-party guarantor) and a monetary bond. For a poor individual, particularly a daily wage earner, arranging even a modest bail amount is frequently impossible. This inability to secure release leads to prolonged under-trial detention, a phenomenon where thousands of individuals, presumed innocent, remain incarcerated simply because they are poor. Data consistently shows that the majority of India's prison population comprises under-trial prisoners, many of whom are from socially and economically marginalised groups.

Judicial Indifference to Economic Status:

While the Supreme Court has consistently held that the objective of bail is to ensure the presence of the accused at trial, not to inflict punishment, this principle is often overlooked in practice. Judges often impose bail conditions—especially the bond amount—without adequate consideration of the accused's economic circumstances. The modus operandi of a poor person arrested for a minor, poverty-driven offence (like petty theft or a minor public nuisance) is often to plead guilty or remain incarcerated until their trial concludes, simply

because the bail amount is financially prohibitive. This leads to coercive plea bargaining enforced not by law, but by economic necessity.

Case Law on Bail and Poverty:

Judicial activism has attempted to mitigate this. In landmark cases like Hussainara Khatoon v. State of Bihar (1979), the Supreme Court highlighted the plight of thousands of poor under-trial prisoners and mandated their release, thereby expanding the right to speedy trial under Article 21. More recently, in Moti Ram v. State of Madhya Pradesh (1978) and other judgments, the Court has stressed that bail should not be denied solely because an individual is too poor to furnish a high cash bond. The Court suggested alternatives such as personal bonds or periodic reporting to the police station.

Despite these strong pronouncements, the gap between judicial directive and on-the-ground implementation remains vast. Subordinate courts frequently impose high monetary bail, and even when a personal bond is accepted, poor individuals often struggle to find a surety who meets the magistrate's criteria (e.g., proof of property or income). This transforms a fundamental right—the presumption of innocence and personal liberty—into a privilege accessible only to those with economic means, making the legal process a de facto punishment for poverty.

The Interplay with Legal Aid:

The constitutional guarantee of free legal aid (Article 39A) is meant to counteract these disparities. However, legal aid lawyers are often overburdened, under-resourced, and lack the capacity to effectively challenge punitive bail conditions or expedite the release of their clients. The result is a cycle: poverty leads to minor infractions, which lead to an inability to meet bail, resulting in prolonged incarceration, which further deepens poverty upon

eventual release. The system thus punishes the accused not for the crime, but for their economic status.

Case Law & Constitutional Constraints

Judicial intervention has increasingly recognised that punishing poverty violates constitutional norms. The Delhi High Court's decriminalisation of begging (2018) serves as a landmark instance, where the Court explicitly held that the criminalisation of economic vulnerability contravenes the right to life and dignity. Similarly, the Supreme Court's decision in Don't Impose Harsh Sentence for Not Paying Fine (2016) emphasised restraint in imposing imprisonment for default fines and required courts to consider pecuniary circumstances[16].

Constitutional jurisprudence provides further safeguards. Article 14 guarantees equality before the law, demanding that legal sanctions be applied without arbitrariness, while Article 21 protects life and personal liberty, encompassing the right to subsistence, dignity, and minimum necessities. Additionally, Articles prohibiting cruel, inhuman, or degrading treatment constrain the State from imposing unduly harsh penalties on economically vulnerable groups. These principles require courts to scrutinise both legislative intent and administrative implementation, ensuring that poverty is not effectively criminalised through systemic neglect or punitive measures[17].

Overall, India's legal framework reflects both the challenges and potential for reform: while certain laws continue to criminalise poverty, judicial intervention provides pathways for protecting vulnerable populations. Nevertheless,

[16] Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369 (Supreme Court of India, 1979).

[17] Constitution of India, Articles 14 & 21.

persistent enforcement gaps, administrative inertia, and structural inequalities highlight the need for comprehensive reform that integrates legislative change, judicial guidelines, and social protection mechanisms.

Legal Responses, Gaps, and Lessons

Legislative Measures and Welfare Policies

India has developed a robust framework of laws and welfare programs intended to protect economically vulnerable populations. However, while the legislative intent behind these measures is progressive, inadequate enforcement, bureaucratic barriers, and poor accessibility frequently undermine their effectiveness. Consequently, the poor often remain exposed to both economic deprivation and legal punishment.

The Minimum Wages Act, 1948 was designed to prevent exploitative labour practices and ensure a subsistence-level income for workers in both formal and informal sectors. Although the Act theoretically safeguards workers from exploitation, persistent implementation failures continue to erode its purpose. Reports by the National Commission for Labour reveal widespread non-compliance and underpayment, especially in informal sectors such as domestic work, construction, agriculture, and small-scale manufacturing. The inability of workers to secure even the statutory minimum wage perpetuates a cycle of poverty and indirectly exposes them to punitive state mechanisms for survival-related infractions[18].

Similarly, The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 was enacted to legitimise and secure the livelihoods of informal urban workers by recognising street vending as a lawful economic

[18] National Commission for Labour. (2019). Report on Informal Labour Markets. Government of India.

activity. The Act mandates vending zones, protection from arbitrary eviction, and grievance redressal mechanisms. However, municipal enforcement remains inconsistent; fines, evictions, and denial of licenses are still common, disproportionately affecting women and migrant vendors.[19]

The Bonded Labour System (Abolition) Act, 1976 represents another landmark intervention against extreme exploitation. While it formally abolishes bonded labour and provides for rehabilitation, investigations by the National Human Rights Commission (NHRC) reveal that bonded labour continues in sectors such as brick kilns, agriculture, and construction through informal debts and coercive contracts.[20] Welfare and social protection schemes such as MGNREGA, the Public Distribution System (PDS), and Ayushman Bharat function as indirect mechanisms to reduce the punitive effects of poverty by guaranteeing work, food, and healthcare. Yet, corruption, inefficient administration, and social exclusion hinder their reach and effectiveness.[21]

Judicial Interventions and Constitutional Guarantees

The Indian judiciary has increasingly recognised that punitive laws affecting the poor must align with constitutional guarantees of equality, dignity, and due process. Article 21 of the Constitution, interpreted to include the right to livelihood and dignity, forms the cornerstone of this jurisprudence.

---

[19] Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.

[20] National Human Rights Commission (NHRC). (2020). Status of Bonded Labour in India. New Delhi.

[21] Planning Commission of India. (2019). Evaluation Report on Welfare Schemes. Government of India.

Public Interest Litigations (PILs) have been pivotal in contesting the criminalisation of poverty. In Harsh Mander & Karnika Sawhney v. Union of India (2018), the Delhi High Court struck down the anti-begging provisions of the Bombay Prevention of Begging Act, 1959 as unconstitutional, affirming that poverty and begging are outcomes of systemic inequality rather than moral failure.[22] Courts have also extended procedural safeguards to prevent economic discrimination in sentencing. In Don't Impose Harsh Sentence for Not Paying Fine (2016), the Supreme Court directed that imprisonment for non-payment of fines must take into account the offender's financial status. Likewise, in State of Karnataka v. L. Veerappa (2000), it was emphasised that fines should not disproportionately burden indigent convicts.[23] The landmark case Maneka Gandhi v. Union of India (1978) further expanded the meaning of "procedure established by law" under Article 21 to include fairness, reasonableness, and non-arbitrariness, principles that underpin judicial scrutiny of punitive laws affecting the poor.[24]

Gaps Between Law and Practice

Despite progressive legislation and landmark judgments, significant gaps persist between legal ideals and practical enforcement. Archaic vagrancy and anti-begging laws are still selectively implemented, often targeting homeless individuals, daily-wage labourers, and migrant workers. This selective

[22] Harsh Mander & Karnika Sawhney v. Union of India, W.P. (C) 10498/2009 (Delhi HC, 2018).

[23] State of Karnataka v. L. Veerappa, AIR 2000 SC 2241.

[24] Maneka Gandhi v. Union of India, AIR 1978 SC 597.

enforcement exposes the contradiction between constitutional promises of equality and ground-level governance.

Limited awareness of rights and inadequate access to legal aid compound the problem. Many impoverished individuals face prolonged detention for minor offences or default on fines simply because they cannot afford legal representation. Marginalised communities—especially women, Dalits, Adivasis, and migrants—experience overlapping discrimination that heightens their vulnerability to criminalisation.[25]

Institutional weaknesses, underfunded welfare schemes, and fragmented coordination between government agencies also impede the realisation of socio-economic rights. Without comprehensive structural reforms and inclusive policy design, poverty remains both a cause and consequence of systemic neglect and punitive governance.[26]

Lessons from Lives: Lived Experience and Empirical Evidence

Empirical evidence underscores how punitive frameworks operate in the everyday lives of the poor. Reports from NGOs and media outlets document instances where homeless persons and those with mental illnesses are forcibly detained in beggar homes or subjected to police harassment.[27] Families are

[25] National Legal Services Authority (NALSA). (2022). Legal Aid in India: Gaps and Challenges. New Delhi.

[26] Centre for Budget and Governance Accountability (CBGA). (2023). Social Sector Spending in India. New Delhi.

[27] Human Rights Law Network (HRLN). (2021). Documentation on Homelessness and Criminalisation of Poverty.

sometimes criminalised under "company with beggars" clauses, leading to disproportionate punishment for individuals merely struggling for survival.

The Kolhapur Case (Bombay High Court, 2024) exemplifies this intersection of law and poverty. A convict, having completed his substantive sentence, was detained further solely for non-payment of fines—a direct consequence of his financial incapacity.[28] Similarly, countless street vendors recount experiences of harassment, confiscation of goods, and arbitrary eviction, demonstrating how administrative infractions translate into social and economic marginalisation.

Comparative Reflection and Theoretical Framing

While this chapter focuses on India, comparative studies from Latin America, Africa, and Southeast Asia reveal parallel trends: homelessness and vagrancy criminalised, excessive fines imposed on indigent offenders, and legal systems reinforcing poverty as personal failure rather than systemic inequity.[29] Theoretical frameworks such as Amartya Sen's Capability Approach, theories of social justice, and insights from critical legal studies help explain how legal and economic institutions perpetuate inequality.

Colonial legacies in India—particularly vagrancy and beggary laws—continue to shape social attitudes and governance practices. When combined with entrenched caste hierarchies and structural exclusion, these legal remnants

[28] Bombay High Court. (2024). Kolhapur Detention Case: Default Imprisonment Due to Non-Payment of Fine.

[29] UN Special Rapporteur on Extreme Poverty and Human Rights. (2018). Report on Criminalisation of Poverty. United Nations.

sustain cycles of criminalisation and deprivation, making poverty not merely a social condition but a legally mediated disadvantage.[30]

Conclusion:

Key Insights:

Poverty is not merely deprivation but, in many legal contexts, treated as fault: inability to pay, homelessness, begging, and vagrancy are often criminalised.

The Indian judiciary has intervened selectively to decriminalise poverty, limit default imprisonment, and enforce State obligations to provide basic services.

While statutes and policies exist, their design and implementation often fail the poorest, with entitlements tied to documentation, low coverage, and procedural complexity.

Gaps:

- Legal lacunae persist: archaic anti-begging/vagrancy laws continue in several states.
- Judicial discretion is variable: some judges consider economic vulnerability; many do not.
- Implementation gaps: welfare programs are underfunded, legal aid is insufficient, enforcement inconsistent.
- Intersectional invisibility: poor women, Dalits, Adivasis, and migrants remain inadequately protected.

[30] Sen, A. (1999). Development as Freedom. Oxford University Press.

Recommendations

- **Decriminalise poverty-linked behaviours.**

Laws such as the Bombay Prevention of Begging Act, 1959 and similar state statutes continue to criminalise survival behaviours like begging or loitering. These laws should be repealed or amended to align with constitutional guarantees of dignity and equality (Harsh Mander & Karnika Sawhney v. Union of India, 2018). A shift from punitive to rehabilitative and welfare-based measures is essential (National Law University Delhi, 2019).

- **Establish mandatory judicial guidelines.**

Judicial sentencing policies must incorporate an accused's economic condition to prevent default imprisonment for inability to pay fines. The Supreme Court in Don't Impose Harsh Sentence for Not Paying Fine (2016) and State of Karnataka v. L. Veerappa (2000) emphasised proportionality and economic fairness in sentencing.

- **Strengthen welfare and social protection.**

Poverty reduction and social-security frameworks—such as the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, the Public Distribution System, and Ayushman Bharat—should be expanded to guarantee food, shelter, health, and livelihood security (NITI Aayog, 2020). Stronger monitoring and grievance-redress mechanisms would reduce the structural vulnerability that leads to criminalisation.

- **Expand access to justice and legal aid.**

The Legal Services Authorities Act, 1987 mandates free legal services for economically weaker sections, yet coverage remains inadequate. Strengthening legal-aid infrastructure, community legal literacy, and mobile

legal clinics can enhance procedural justice (National Legal Services Authority [NALSA], 2021).

- **Promote empirical research and data collection.**

Systematic, disaggregated data on the criminalisation of poverty—by caste, gender, and geography—should guide legislative and judicial reforms. Partnerships between universities, the judiciary, and the National Crime Records Bureau (NCRB) are necessary to produce evidence-based policy (Centre for Law and Policy Research, 2022).

- **Encourage cross-sectoral reforms.**

Sustainable reform requires collaboration among the legislature, judiciary, executive, and civil society. Periodic statutory reviews, as recommended by the Law Commission of India (2017), can help identify and repeal obsolete or oppressive laws that perpetuate economic marginalisation.

---------- ****----------

Chapter-III

Unrecognized Identities and Legal Frameworks

Rights of LGBTQ+, Disabled persons and Refugee Communities

by

Trisha Sarkar, Priyanka Das

Abstract

In contemporary societies, certain communities continue to face persistent marginalization due to the insufficient recognition of their identities within mainstream legal and social frameworks. As evident from many ancient and mythological scriptures, the LGBTQ community has existed in our country for centuries. Members of this community frequently face challenges arising from their sexual or gender identity and refugee status, which limit their access to justice, dignity, fairness and equal participation.This chapter explain detailed analysis of constitutional provisions, statutory protections and judicial interventions and assesses both the strengths and limitations of current legal safeguards and also try to explore emerging jurisprudence and policy – initiatives that seek to enhance inclusivity, dignity and rights, by foregrounding the lived experiences of marginalized communities from the mainstream world in every step of their life which prevents them to pursue their dreams, aspirations and desires. Finally, this chapter is not only concerned about issues of refugees and identity crisis faced by them, but also aims to suggest pathways toward developing a more responsive legal system to address the complex identities that have traditionally been ignored. The objective is to uplift this community alongside other fellow citizens, overcome social stigma and prejudice, and to ensure that all people in the country feel their rights are protected - regardless of gender identity or sexual orientation.

Keywords: Unrecognized identities, LGBTQ+ rights, Disability rights, Refugee rights, Legal recognition

Recognition of identity is not a mere act of acknowledgment; it is the gateway to dignity, agency, and justice."

– Axel Honneth[31]

The question of identity and its recognition within legal frameworks has long occupied the discourse of human rights jurisprudence. "Identity" is more than label: it is about recognition, dignity, agency, and belonging. Yet many people – LGBTQ+ persons, persons with disabilities, refuges – remain under or unrecognised in legal and social systems[32]. Such unrecognised identities face exclusion from rights that others take for granted: from healthcare, schooling, employment, protection under the law, or safe refuge. The failure to recognise identities may be de jure (in statutes, policies) or de facto (in social practice, bureaucracy). Legal recognition is critical to ensure human rights, equality, non – discrimination, dignity, and agency. Their lived realities reflect a gap between the theoretical rights enshrined in constitutions, international instruments, and judicial pronouncements, and the practical accessibility of those rights in daily life.

Understanding Unrecognised Identities :

In the legal and social context, an unrecognised identity is a situation where people or communities are either completely excluded from the rights, resources, and protections afforded to other citizens, or are only partially acknowledged. A lack of recognition can be substantive, like when institutions and society fail to provide equal treatment, or formal, like when there are no laws that recognise a specific gender identity. Thus, recognition is a socio-political and legal necessity[33].

The LGBTQ+ communities face lack of proper recognition such as the criminalisation of same – sex behaviour, the stigmatisation of non – binary genders, and social exclusion from basic human rights, which means they can't get basic human rights like marriage, work, inheritance and healthcare[34]. For disable persons they are face Systemic discrimination, such as inaccessible infrastructure, exclusion from education and employment and inadequate healthcare facilities[35]. Similarly, refugees are denied from civil rights, social

[31] Axel Honneth, The Struggle for Recognition (Polity Press, 1996) 34.
[32] Martha C. Nussbaum, Frontiers of Justice: Disability, Nationality, Species Membership (Harvard University Press, 2006) 102.
[33] H. R. Anand, "Legal Recognition of Identity and Rights" (2019) 61 ILI Rev 45.
[34] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[35] Rights of Persons with Disabilities Act, 2016, India

benefits and protection from arbitrary detention or deportation especially, they are face lacking of formal refugee legislation[36].

Historical context of Marginalization:

The marginalisation of these communities has a long history. For centuries, LGBTQ+ people have been treated like criminals and pathologised in many societies. People with disabilities were frequently shunned by society and denied from legal personhood and social exclusion. Historically, Refugees communities, especially those escaping war, ethnic cleansing or political persecution, have been regarded as burdens rather than as individuals entitled to rights[37]. It is crucial to comprehend this historical background because it helps us to understand the current fight for legal recognition and fair protection.

Legal Recognition and its Significant:

Recognition is required by law and is not just a symbolic act; it gives guarantees to that individuals can exercise their rights under constitutional and statutory rights. For example, access work, healthcare, and education is directly impacted when consensual same – sex relationships are decriminalised or when non – binary gender identities are acknowledged. In a similar way, disability rights in legal frameworks ensure protection from discrimination[38], reasonable accommodations and accessibility. Legal recognition for refugees sets up a system for asylum, protection from refoulement and access to social services.

Intersectionality and Compounding Vulnerabilities :

It is essential to recognise the intersectional aspects of marginalisation. Many people hold several unacknowledged identities at the same time; for example, a disabled, LGBTQ+, refugee may experience extra discrimination because of overlapping social and legal invisibilities. Intersectionality emphasises that protecting rights cannot be done in a vacuum; it must consider the intricate realities of intersecting vulnerabilities[39].

---

[36] 1951 Convention Relating to the Status of Refugees, UNHCR.
[37] David L. Eng, The Feeling of Kinship: Queer Liberalism and the Racialization of Intimacy (Duke University Press, 2010) 56.
[38] UN Committee on the Rights of Persons with Disabilities, General Comment No. 6, 2018.
[39] Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43 Stanford L. Rev 1241.

Scope of this Chapter :

This chapter seeks to examine how legal recognition and policy frameworks interact with social realities. It evaluates the constitutional, statutory, and judicial responses to the rights of LGBTQ+ persons, refugees, and individuals with disabilities, while also exploring emerging jurisprudence and international commitments. By foregrounding lived experiences, it argues for a transformative approach that bridges the gap between rights on paper and rights in practice. The chapter seeks to increase knowledge of how legal systems can change to uphold the rights and dignity of unrecognised identities by offering a thorough analysis. Essentially, the foundation of justice is recognition. Without it, social inclusion and legal protections remain idealistic. In – depth discussion of historical developments, international obligations, national frameworks and practical recommendations for securing these communities' substantive recognition and protection will be covered in this chapter. As Amartya Sen reminds us, "Development is freedom"[40], and freedom can only be realized when marginalized identities are not just legally recognized, but socially affirmed and protected.

Historical Background of Unrecognized Identities

"Justice delayed is injustice. Recognition of identities delayed is oppression perpetuated."

-- Justice Ruma Pal[41]

The historical marginalization of unrecognised identities, including LGBTQ+ individuals, persons with disabilities and refugees, has deeply entrenched in societal, legal and political origins. Colonialism, patriarchy, ableism, and nationalism have all worked together to create hierarchies of belonging and exclusion within socio – legal systems. This chapter traces the evolution of societal and legal recognition of these communities, highlighting all the systemic marginalization and the emergence of movements advocating for inclusion.

LGBTQ+ Communities : Historical Marginalization

In the Indian context, before colonial rule[42], a variety of gender and sexual expressions were historically visible and frequently socially acceptable. Regional folklore and ancient Indian

[40] Amartya Sen, Development as Freedom (Oxford University Press, 1999).
[41] Justice Ruma Pal, Judicial Perspectives on Human Rights (Oxford University Press, 2003) 12.
[42] Ruth Vanita, Same-Sex Love in India: Readings from Literature and History (Macmillan, 2000) 45.

texts like the Kama Sutra accepted third – gender identities and same – sex relationships without imposing moral condemnation[43]. The fluidity of gender and sexually in Indic thought is exemplified by mythological characters like Mohini, the female incarnation of Lord Vishnu, and Shikhandi in the Mahabharata[44]. However, victorian moral codes that pathologised and criminalised non – heteronormative behaviour were brought about by the establishment of British colonial governance. This prejudice became legally codified with the passage of section 377 of the Indian Penal Code, 1860, which was modelled after Britain's "Buggery Act" of 1533 and classified homosexual acts as "unnatural offences"[45]. In addition to criminalising queer identities, this colonial imposition erased centuries of indigenous acceptance and diversity in gender roles[46].

Similar patterns appeared in the west. Gender diversity and same – sex relationships were illegal under sodomy laws and moralistic legal frameworks. This legal marginalisation frequently legitimised social discrimination and exclusion from public life. Even in cases where laws were liberalised in later centuries due to social stigma[47]. The LGBTQ+ rights movement started in the 20th century and fought against both legal and social exclusion. The landmark global events, The Stonewall Riots (1969) sparked activism and support for the decriminalisation and recognition of gender diversity[48].

Persons with Disabilities: Historical Perspectives

Persons with disabilities have been subjected to ignored, left out and in some cases, forced to institutionalization or sterilization. In early societies, disabilities are frequently viewed as the result of moral failings or superstition[49]. In Medieval Europe, for example, individuals with visible disabilities were relegated to begging or marginalized within guild systems[50].

Colonial policies in India and other places often institutionalized this exclusion. Legal frameworks did not recognize disability as a ground requiring affirmative protection and

[43] Vātsyāyana, Kama Sutra of Vatsyayana, translated by Sir Richard Burton (Indo-European Publishing, 2009).
[44] Devdutt Pattanaik, Shikhandi and Other Tales They Don't Tell You (Zubaan Books, 2014).
[45] Indian Penal Code, 1860, s. 377 (repealed in part by Navtej Singh Johar v. Union of India, (2018) 10 SCC 1).
[46] Arvind Narrain, Queer: Despised Sexuality, Law and Social Change (Yoda Press, 2004).
[47] Michel Foucault, The History of Sexuality (Vintage, 1990) 72.
[48] George Chauncey, Gay New York: Gender, Urban Culture, and the Making of the Gay Male World (Basic Books, 1994) 213.
[49] Lennard J. Davis, Enforcing Normalcy: Disability, Deafness, and the Body (Verso, 1995) 18.
[50] Susan Burch, Bodies in Protest: Disability and Social Change (University of Michigan Press, 2001) 35.

educational and employment opportunities were broadly inaccessible[51]. In the latter half of the 20th century that the global disability rights movement, this promoted equality, accessibility and the social model of disability, which prioritises societal barriers over personal deficiencies[52]. International instruments such as, The United Nations Declaration on the Rights of Disabled Persons (1975), laid the basis for contemporary recognition and protection, culminating in the UN Convention on the Rights of persons with Disabilities (CRPD, 2006)[53].

Refugees: Historical Displacement and Legal Non – Recognition

Refugees are people who have been compelled to leave their countries because of human rights violations, persecution or war. Colonial legacies, xenophobia and national security concerns have influenced how refugees communities has historically been treated. In the outgrowth millions of people were displaced due to international conflicts, which sparked concern for stateless and persecuted people on global phenomenon. During the 20th century, the precarious legal and social status of displaced persons was brought to light by significant refugee crisis, including the displacement that followed World war I, the Armenian genocide and the post - World war II movements that highlighted precarious legal and social status of displaced persons[54].

In the Indian context, waves of refugees, especially those from 1947's partition and later from neighbouring countries, often experienced legal uncertainty and social marginalization[55]. Refugees were more susceptible to exploitation because of unlike citizens, lacked to access property rights, employment, and education and basis social services. India's non – signatory status highlights persistent gaps in legal recognition, despite international efforts to codify protections through the 1951Refugee convention[56] and its 1967 protocol, which define the legal status of refugees and establishing the principle of non – refoulement[57]. Despite having world largest refugees populations including Tibetans, Sri Lankan, Tamils, Rohingyas, and Afgans, India have not yet passed a comprehensive

[51] S. K. Sharma, "Colonial Policies and Disability in India" (2010) 52 ILI Rev 78.
[52] Michael Oliver, The Politics of Disablement (Palgrave, 1990) 57.
[53] UN Convention on the Rights of Persons with Disabilities, 2006.
[54] Alexander Betts, Forced Migration and Global Politics (Wiley, 2009) 12.
[55] Ranabir Samaddar, Refugees and the State: Practices of Asylum and Care in India (Sage, 2003) 89.
[56] 1951 Convention Relating to the Status of Refugees, UNHCR.
[57] United Nations, Convention Relating to the Status of Refugees, 1951; Protocol Relating to the Status of Refugees, 1967.

refugee law or accede to these international instruments[58]. In India, refugees communities continue depend on the executive discretion, which leads to inconsistent and often precarious recognition of their rights[59].

Intersection of Marginalization:

The intersectional character of historical marginalisation is an important aspect. Many individuals hold overlapping unrecognised identities. These communities often experiences compounded vulnerabilities both socially and legally. Historical exclusion, as demonstrated by intersectionality and it is rarely isolated and often reinforces one other, creating systemic barrier that persists for generations[60].

Early Movements for Legal Recognition:

In the middle of the 20th century witnessed early activism for legal recognition and rights protection. Intercession for LGBTQ+ communities focused on anti – discrimination and decriminalisation. For persons with disabilities, movements emphasized affirmative action, accessibility and acknowledgement of disability rights as human rights. International organisations and civil society concentrated to codify protections for refugees against statelessness and refoulement[61]. Although, these movements have different areas of emphasis, they all seek to be recognised as individuals with proper rights. Historical struggle demonstrate that recognition is both a moral and legal imperative, and that the absence of recognition has significant social, economic, and psychological repercussions[62].

Conceptual Understanding of unrecognised Identities

The concept of unrecognised identities refers to groups whose social existence and legal recognition are either denied or inadequately protected within legal and policy frameworks. These communities often experience systemic exclusion from fundamental rights, resulting in marginalisation within society. The three primary groups discussed under this category—LGBTQ+, persons with disabilities, and refugees—reflect the intersection of identity, law, and human rights.

---

[58] B.S. Chimni, International Refugee Law: A Reader (SAGE Publications, 2000).
[59] Sujata Ramachandran, "Reconsidering the Indian Refugee Regime," Economic and Political Weekly, Vol. 45, No. 37 (2010), pp. 56–64.
[60] Kimberlé Crenshaw, "Mapping the Margins" (1991) 43 Stanford L. Rev 1241.
[61] UNHCR, Global Trends: Forced Displacement in 1950s–1970s (UNHCR Report, 1975).
[62] H. R. Anand, "Historical Marginalization and Legal Recognition" (2018) 60 ILI Rev 33.

- **LGBTQ+ Community:** The term LGBTQ+ stands for Lesbian, Gay, Transgender, Bisexual, queer and other non- heteronormative identities. It includes people whose sexual orientation or gender identities deviates from the conventional heterosexual and cisnormative norms. The recognition of LGBTQ+ individuals has a rights to evolved gradually through judicial interpretation in country. In India, the landmark Judgement in National Legal Service Authority v. Union of India, marked a significant milestone in India's legal recognition of Transgender as the "Third Gender" and affirmed that the right to self – identity which is protected by Articles 14,15,16,19(1)(a), and The Supreme Court upheld the fundamental right to personal autonomy guaranteed by Article 21 of the constitution of India[63]. In the case of Navtej Singh Johar v. Union of India [64]the court stressed that "constitutional morality suspersedes societal morality" to protect individual liberty, decriminalising same – sex relationships by invalidating by section 377 of the Indian Penal Code (IPC) to the extent that it criminalised private acts between consenting adults.

Internationally, the LGBTQ+ rights protected under Article 1 and 2 of The Universal Declaration of Human Rights 1948 (UDHR), and the Yogyakarta Principles, which can maintain the application of human rights to sexual orientation and gender identities[65].

- **Persons with Disabilities:** Any individuals with disabilities has a long -term physical, mental, intellectual or sensory deprivation that combined with obstacles, prevents them from fully and effectively participation in society on equal basis with others is considered to have a disability. In India, The Persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995 was superseded by the Rights of persons with Disabilities Act, 2016 in India[66]. The UN Convention on the Rights of persons with Disabilities (UNCRPD) 2006[67], ratified by India in 2007. The Supreme Court affirmed the rights and dignity of disable persons. In the case of , Jeeja Ghosh v. Union of India[68], by compensating a passenger with cerebral palsy who had been kicked off an aeroplane. The court held that discrimination against disabled peoples is incompatible with principle of

[63] National Legal Services Authority v. Union of India, (2014) 5 SCC 438.
[64] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[65] Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2007.
[66] Rights of Persons with Disabilities Act, 2016, s. 2(r).
[67] UN Convention on the Rights of Persons with Disabilities, 2006.
[68] Jeeja Ghosh v. Union of India, (2016) 7 SCC 761.

reasonable accommodation and Article 21 of the Constitution. However, the condition of disabilities is not a medical condition but a social construct arising from the interaction between societal barriers and impairments.

- **Refugee Communities:** According to Article 1A(2) of the 1951 [69]convention relating to the status of Refugees, as amended by the 1967 protocol, a person is considered as a refugee who is outside of the country and is unable or unwilling to avail himself of the protection of that country due to a well -founded fear of being persecuted for reasons of race, sex, religion, nationality, membership of a particular social group or political opinion. Indian Constitution provided protection to refugees by interpreting Article 21 (Right to life and personal liberty) of the constitution. The Supreme court of India addressed In National Human Rights Commission v. State of Arunachal Pradesh[70], that Article 21 applies to all people, citizens and non – citizens alike and that state have a duty to protect the life and liberty of refugees (in this case, chakma refugees). Moreover, International Human Rights instruments such as the Universal Declaration of Human Rights (Article 14) and the International Covenant on Civil and Political Rights (ICCPR, 1966), that recognise the right to seek asylum and protection from persecution.

International legal framework for the LGBTQ community -

Several global instruments are dedicated to LGBTQ rights. There is no single international treaty to protect and promote such rights.

- Universal Declaration of Human Rights (UDHR), 1948

Article 1 & 2 promotes that All human beings are born free and equal in dignity and rights without distinction of any kind including sexual orientation and gender identity.[71]

- International Covenant on Civil and Political Rights (ICCPR), 1966

Articles 2 & 26 Guarantee equality before the law and prohibit discrimination.

[69] Convention Relating to the Status of Refugees, 1951, art. 1A(2); Protocol Relating to the Status of Refugees, 1967.
[70] National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742.
[71] Universal Declaration of Human Rights- the United Nations, *available at*: https://www.un.org(last visited on Oct 7,2025 at 10:09 a.m.).

Article 17 guarantees everyone's right to privacy, protecting against arbitrary interference with their home, family, correspondence, and reputation.[72]

- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

It ensures equality in access to health, education, work, andfood,clothing, housing without discrimination.[73]

- Yogyakarta Principles (2006)

It is a non-binding declaration of human rights principles that applies inter-national human rights law to sexual orientation and gender identity. These principles affirm that all people have rights to equality, non-discrimination, privacy, freedom of expression, and recognition before the law.[74]

National Legal Framework for the Protection of the LGBTQ+ Community (India)

National framework for LGBTQ community is deeply rooted in constitutional guarantees, landmark judicial activism and progressive legislation.

- Constitutional Provisions :-

The Constitution of India establishes a foundation for LGBTQ+ rights through Articles 14, 15, 19, and 21, which guarantee equality before the law, prohibit discrimination based on sex (now interpreted to include sexual orientation and gender identity), protect freedom of speech and expression (including expressing sexual identity), and ensure the right to life, personal liberty, privacy, dignity, and identity.[75]

- Statutory Protection:-

➢ Transgender Persons (Protection of Rights) Act, 2019

[72] The International Covenant on Civil and Political Rights (ICCPR) ,*available at* :https://ccprcentre.org (last visited on Oct 7,2025 at 10:00 a.m.).

[73] THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR), *available at*: https://papers.ssrn.com (last visited on Oct 7,2025 at 10:14 a.m.).

[74] THE YOGYAKARTA PRINCIPLES – 2006, *available at*: https://translaw.clpr.org.in (last visited on Oct 7,2025 at 10:28 a.m.).

[75] Transgender Equality: Court Decision on Transgender Rights in India, *available at* :https://clpr.org.in/wp-content/uploads/2024/12/Accessible_Transgender-Rights_Resource_Book_3.pdf (last visited on Oct 7,2025 at 11:02 a.m.).

It prohibits discrimination against transgender individuals in various sectors, including education, employment, and healthcare, and recognizes their right to self-perceived gender identity.[76]

- Mental Healthcare Act, 2017

It explicitly recognizes that homosexuality is not a mental disorder and prohibits discrimination based on sexual orientation.[77]

International Legal Framework for Refugees & Disabled Persons

- The 1951 Refugee Convention

The Convention relating to the Status of Refugees (1951) is the cornerstone of international refugee law.

Art 33 deals with the Principle of Non-Refoulement according to which refugees can not be sent to contries where they face persecution.

Article 3 ensures protection against discrimination.

Essential services and opportunities like access to courts, right to education, right to work and freedom of movement should be granted to Refugees[78]

- 1967 Protocol Relating to the Status of Refugees

It makes refugee protection universal by virtue of which a common legal framework was applied for all countries to protect refugees.[79]

- UNHCR (United Nations High Commissioner for Refugees)

[76] Transgender Persons(Protection of Rights) Bill 2019 Passed by Parliament, *available at*: https://www.pib.gov.in (last visited on Oct 7,2025 at 11:10 a.m.).
[77] Section 377 verdict: Homosexuality no more seen as 'mental illness', *available at* :https://www.thehindu.com (last visited on Oct 7,2025 at 11:16 a.m.).
[78] UNHCR- The UN Refugee Agency, *available at*: https://www.unhcr.org/about-unhcr/who-we-protect/refugees (last visited at Oct 7,2025 at 5:25 p.m.).
[79] The 1951 Convention and its 1967 Protocol – UNHCR, *available at*:https://www.unhcr.org (last visited on Oct 7,2025 at 5:35 p.m.).

It provides international protection to people forced to flee and assist in their voluntary repatriation, local integration, or resettlement.[80]

- United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), 2006

The UNCRPD (2006) is the cornerstone of the international legal framework for persons with disabilities. It transforms the approach from charity and welfare to rights, equality, and empowerment, ensuring full participation of disabled persons in all aspects of lifeby getting same opportunities as of others in the society.[81]

Judicial battle regarding LGBTQ rights in India:-

India has seen significant changes in the mindset of the people which is possible by the battle that has been fought by the LGBTQ community for their gender identity, adoption & custody rights and having a family. This reflected that how far they have come for their recognition. The real battle starts in the year 2001 when Naz Foundation challenged the constitutional validity of section 377 of IPC. In ***Naz Foundation* v. *Government of NCT***[82], the Delhi High Court declared Section 377 unconstitutional in so far as it criminalizes consensual same sex sexual acts among adults. But it has not marked as milestone because the Supreme Court in ***Suresh Koushal* v. *Union of India***[83] has overturned the Delhi High Court's judgement stating that Section 377 IPC does not suffer from constitutional infirmity merely because it criminalizes certain sexual acts even if those acts are between consenting adults in private. This was a major setback which made the LGBTQ+ individuals vulnerable to violence, harassment, discrimination and marginalization. This highlighted the need for the legislative reform and broader social change. The year 2014 was the turning point when the Supreme Court in ***National Legal Services Authority* v. *Union of India (NALSA)***[84]recognized transgender persons as a "third gender" distinct from male and female. It held that every person has the right to self-identify their gender whether of male,

[80]United nations High Commissioner for Refugees,*available at*: https://en.wikipedia.org (last visited on Oct 7,2025 at 5:45 p.m.).
[81]UN Convention on the Rights of Persons with Disabilities,*available at*: https://www.equalityni.org(last visited on Oct 7,2025 at 5:55 p.m.).
[82] 2009 (4) AIR BOM R 58.
[83] (2014) 1 SCC 1.
[84] 1 (2014) 5 SCC 438.

female or third gender and no one should be compelled to undergo medical or sexual reassignment surgery as a precondition to legal recognition. This verdict of the Supreme Court not only affirmed their fundamental right to a dignified life but also paved the way for inclusivity and diversity. [85]

In ***K.S. Puttaswamy* v. *Union of India***[86], the Supreme Court unanimously held that the right to privacy is a fundamental right under Article 21. Privacy includes the freedom to make personal choices related to one's body, gender identity and sexual orientation. Later the verdict in ***Navtej Singh Johar* v. *Union of India***[87] made a history where the Supreme Court unanimously struck down Section 377 of IPC (criminalizedhomo sexuality) as unconstitutional. By virtue of this judgement, Supreme Court legalized consensual same sex relations among adults and held that discrimination based on gender identity and sexual orientation falls under the purview of Article 15. This judgement leads to the enhancement of protection of dignity and equality of LGBTQ individuals.[88]

In spite of the law undergoing a change, the mindset of people never changed in India. LGBTQ people still facing discrimination, harassment, violence from public,police,goons and even fromthe members of their own family.The situation worsened after the verdict of ***Supriya Chakraborty &Anr.* v. *Union of India***[89]. The hope of LGBTQ people had vanished after same sex marriage was not legalized leaving them with no other options but to commit suicide or fleeing from India. Despite these difficulties LGBTQ community continues to fight for their rights,identity, dignity and for broader social acceptance.[90]

Recommendations and Conclusion

To bridge the gap between recognition and realisation of rights for LGBTQ+ Persons, refugees, and persons with disabilities, the following measurers are recommended:

1) Domestic status must align with International human rights norms. A comprehensive LGBTQ, disability, refugeelaw should guarantee status, rights, non – refoulement, and fair

[85]Kanishka Singh and Dr. Ashish Kumar Singhal, "LGBTQ+ Rights and Legal Recognition in India: Challenges, Progress and the Way Ahead", 7 *IJMR* 5 (2025).
[86] 22 (2017) 10 SCC 1.
[87] AIR 2018 SC (CRI) 1169.
[88]Kanishka Singh and Dr. Ashish Kumar Singhal, "LGBTQ+ Rights and Legal Recognition in India: Challenges, Progress and the Way Ahead", 7 *IJMR*6 (2025).
[89] 2023 INSC 920.
[90] Navigating Exile: The Struggles of LGBTQ Refugees, *available at* :https://articles.manupatra.com (last visited on Oct 7,2025 at 2:40 p.m.).

procedures. Transgender laws must respect self – identification and eliminate medical or bureaucratic barriers. Disability law requires strong enforcement, financial backing, and accessible infrastructures. Framing of anti-discrimination laws and supportive policies for the protection of these communities is the need of the hour.

2) Identity documents must permit non – binary markers with transparent, simple change procedures. Refugees should be issued portable, officially recognised documentation. Disability certification processes must be equitable, accessible, non – stigmatizing.

3) A large number of people hold conservative views, discriminatory perceptions towards LGBTQ community. They often affected by bullying, violence and harassment for their sexual orientation. So, societal attitudes towards LGBTQ youth should be changed which will pave the way of brother societal acceptance and safeguard against discrimination in public and private Spheres. Court should exercise supervisory jurisdiction to ensure compliance with directives. Public Interest Litigations and constitutional petitions must remain accessible, supported by awareness and legal Aid.

4) Discrimination in workplace,educational sector and limited access to health care leads to economic hardship and severe health issues. Mental health of these communities often overlooked. Community education, training for police,judiciary, health care providers,and school teachers are very much needed.

5) Affirmative measures such as reservations/quotas in education and employment for transgender persons, disabled persons, and refuges (where appropriate) are essentials. And welfare schemes must address healthcare, mental health, transport accessibility, and refugee resettlement is required to raise them equally in heteronormative world.

6) While some progress has been made(e.g. recognition of third gender, decriminalisation of same sex relationships in India) there is still a substantial lack of specific legal provisions that protect the rights, dignity, status of LGBTQ community particularly in marriage, adoption,custody, inheritance and property rights. Enactment of comprehensive legislation and strong mechanisms for its enforcement is highly required.

7) Independent bodies like the ombudsman and the human rights commission should be there to monitor the progress of inclusion of these communities in the mainstream of the society and adequate budgetary allocations are necessary to ensure affordable and accessible justice.

India being abode for a variety of communities with distinct cultures and diversities should welcome, recognition of diverse identities is both a legal necessity and moral imperative. While International treaties, progressive judicial decisions, and some legislative reforms have advanced the position of LGBTQ+ persons, persons with disabilities, and refugees, many remain un/under recognised in law or practice. Framing of adequate and proper legislation is required to safeguard and protect their rights,interests and well-being and to avoid discrimination and violence. LGBTQ community deserves to lead their life freely without any pressure of sex reassignment surgeries or hiding of their gender identity. To boost up their finance, countries should come forward with basic educational and employment opportunities to enable them to survive in their home countries without fleeing and seeking asylum in another country. India is still at its flourishing when it comes to safeguarding the rights of LGBTQ communities. Lack of understanding and intolerance is prevailing towards eligibility to the community .There is nothing to be ashamed of for being homosexual, transgender or having a queer identity. Heterosexual is just as normal as the rest of us. They should be treated equally. The promise of constitutional values – equality, dignity, autonomy, non – discrimination is yet to be fully realised. The legal system must not onlyestablish rights but also guarantee their application. Nonetheless, the Supreme Court's landmark ruling recognising transgender persons as third gender and another historical judgement demonstrating Section 377 as irrational, indefensible and arbitrary- all has been made possible because of hard work anddiscrepancy between lived reality and legal recognition emphasizes the necessity of extensive reforms, public awareness campaigns, and efficient enforcement.

In spite of all the revolutions, the LGBTQ+ persons, persons with disabilities and refugee's community still face humiliation,helplessness and identity crisis. The legal system must not only establish rights but also guarantee their application. By extensive reforms, efficient legislation,constitutional morality, India can ensure that marginalised communities enjoy dignity, equality and freedom, fulfilling the vision of an inclusive society.

---------- ****----------

Chapter-IV

Climate Justice and Marginalized Communities: A case study on Sundarban Coastal area

By

Esita Das

Abstract

In the age of climate change marginalize populations suffer disproportionate vulnerabilities, which are encapsulated in the concept of climate justice. The front-lines include island nations and resource-dependent peripheries, whose survival and cultural continuity are under risk due to resource depletion, deforestation, increased storm intensity, and rising sea levels. This article looks at how the law has responded to these issues, using comparative viewpoints from small island governments, the peripheries of Africa and Latin America, and India's distinct environmental justice system. Frequently left out of international decision-making, it emphasizes how underrepresented voices are redefining climate change as a matter of justice, rights, and sovereignty.In recent years, climate change has garnered significant attention as one of the world's most pressing issues. Severe weather events are becoming more frequent and intense, particularly in coastal regions like the Sundarbans. This study's primary goal is to evaluate how migration is affected by climate change and comprehend the needs of migrants in terms of adaptation. Three migration-related factors—environmental, economic, and social—have been highlighted in this article. The primary environmental factors influencing migration in this region are: 86.67% of households have moved, either directly or indirectly as a result of climate change.A major challenge to population economic sustainability is the reduction in purchasing power and the absence of alternative developmental options in the face of climate variability. In order to help policymakers prescribe policies based on factual information, this study has attempted to examine vulnerability particular to both problems and regions.

Key words: adaptation, climate justice, marginalize, migration, vulnerability

“ Climate change is the single greatest threat to a sustainable future but, at the same time, addressing the climate challenge presents a golden opportunity to promote prosperity, security and a brighter future for all.”

Climate change is more than just an environmental phenomenon, a justice issue that exacerbates already-existing disparities The hardest hits are those who emit the fewest greenhouse gases, especially small island states and resource-dependent peripheries. [91]Climate justice highlights this injustice by advocating for responsibility redistribution and acknowledging past wrongs.

While resource-rich but economically marginalized countries in Africa, Latin America, and South Asia face environmental degradation, exploitation, and displacement, island states like Vanuatu, Kiribati, and the Maldives face grave dangers from rising seas. [92] Even though India has a sizable economy, its marginalized groups—coastal fishermen, tribal people, and the rural poor—are disproportionately affected. This makes India a special situation.

Theoretical Framework: Climate Justice and Marginalization

Island communities are a prime example of how marginalization, justice, and climate change intersect. Even though they contribute very little to global greenhouse gas emissions, islands—both small island states and delta regions like the Sundarbans—are disproportionately impacted by sea level rise, harsh weather, and ecological degradation. [93] One of the largest mangrove ecosystems in the world, the Sundarbans span Bangladesh and India and are home to millions of marginalized people. Meanwhile, inundation poses existential dangers to small island developing states (SIDS) like Kiribati, Tuvalu, and the

[91] Chakraborty, T. (2020). Gender and resilience in the Sundarbans: A critical perspective. Asian Journal of Women’s Studies, 26(2), 245–264.

[92] Schlosberg, D., & Collins, L. B. (2014). From environmental to climate justice: Climate change and the discourse of justice. Wiley Interdisciplinary Reviews: Climate Change, 5(3), 359–374.

[93] Klein, N. (2014). This changes everything: Capitalism vs. the climate. Simon & Schuster.

Maldives. Climate justice, environmental justice, postcolonial theory[94], and political ecology must all be incorporated into a theoretical framework for examining these situations in order to explain how vulnerability is socially produced and politically mediated.

Climate Justice: A Foundational Perspective

The larger environmental justice movement gives rise to climate justice, which emphasizes that climate change is a moral, ethical, and political issue in addition to an environmental one. According to the theory of climate justice, island communities and other groups that bear the least responsibility for climate change are frequently the ones most affected by it. Three dimensions can be used to frame this injustice. Distributive justice[95] is the study of how the costs and rewards of climate change consequences and solutions are allocated. Floods, erosion, and relocation are the worst problems faced by islands like the Sundarbans, which also do not benefit from the industrial emissions that cause climate change[96]. The term "procedural justice"[97] describes how equitable the decision-making procedures are. Global powers and donor agencies create policies that are disconnected from local reality, and island communities are frequently left out of global climate negotiations. Beyond distribution and protocol, recognition justice takes into account cultural identities, historical oppression, and sociopolitical marginalization. The lived experiences, indigenous knowledge, and voices of island inhabitants are frequently marginalized.This triangle offers a starting point for placing marginalization inside the framework of climate justice.This triad provides a foundation to situate marginalization within the climate justice framework. One of the world's most climate-vulnerable areas is the Indian Sundarbans, which are found in West Bengal's southern region. Part of the larger Ganga-Brahmaputra-Meghna delta shared

[94] Sen, S. (2021). Carbon inequality and the moral economy of climate change. Global Justice Journal, 15(2), 203–222.

[95] Roy, D., & Datta, K. (2022). Community-based adaptation in the Sundarbans: Lessons for climate justice. Local Environment, 27(1), 1–19.

[96] Roy, D., & Datta, K. (2022). Community-based adaptation in the Sundarbans: Lessons for climate justice. Local Environment, 27(1), 1–19.

[97] Ashrafuzzaman, M., Gomes, C., & Guerra, J. (2022). Climate justice for the southwestern coastal region of Bangladesh. Frontiers in Climate, 4, 881709.

with Bangladesh, it is a maze of mangrove islands, estuaries, and tidal rivers. The homes, livelihoods, and food security of millions of people in this region are in danger due to rising sea levels, rising salinity, and intensifying cyclones[98]. These same communities, however, have made very little contribution to the global emissions that are causing climate change. The core of the idea of climate justice is this paradox. Understanding climate change as a purely environmental or scientific issue is only one aspect of climate justice. Rather, it draws attention to the crisis's moral and political aspects, emphasizing issues of accountability, equity, and human rights.[99] It acknowledges that the negative consequences of climate change are not dispersed equally but rather interact with prevailing social injustices based on geography, gender, caste, and class. Climate justice offers a compelling framework for comprehending how historical neglect, governance shortcomings, and global systems of inequality are intertwined with local vulnerability in the Indian Sundarbans.

The concern of procedural justice is the fairness of decision making process. It requires that impacted communities be given real chances to be involved in the creation and execution of policies that affect their daily lives. However, governance in the Indian Sundarbans is still primarily technocratic and top-down[100]. A "command and control" approach is frequently used in climate adaptation projects, like the Integrated Coastal Zone Management Programme (ICZMP)[101] and other World Bank-funded programmes. Distant bureaucracies make decisions regarding resettlement, mangrove restoration, and embankment placement with little village-level input. During project rollouts, rather than during the design or evaluation stages, community voices are frequently only asked for token participation. The

[98] Hossain, J., & Thieme, S. Adaptation Towards Justice?: Neo-Liberal Development and Gender-Class Complexities in the Sundarbans Delta of Bangladesh. Neo-Liberal Development and Gender-Class Complexities in the Sundarbans Delta of Bangladesh.

[99] Srivastava, S., Bose, S., Parthasarathy, D., & Mehta, L. (2025). Climate justice for whom? Understanding the vernaculars of climate action and justice in marginal environments of India.

[100] Kumar, Y. (2024). Climate Justice in India: Addressing the Impact of Climate Change on Vulnerable Populations. ldealistic Journal of Advanced Research in Progressive Spectrums (IJARPS) eISSN–2583-6986, 3(11), 148-157.

[101] Sahana, M. (2025). Hindu nationalism, climate reductionism, and the political ecology of dalits on Char Islands: Does caste matter for climate resilience in India?. Geoforum, 163, 104298.

administrative intricacy of the Sundarbans exacerbates this procedural injustice. The area crosses several districts and is under the combined purview of the Forest Department, Panchayati Raj organizations, and disaster relief agencies. [102] Effective governance is thwarted by bureaucratic silos and poor coordination. Furthermore, positions in these decision-making bodies are rarely held by the marginalized, especially women and lower caste groups. Formal policy frameworks rarely incorporate their lived knowledge, which has been gathered over generations of adaptation to monsoon cycles and tidal rhythms. Decentralizing adaptation governance and empowering local communities are therefore necessary for procedural justice in the Sundarbans. Transparent funding distribution, community-based disaster committees, and participatory planning can change the balance of power in favor of more equitable decision-making[103]. Adaptation runs the risk of turning into yet another tool of control rather than a means of achieving justice in the absence of procedural reform.

Marginalization in Island Contexts

Marginalization occurs on several levels in island situations and might be economic, political, or sociocultural. Economic Marginalization: A lot of islands rely on industries that are extremely susceptible to climate change, such as fishing, agriculture, and ecotourism. In the Sundarbans, cyclones frequently destroy livelihoods, and seawater intrusion threatens rice agriculture. As coral reefs bleach and coasts deteriorate, SIDS around the world confront dwindling fisheries and collapsing tourism industries.[104] Political Marginalization: In international climate conferences, islands are frequently underrepresented. For instance, compared to developed countries, the Alliance of Small Island States (AOSIS) has less

[102] ASHRAFUZZAMAN, M. CLIMATE JUSTICE FOR WHOM? THE LIVELIHOOD STRUGGLES OF FEMALE TIGER WIDOWS IN BANGLADESH.

[103] Chatterjee, M., Srivastava, M., & Das, D. (2025). Displacement and Rehabilitation in Coastal Bengal: Navigating Social Inequalities Inside Climate 'Communitas'. Migration and Development, 21632324251364640.

[104] Roy, D., & Datta, K. (2022). Community-based adaptation in the Sundarbans: Lessons for climate justice. Local Environment, 27(1), 1–19.

bargaining strength even though they support 1.5°C targets.[105] Communities in the Sundarbans that live on the edge of state borders (the boundary between India and Bangladesh) deal with poor disaster response, little financing for adaptation, and bureaucratic neglect. Social Marginalization: Low-income populations with little social mobility, fishermen, and indigenous peoples are frequently found in island settlements. Vulnerability is increased when national policies fail to acknowledge them. These communities bear a disproportionate share of the consequences of climate change, even though they are among the least accountable for greenhouse gas emissions. Because it highlights the unequal distribution of climate burdens, the idea of climate justice thus becomes especially pertinent. Landless workers, lower caste groups, fishermen, women, and minority groups are among the marginalized communities in the Sundarbans that face environmental degradation as a result of historical neglect, socioeconomic marginalization, and unfair governance systems, rather than just as a natural occurrence. Using the concepts of distributive, procedural, and recognition justice, this section examines the ways in which climate injustice appears in these communities and sheds light on their complex challenges. Because women are disproportionately affected by food insecurity and displacement, the effects of gender inequality are noteworthy. According to theories of marginalization, vulnerability is more about political and social exclusion than "natural exposure,"[106] as systemic injustices exacerbate climate hazards.

The Sundarbans: A Case of Localized Climate Justice

The marginalized communities that live in the Sundarbans, a deltaic island system, rely on agriculture, fishing, and forest products. Thousands have already been displaced due to salinization, stronger cyclones, and rising seas. Several injustices are exposed when the climate justice theory is applied in this situation. Sundarbans villages are being drowned by carbon emissions from the global north, but impacted communities are not given much

[105] Schlosberg, D., & Collins, L. B. (2014). From environmental to climate justice: Climate change and the discourse of justice. Wiley Interdisciplinary Reviews: Climate Change, 5(3), 359–374.

[106] Mukhopadhyay, A., & Ghosh, T. (2018). Social vulnerability and climate change in the Indian Sundarbans. Climate and Development, 10(6), 454–466.

compensation and planning for adaptation seldom incorporates local perspectives. [107] Top-down plans, such as mangrove plantations or forced relocation, frequently disregard the needs of the community. When discussing climate change, it is uncommon to recognize the Sundarbans' inhabitants' cultural identity, which includes their reliance on fishing and mangroves. Rather than being regarded as engaged citizens with rights, they are viewed as "climate refugees." About 4.6 million people live in the Indian Sundarbans region, which is made up of 104 islands, 54 of which are inhabited. It functions as a socioeconomic periphery as well as an essential ecological buffer[108]. Land is being submerged and coastal erosion is being exacerbated by rising seas, which are predicted to rise by 3 to 8 millimeters per year. Cyclones like Yaas (2021), Amphan (2020), and Aila (2009) have repeatedly destroyed agricultural lands, destroyed embankments, and uprooted thousands of families. [109]

The moral and political ramifications of climate change are still poorly understood, despite the fact that its physical effects are widely known. These environmental changes are reframed as an inequality crisis by climate justice. The Indian Sundarbans are a prime example of how social disasters are exacerbated by structural factors such as caste hierarchies, poverty, landlessness, and a lack of government assistance. The poorest households on the most vulnerable islands, who frequently belong to marginalized castes and minority groups, are the ones most impacted. Globally, industrialized nations in the Global North have long been the main source of greenhouse gas emissions, with deltaic and island areas such as the Sundarbans experiencing disproportionate effects. Residents of the Sundarbans suffer devastating losses of land, livelihood, and life without restitution or sufficient international assistance, despite their insignificant carbon footprint. This is what

[107] Roberts, J. T., & Parks, B. C. (2007). A climate of injustice: Global inequality, North–South politics, and climate policy. MIT Press.

[108] Sahana, M. (2025). Hindu nationalism, climate reductionism, and the political ecology of dalits on Char Islands: Does caste matter for climate resilience in India?. Geoforum, 163, 104298.

[109] Schlosberg, D., & Collins, L. B. (2014). From environmental to climate justice: Climate change and the discourse of justice. Wiley Interdisciplinary Reviews: Climate Change, 5(3), 359–374.

Klein refers to as "climate colonialism,"[110] in which the world's poorest regions bear the costs of fossil fuel-driven development while a select few benefit.

Theoretical Lenses: Postcolonial and Political Ecology Perspectives

It is necessary to look at structural and historical factors in addition to normative ethics in order to comprehend climate justice in the Sundarbans. Political ecology and postcolonial theory offer crucial frameworks for this work. From a postcolonial standpoint, the Sundarbans' vulnerabilities are not coincidental; rather, they are the result of colonial exploitation and postcolonial neglect. In the nineteenth century, British colonial reclamation projects turned mangrove forests into farmland that produced income. Natural hydrological flows were disturbed by these interventions, which also strengthened socioeconomic disparities between landowners and laborers without land.[111] Current development policies that put economic growth ahead of ecological balance are still influenced by the colonial logic of "improvement." This analysis is expanded upon by political ecology, which shows how power dynamics influence environmental results. Vulnerability in the Sundarbans results not only from biophysical exposure but also from political and economic choices about who owns land, who benefits from resource extraction, and who pays the price. For example, shrimp aquaculture has displaced small-scale farmers and degraded mangrove ecosystems while enriching local elites and foreign investors. Similarly, the government's focus on commercial development and ecotourism runs the risk of commercializing the very landscape it is trying to preserve[112]. Climate justice in the Sundarbans can be viewed as a call for democratizing development and decolonizing environmental governance, as well as a moral assertion and political struggle.

[110] Roberts, J. T., & Parks, B. C. (2007). A climate of injustice: Global inequality, North–South politics, and climate policy. MIT Press.

[111] Roy, D., & Datta, K. (2022). Community-based adaptation in the Sundarbans: Lessons for climate justice. Local Environment, 27(1), 1–19.

[112] Ashrafuzzaman, M., Gomes, C., & Guerra, J. (2022). Climate justice for the southwestern coastal region of Bangladesh. Frontiers in Climate, 4, 881709.

Climate Justice & Marginalized communities

The estimated 4.5 million people who live in the Indian Sundarbans (Census of India, 2021) are subject to unstable socioeconomic circumstances. Most are landless laborers, sharecroppers, or small and marginal farmers. Livelihoods are largely reliant on agriculture, fishing, honey collection, and forest products—activities that are extremely vulnerable to climate variability—because there are few industrial or formal employment opportunities. The Sundarbans' socioeconomic division is a reflection of larger disparities in rural India. The poorest households are disproportionately composed of members of lower castes, such as Scheduled Castes (SCs) and Scheduled Tribes (STs).[113] These communities frequently live on low-lying, cyclone-prone islands with unstable land tenure and extremely limited access to essential services like roads, electricity, healthcare, and education. These groups were left to bear the brunt of the devastation caused by cyclones such as Aila (2009) and Amphan (2020) with little support or compensation from the state. These trends highlight how intricately geography, caste, and class shape vulnerability. Preexisting social hierarchies are exacerbated by the uneven distribution of climate impacts in the Sundarbans. The most disaster-prone areas are frequently inhabited by the poorest citizens, particularly those without official land rights. [114] Families without land usually erect their huts next to embankments or beside tidal creeks, which are the areas most affected by erosion and cyclonic surges. In contrast, wealthier households can afford to rebuild after every disaster or live on relatively elevated land. Access to state resources for adaptation and relief is another area where distributive injustice is visible. Land titles or other identification documents that marginalized residents lack are frequently required by post-disaster compensation plans. In certain instances, marginalized groups—particularly widows, women-headed families, and migrant households—are ignored while politically connected households receive disproportionate aid.

Fairness in decision-making and involvement in environmental governance are referred to as procedural justice. Marginalized communities in the Sundarbans are routinely left out of these procedures. Programs for disaster management, conservation, and adaptation are frequently created and carried out by far-off entities—state agencies, non-governmental

[113] Haque, C. E. (2019). Governance and climate resilience in the Sundarbans. Climate Policy, 19(7), 845–860.

[114] Government of West Bengal. (2022). Sundarbans Development Board Report 2021–22. Kolkata.

organizations, and foreign donors—without adequate communication with impacted communities. For instance, after significant cyclones, embankment reconstruction projects are usually contracted out to outside organizations with minimal involvement from locals. Despite depending on these vital structures for protection, communities are rarely involved in the planning, design, or upkeep of these structures. In a similar vein, mangrove restoration initiatives occasionally limit customary fishing or honey harvesting, eliminating vital sources of income without providing sustainable substitutes. Historical power disparities are the root cause of this exclusive governance structure. Local residents were viewed as encroachers rather than stakeholders in the Sundarbans' long-standing top-down bureaucratic system, which was carried over from colonial forest administration[115]. As a result, residents who are marginalized do not have institutional representation or decision-making authority. Technocratic and donor-driven agendas frequently eclipse their expertise, needs, and priorities. Participatory governance—local committees, community-based disaster planning, and the inclusion of women and underrepresented castes in decision-making—would be necessary for true procedural justice. However, in reality, these mechanisms continue to be arbitrary, which serves to further marginalize those who are most impacted by the process.

Climate-vulnerable communities and the law

One of the world's most climate-vulnerable areas is the Sundarbans region, which straddles Bangladesh and India. Millions of locals' lives and means of subsistence are still in danger due to salinization, cyclones, and rising sea levels. Despite the fact that climate justice is frequently discussed in moral or ethical terms, legal frameworks that specify rights, obligations, and redress channels are essential to its realization. Law can either be a tool of protection or exclusion for the Sundarbans' marginalized communities, which include fishermen, landless laborers, and displaced families. Examining international climate obligations, constitutional rights, and domestic environmental law is necessary to comprehend the legal aspects of climate justice in this context. The right to life (Article 21),

[115] Haque, C. E. (2019). Governance and climate resilience in the Sundarbans. Climate Policy, 19(7), 845–860.

which the Supreme Court has broadly construed to include the right t[116]o a clean and healthy environment, serves as the legal basis for climate justice in India. Important rulings like M.C. Mehta v. Union of India (1987) and Subhash Kumar v. State of Bihar (1991) established environmental protection as an essential component of fundamental rights. [117] According to this interpretation, the state is legally required to protect the people of the Sundarbans from environmental damage and harm brought on by climate change. Furthermore, the state and citizens are required to safeguard and enhance the environment under the Directive Principles of State Policy (Articles 48A and 51A(g)).[118] These clauses have influenced environmental governance and judicial activism even though they are not directly enforceable. However, poverty, illiteracy, and bureaucratic complexity frequently make it difficult for marginalized communities to access justice. In remote deltaic islands, the lack of localized legal support systems restricts their capacity to successfully assert their environmental rights. Climate justice and human rights law are related. Recurrent floods and displacement in the Sundarbans jeopardize internationally recognized rights, including the right to sufficient housing, food, and water.

Environmental and Disaster Management Laws

A number of laws pertaining to the Sundarbans are part of India's environmental protection legal framework. Resource use and conservation are governed by the Environment (Protection) Act of 1986, the Wildlife (Protection) Act of 1972, and the Forest Conservation Act of 1980[119]. However, these laws frequently put ecological preservation ahead of community rights, which leads to conflicts between local livelihoods and conservation objectives. For example, traditional fishing and honey gathering are restricted by forest access restrictions in the Sundarbans Biosphere Reserve, which disproportionately affect low-income households. A legislative framework for disaster relief and preparedness is provided by the Disaster Management Act of 2005. However, there are still implementation

[116] Roy, D., & Datta, K. (2022). Community-based adaptation in the Sundarbans: Lessons for climate justice. Local Environment, 27(1), 1–19.

[117] Klein, N. (2014). This changes everything: Capitalism vs. the climate. Simon & Schuster.

[118] Bhattacharyya, D. (2018). Empire and ecology in the Bengal delta: The making of Calcutta. Cambridge University Press.

[119] The Forest (Conservation) Act, 1980 is an important legislation enacted by the Parliament of India to provide for the conservation of forests and to regulate the diversion of forest land for non-forestry purposes.

gaps. Marginalized residents often have difficulty meeting documentation requirements, and compensation schemes are often delayed. Furthermore, the Act prioritizes immediate relief over long-term adaptation or climate resilience. It would be necessary to amend such laws to specifically include equity, participatory governance, and climate adaptation in order to take a justice-oriented approach.

International Legal Context and State Obligations

India is a signatory to a number of international treaties and conventions that support climate justice, such as the Paris Agreement (2015), the Kyoto Protocol, and the United Nations Framework Convention on Climate Change (UNFCCC). [120] The concept of "common but differentiated responsibilities" (CBDR), which acknowledges that developed countries have a greater responsibility to address climate change, is recognized by these agreements. It is still difficult to turn these international pledges into real protection for the Sundarbans' marginalized communities. The Paris Agreement's focus on loss and damage mechanisms as well as adaptation offers a possible legal path to restitution and resilience-building[121]. However, state governments and local authorities are not legally bound by these frameworks at the federal level.

The concept of environmental justice, which emphasizes sustainability and equity, has been used more frequently by Indian courts. One important organization for environmental adjudication is the National Green Tribunal (NGT), which was founded by the NGT Act (2010).[122] Direct interventions tailored to the Sundarbans are still scarce, despite the fact that it has addressed a number of cases pertaining to the coast and forests. Legal remedies could be more inclusive if vulnerable groups are represented and access to the NGT is strengthened. The public trust doctrine, which holds the state accountable for protecting natural resources for the general public's use, is another tool that courts can employ. This idea could be applied in the Sundarbans to make sure that tourism or embankment reconstruction projects don't negatively impact ecosystems or forcibly uproot locals.

[120] The United Nations Framework Convention on Climate Change (UNFCCC) is the UN process for negotiating an agreement to limit dangerous climate change. It is an international treaty among countries to combat "dangerous human interference with the climate system"

[121] Mukhopadhyay, A., & Ghosh, T. (2018). Social vulnerability and climate change in the Indian Sundarbans. Climate and Development, 10(6), 454–466.

[122] NGT originated after the Stockholm and Rio De Janerio Convention from 186th Report of Commission of India (2003). It came into force on 8th Oct, 2010 was enacted to satisfy the need to alternative means to deliver speedy and inexpensive justice over environmental issues.

Suggestion

A comprehensive and justice-focused approach to climate adaptation is necessary in the Sundarbans region, which is characterized by ecological fragility and social inequality. Due to economic hardship, political marginalization, and restricted access to resources, marginalized communities—including women, fishermen, lower-caste groups, and landless laborers—face increased risks from climate change. Targeted interventions that integrate social empowerment, legal reform, participatory governance, and environmental protection are necessary to address climate injustice in the Sundarbans.

1. Enhancing Socio-Economic Resilience: Diversifying sources of income must be the first step in developing resilience. Communities in the Sundarbans are extremely vulnerable to salinization and ecosystem degradation because of their reliance on agriculture and fishing. It is possible to lessen the strain on natural resources and establish sustainable revenue streams by encouraging alternative livelihoods like handicrafts, ecotourism, small-scale aquaculture, and mangrove-based businesses. For these projects, government and non-governmental organizations should offer market connections, microfinance access, and skill development. Furthermore, it is essential to guarantee the security of land tenure. Many marginalized families are excluded from government welfare and compensation programs because they reside on embankments or unregistered lands without ownership documents. Regularization of land and inclusive rehabilitation.

2. Enhancing Involved Governance: Procedural fairness is a crucial component of climate justice. Local communities should be directly involved in adaptation planning and decision-making in the Sundarbans should be decentralized. In order to guarantee that marginalized voices—particularly those of women and minority groups—have an impact on policies that affect their lives, Panchayati Raj institutions and community-based organizations should be strengthened. Transparency and accountability should be promoted by giving local committees the authority to oversee the building of embankments, the restoration of mangroves, and disaster preparedness. In addition to preventing financial mismanagement, participatory monitoring can guarantee that relief supplies are distributed fairly during emergencies.

3. Gender-Inclusive Adaptation Strategies: Women are essential to adaptation efforts because of their roles in running households, gathering water, and maintaining food security. Their lack of participation in decision-making, however, reduces the efficacy of policies. It

is crucial to incorporate gender viewpoints into climate planning at all levels. This entails giving women the chance to lead village councils, expanding their access to credit and education, and assisting women-led cooperatives in diversifying their sources of income. Gender-specific needs, such as reproductive healthcare, shelter safety, and targeted financial assistance for widows and female-headed households, must also be addressed by post-disaster rehabilitation programs.

4. Legal Empowerment and Access to Justice: It is common for marginalized communities to be unaware of their legal and environmental rights. In the Sundarbans, the establishment of community paralegal networks and legal aid centers can enable locals to demand accountability, contest exclusion, and seek compensation. Civic engagement can be enhanced by environmental rights education provided by neighborhood NGOs and educational institutions. Cases involving unlawful land acquisition, poor rehabilitation, and environmental degradation should be given top priority by the National Green Tribunal and local courts. The most vulnerable groups will be protected if climate justice principles are incorporated into India's environmental and disaster management legislation.

5. Cross-Border and Policy Integration: Since Bangladesh and India share the Sundarbans, regional cooperation is crucial. Coordination of adaptation initiatives, early warning systems, and collaborative research can improve resilience across the border. Social protection measures like universal basic services, climate insurance, and compensation for displacement must also be incorporated into larger climate action plans. Bilateral environmental agreements that support research, biodiversity monitoring, and mangrove restoration are among the current efforts, as are joint river commissions that oversee water sharing and deal with riverbank erosion. By exchanging early warning systems and coordinating cyclone response plans, the two nations also work together on disaster preparedness. A major gap still exists in spite of these efforts: no legally binding framework has been created expressly to address cross-border climate justice or to guarantee the protection of vulnerable populations. Many marginalized communities are left without sufficient support during climate-induced crises due to the lack of enforceable mechanisms, which also limits accountability.

Conclusion

More than environmental preservation is needed to achieve climate justice in the Sundarbans; equity, acknowledgment, and involvement are also necessary. It is possible to

turn marginalized communities from victims of climate change into proactive agents of resilience by empowering them through livelihood support, inclusive governance, gender equity, and legal reform. Only when adaptation and development give priority to those who have historically been marginalized but continue to be the region's true custodians will sustainable justice in the Sundarbans become a reality. Even with a strong legal system, it is still difficult to ensure that marginalized Sundarbans communities receive justice under environmental and climate laws. Justice is weakened by the absence of a distinct legal category for climate displacement, the lack of community involvement in the creation of policies, and the lax enforcement of environmental regulations. Marginalized communities in the Sundarbans embody the human face of climate injustice. Environmental vulnerability, social inequality, and political exclusion are intertwined forces that shape their identities, lives, and means of subsistence. These dynamics can be better understood through the distributive, procedural, and recognition aspects of climate justice, which show how structural and historical injustices intensify the effects of climate change. Policies must shift from disaster management to social transformation redistributing resources, democratizing governance, and elevating marginalized voices in order to achieve true climate justice. As a result, the Sundarbans are both a place of suffering and a place of resistance, where the fight for environmental justice and the larger struggle for equity and human rights meet.

---------- ****----------

Chapter-V

THE LEGAL AND SOCIAL MARGINS

THE HARSH REALITIES OF INFORMAL LABOUR IN INDIA

BY

ANTU RANI MAJUMDAR

ABSTRACT

Informal work is a characteristic of the Indian economy, covering more than 90% of India's workforce and entering industry such as agriculture and construction, street vendors and home work. It is evidence of the determination and exposure of millions of workers whose working lives are beyond the cover of protection given by formal labour law. Informal employment is distinguished by low pay, absence of social security, insecure employment, and poor working conditions that subject the workers to exploitation. This chapter analyzes the structural determinants of informality such as socio-economic inequality, poor legal frameworks, and poor enforcement frameworks. It shows how informality cuts across caste, gender, and migration and how it operates to increase vulnerabilities among marginal groups. The chapter also explores emerging policy reactions and legal actions to close such gaps and evaluates their potential and constraints. In drawing inspiration from the very tangible lives of informal workers and structural obstacles making them invisible, the book places front and center the imperative to construct labour reforms that attain legal protection and socio-economic belonging.

Lastly, it argues that informalization is not so much a matter of labour justice but, more seriously, a matter of ensuring balanced economic growth. The chapter emphasizes the shift in imagination from perceiving the informal workforce as an ad hoc adjustment to perceiving it as being part of India's entire labour matrix and hence requiring rights-based, participatory, and place-sensitive interventions.

Keywords: Informal Labour, Labour Rights, Marginalized Groups and Socio-Economic Development.

"Informal workers form the backbone of India's economy, yet remain on the margins of its legal and social frameworks."

India's economic development is retold a thousand times through the lens of industrialization, rising GDP rates, and the thriving service sector. But beneath this chain of events lies a far more complex and sinister reality that of millions of workers who power this progress but escape official legal and economic prisms. These are the street vendors, domestic workers, construction workers, home-based workers, and many more who work and live on the fringes of legality, subsistence, and dignity. The informal sector produces nearly 90 percent of total employment in India, the backbone of the Indian workforce but operating in the framework of insecurity, exploitation, and exclusion. Informal work is paradox and contradiction on India's development trajectory. It creates livelihoods and sustains rural and urban economies on the one hand, but includes insecurity of work, absence of social protection, and structural vulnerability on the other. The informality of the informal sector is no exception but a reflection of structural disequilibria along lines of caste, gender, class, and regional differentials that have characterized the Indian labour market from the past. While liberalization and globalization have opened up new vistas of employment opportunities, simultaneously they have eroded conventional institutional arrangements for labour protection, pushing a large segment of workers deeper into informality and insecurity.[123]

The unfavourable conditions of informal work are expressed in different forms such as, irregular remunerations, absence of health or protection against risks, absence of contractual agreements, refusal of minimum wages, and de facto exclusion from social security schemes. The COVID-19 crisis violently revealed these frailties as informal and migrant workers were left stranded with livelihood nor state protection. The crisis highlighted India's fragile labour infrastructure and the vast gap between the law's promise and the reality faced by workers.

[123] Ghosh, J. (2019). *Working Lives in India: Current Insights and Future Directions. Work, Employment and Society.*

This chapter attempts to untangle the multi-layered nature of India's informal labour market. It looks at the manner in which economic orders, social orders, and legal orders intersect to produce the phenomenon of enduring informality. But most importantly, it questions the role of law as a possible site of protection as well as a weapon of exclusion in shaping the lives of informal workers. By positioning informal labour within wider arguments over justice, human rights, and social fairness, the chapter contends that informality in no way represents a temporary or residual state but rather a perduring situation sustained by policy ambivalence and systemic disregard. Keeping this in mind, the chapter invokes a reconceptualization of labour protection beyond hard formal-informal binary oppositions and accepts realities of life for individuals who live and work at the fringes of India's economy and law.

UNDERSTANDING INFORMAL EMPLOYMENT IN INDIA

Informal employment in India represents a huge and diversified segment of the labour market which does not remain within the limits of the regulatory scope of the labour legislations and the social security actions. It represents the conclusion of the security-less growth phenomenon under which millions of workers sustain the economy but remain outside the periphery of the advantages of formal work. In order to comprehend the prevalence and significance of informal work, the meaning, nature, and evolution of its prevalence in the Indian socio-economic and juridical system have to be taken into account.

Defining Informal Employment

The first usage of the phrase informal employment came in Keith Hart's Ghana fieldwork in the early 1970s, then formalized by the International Labour Organization (ILO) in its pioneering 1972 report on Kenyan labour. The ILO saw the informal sector made up of "small-scale, self-employment activities, often with little capital, low productivity, and not under state regulation." In due course, thinking on informality widened from sectoral to jobs-based, with growing focus on employment relations rather than on the type of enterprises.[124]

According to International Labour Organization (ILO) 2018 guidelines, informal employment is all employment that is without elementary social or legal protection in

[124] Junankar, P. N., & Shonchoy, A. (2013). The informal labour market in India: transitory or permanent employment for migrants? *IZA Discussion Papers, No. 7587.*

informal enterprises, in domestic units, or even in formal firms that hire workers informally. India's National Commission for Enterprises in the Unorganised Sector (NCEUS) defined informal workers as "those who do not have employment security, work security, or social security." In the Indian situation, accordingly, informal work ranges over a wide universe of activities, self-employment in unregistered and small units, wage employment in casual or temporary labour, domestic service, street vending, farm labour, home production, and migratory work. What unifies these heterogeneous forms is not the type of work but the absence of formal recognition and protection.

Distribution of Informality in India

India's informal labour is not peripheral; it is integral. More than 89 percent of all of India's workers are in informal work, and almost 50 percent of national GDP of the country are accounted for by it, according to the Periodic Labour Force Survey (PLFS) 2022-23. Informality spreads this large, beyond rural and urban economies, formal and informal businesses, and all larger sectors from farming and building to manufacturing and services.

1. Rural Informality:

Informal work is strongly embedded in agrarian social institutions, caste organization, and seasonal risk in rural India. Farm labourers, sharecroppers, and landless workers regularly rely on casual, low-wage employment without insurance or contracts.

2. Urban Informality:

The latter's urbanization during the past decades has not drawn rural migrants into formal employment. Rather, it has transformed cities into centers of informal economic activity street vending, scavenging, domestic labour, gig economy-based services, and construction activities. These are vital to urban survival but made legally invisible.

3. Gendered Dimensions:

They form most of the informal workforce, concentrated in home-based work, domestic service, and agricultural work. They have added marginalization by gender discrimination, wage differentials, and the lack of maternity or social protection.

4. Migrant and Caste-Based Vulnerability:

Migration, circular and seasonal, has rooted in-formalization. Migrant workers have no local documents, housing, and welfare schemes. Occupational castes further root informal work, creating social hierarchies in labour relations.

EXPLOITATION AND VULNERABILITIES OF THE MARGINALISED INFORMAL SECTOR

India's informal economy, while crucial to employment generation and expansion, rests on vulnerability and exploitation. Without formal contracts, legal legitimacy, and social protection coverage, the informal economy workers are in a deprivation or survival condition. Their status represents the irony of their labour being dependent upon the economy yet returning nothing to them by right, security, or respect. This chapter explains the vulnerabilities and exploitation of the marginalized informal economy in four closely interlinked directions the income inequalities, dangerous conditions of work, discrimination based on gender, and non-payment of child and bonded labour.[125] Combined, these place the focus on the structural inequities that still characterize India's informal economy and expose the long-term marginalization of the people who are its backbone.

1. Wage Disparities

Wage exploitation is one of the most widespread and entrenched forms of exploitation in the informal economy. Most informal labourers are paid wages significantly below the legal minimum, with irregular payment schedules and with no possibility of legal recourse. According to the Periodic Labour Force Survey (PLFS) 2022-23, a regular formal worker in India has an average daily wage that is almost three times as high as that of an informal sector casual worker. The difference is even more marked for migrant workers and females.

Some characteristics of wage inequality are:

- Lack of Minimum Wages: Despite the Minimum Wages Act, 1948, enforcement in informal enterprises is zero. The employers take recourse to casual or piece-rate employment to avoid paying more.

[125] Mazumdar, D. (2009). The informal labour market in India: a critical review of its features, causes and policy challenges. *IZA Journal of Labor & Development.*

- Regional and Sectoral Disparities: Wages vary vastly across urban and rural regions and between sectors such as construction, housework, and agriculture.

- Gendered Wage Gaps: Women informal workers' incomes are 30–40% less than those of their male counterparts, on account of both occupational segregation and gender discrimination.

- Lack of Collective Bargaining: Informal workers barely possess unions or reps and are thus vulnerable to unilateral wage determination.

This wage exploitation not only violates the principle of "equal pay for equal work" (Article 39(d) of the Constitution) but also spreads intergenerational poverty and economic marginalization.

2. Unsafe Working Conditions

The absence of regulation and oversight in informal workplaces leads to perilous and humiliating conditions of work. Informal workers usually work in overcrowded, poorly ventilated, or hazardous working conditions from construction sites and brick kilns to garment workshops and landfill dumps.

Dominant hazards are:

- Occupational Hazards: Exposure to toxic substances, dust, heat, and heavy equipment without protective gear.

- Insufficient Health and Safety Arrangements: Informal workers rarely fall within the jurisdiction of the Factories Act, 1948, or any occupational safety standards.

- Industrial Mishaps: NCRB (2021) statistics show that building and manufacturing sectors account for a high rate of workplace fatalities, with informal workers most affected.

- Missing Health Insurance: Most informal workers lack protection under schemes like the Employees' State Insurance (ESI) or even basic health insurance, leading to catastrophic out-of-pocket expenses in the case of illness or injury.

In the informal economy, safety is often seen as a personal responsibility rather than a structural right, reinforcing the precariousness of labour and the disposability of workers' lives.

3. Gender-Based Discrimination

Informal employment in India is highly gendered. Women constitute the largest proportion of the informal workforce in the areas of domestic work, home-based production, agricultural labour, and petty trade - but are paid less and their work underappreciated.

Aspects of gender-based discrimination are:

- Occupational Segregation: Women are confined to low-skilled, low-wage, and home-based work with minimal mobility and bargaining opportunities.
- Wage Discrimination: Women are paid significantly less than men for equivalent work, violating constitutional protections and international labour rights.
- Invisible Labour and Unpaid Work: Most of women's economic activity, such as home-based piecework or unpaid family work, is statistically elusive and legally unrecognized.
- Sexual Violence and Harassment: Women informal workers stand a greater chance of harassment, especially in domestic work, farming work, and street vending, without the protection of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.[126]
- Maternity and Social Protection: The Maternity Benefit Act, 1961 is largely for formal workers and does not cover the majority of women workers with no written contracts.

Gendered exploitation in the informal sector thus stems from intersecting inequalities of gender, caste, and class, reproducing cycles of vulnerability and economic dependence.

4. Child and Bonded Labour

Child and bonded labour are the worst forms of exploitation in the informal economy, both examples of economic necessity and systemic failure of law enforcement.

Child Labour: In spite of constitutional bans (Articles 23 and 24) and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, child labour still exists in informal industries like carpet weaving, fireworks, brick kilns, domestic service, and

[126] Kabeer, N., Sudarshan, R., & Milward, K. (Eds.). (2018). *Organizing women workers in the informal economy: Beyond the weapons of the weak.* Zed Books / Bloomsbury Publishing. https://www.bloomsbury.com

roadside restaurants.[127] In line with UNICEF (2021), India has more than 10 million child workers, the majority of whom are employed in informal, family-based, or hazardous labour. Economic hardship, poor education, and absence of adult job security force parents to be dependent on children's incomes. The underground economy therefore perpetuates a cycle of exploitation that robs children of education and childhood itself.[128]

Bonded Labour: Bonded labour remains prevalent, above all in agriculture, brick kilns, and manual scavenging. Bonded Labour System (Abolition) Act, 1976, criminalizes all forms of bonded labour, but enforcement is weak and detection is patchy. The persistence of bonded labour is due to structural caste and poverty inequalities. The worst affected are the Dalits, Adivasis, and migrant workers, who are entangled in informal patterns of labour which dissolve the distinction between debt and coercion.

The exploitation and vulnerability of the informal labour are symptoms of a deeper structural disinvestment in the legal and economic framework of India. Wage discrimination, unsafe working conditions, gender discrimination, bonded labour or child labour is a continuum of deprivation not merely withholding workers an honest wage but also dignity and citizenship.

We rectify these injustices not through piecemeal reform, but by reorienting labour rights as universal human rights so that they offer broader protection, representation, and voice to all workers, formal and informal. Only with such an open-ended vision can the "edge" on which informal workers precariously subsist be realigned from one of vulnerability to one of empowerment and justice.[129]

ENFORCEMENT CHALLENGES IN THE LEGAL PROTECTION OF INFORMAL WORKERS

Even with the extensive architecture of labour law and constitutional protection, the day-to-day experience of informal workers bears witness to a sharp gap between law in books and law in action. The problem is not really a paucity of law but a deficiency in its enforcement.

---

[127] Herath, G., & Sharma, K. (Eds.). (2007). *Child labour in South Asia.* Routledge.

[128] Tripathy, S. K. (1989). *Child labour in India.* Discovery Publishing House.

[129] Ghosh, A. (2022). *Pensions and informal sector in India.* Taylor & Francis. https://books.apple.com

Tools designed for compliance, inspection, and remedial measures do not stretch to the informal economy a terrain of concealment, dispersal, and systemic evasions. It analyzes the core enforcement problems that underpin informal workers' vulnerability, including institutional loopholes, bureaucratic barriers, corruption, and structural weaknesses such as fragmented legislation, weak enforcement, and exclusion from social protection.

1. Institutional Gaps

The enforcement of Indian labour legislation is plagued by deeply rooted institutional shortcomings. Labour is regulated jointly by the State and Central Governments, with areas of overlap in jurisdiction and disparity in standards of enforcement. While registered, big units are under formal regulatory control, informal units tend to go unnoticed because of their size, mobility, and unregistered status.

Some of the most important institutional shortcomings are:

- Multiplicity of Agencies: Labour administration is spread across various departments - labour, social welfare, industries, and rural development resulting in duplication, inefficiency, and lack of coordination.

- Weak Local Governance: Panchayat Raj institutions and urban local bodies, although close to informal workers, have weak legal powers or ability to implement labour standards.

- Inadequate Data Systems: Lack of authentic data on informal enterprises and workers disables monitoring, policy formulation, and focused intervention.

The result is a fragmented institutional landscape where responsibility is diffused, accountability is minimal, and enforcement remains largely symbolic.

2. Bureaucratic Hurdles

Even when policies and welfare programs for informal workers exist, bureaucratic inflexibility and procedural complexity usually make them unenforceable. Implementation of labour law usually relies on inspectorates, welfare boards, and registration procedures - all of which informal workers find inaccessible or incomprehensible.

Main bureaucratic obstacles are:

- Complicated Registration Processes: Schemes under the Unorganised Workers' Social Security Act, 2008, or Code on Social Security, 2020, involve many documents like

Aadhaar, occupation proof, and residence - documents many migrant or casual workers may not have.

- Top-Down Decision-Making: Top-down governance approach mutes workers' voices at the policy-making stage, leading to schemes that are oblivious to ground realities.

- Administration's Apathy: Most of the local authorities view informal work to lie outside their regulatory domain, and thus they overlook and fail to adopt worker welfare aspects.

- Digital Divide: Embracing digital portals for enrolling unorganised and gig economy workers (e.g., e-Shram portal) disenfranchises digital illiterates and individuals lacking access to the internet.

Thus, bureaucratic inertia transforms the law's promise of protection into a distant and often unreachable goal for those on the margins.

3. Corruption and Resource Constraints

Underfunding and corruption severely erode the credibility of enforcement of labour law. Labour inspectorates, once the centre of the machinery of enforcement, are now severely understaffed and under-resourced. India, states the International Labour Organization (ILO), has one of the lowest worker-to-labour-inspector ratios in Asia, rendering effective inspection almost impossible.[130]

The most serious indicators of this problem are:

- Rent-Seeking Behaviour: Under some circumstances, inspections become extortion devices rather than compliance, with inspectors requiring bribes to overlook violations.

- Political and Fiscal Pressure: Governments at the local level are likely to avoid drastic enforcement against influential employers, contractors, or industries key to economic growth.

- Budget Restraints: Welfare boards for construction, bidi, or domestic workers usually lack proper money for dispensation or administrative personnel for outreach.

[130] Dutta, N. (2013). Corruption and persistent informality: An empirical analysis for India. *Journal of Comparative Economics.*

- Negligence of Occupational Safety: Without regular inspection and reporting of accidents, breaches of workplace safety are unknown and un-checked.

The erosion of institutional integrity undermines not only enforcement but also workers' trust in the state's ability to uphold justice.

4. Fragmented Legislation

The labour law framework in India has emerged over the years in piecemeal style, resulting in over 40 central and 100 state legislations extending to multiple categories of workers and units of production. Such splintering of laws leads to confusion, inconsistency, and administrative hassle.

For workers in the unorganised sector, the effect is paralyzing:

- Overlapping Jurisdictions: The same worker could be covered by multiple laws (e.g., building workers and contract labour), but enforcement agencies are not typically coordinated.

- Sectoral Gaps: Codes applicable to factories or establishments do not reach home-based, self-employed, or domestic workers.

- Policy Incoherence: Welfare schemes of different ministries have a tendency to stand in isolation, leading to overlaps and gaps remaining unfilled.

While the Four Labour Codes (2019-2020) aimed to consolidate this legal complexity, they have yet to achieve coherence in implementation, especially regarding the informal sector's realities.

5. Weak Enforcement Mechanisms

Even when there is protective legislation, the weakest link in the chain of labour justice always remains enforcement. The first line of regulation, which are the labour inspectors, are generally not trained, lack logistical support, and political support to operate effectively.

- Infrequent Inspection: Most informal plants do not receive even a single inspection throughout many years of operation.

- Reactive Rather Than Preventive Enforcement: The labour department's only respond after accidents, strikes, or complaints from the public.

- Judicial Delays: Courts and labour courts are clogged, causing decades of delay in the hearing of cases.

The overall impact is one of impunity, under which the employers are free to ignore labor standards with impunity.

6. Lack of Worker Organization

The collective organization is the key institution for imposing labor rights, yet the informal sector is not organized to a great extent. The majority of informal economy workers work individually and lack unions, associations, or collective bargaining forums.

The following are the constraints on organization:

- Scattered and Mobile Workforce: Migrant and seasonal workers continuously change location, and long-term organization becomes challenging.

- Fear of Retaliation: They can lose employment or access to the workplace if they demand rights.

- Legal Ambiguity: Most labour laws limit collective bargaining rights to "employees" in registered businesses, leaving out self-employed and casual workers.

But the past few years have witnessed emergent informal worker organizations like Self-Employed Women's Association (SEWA), National Domestic Workers Movement (NDWM), and urban street vendor unions who have claimed more visibility and change.

7. Employer Ambiguity and Accountability

The informal economy is typified by hidden employment arrangements. Employees can be employed through tiers of intermediaries, contractors, or online platforms, obscuring responsibility.

- Triangular Employment Relations: Contract labour arrangements obscure the identity of the "true employer".

- Subcontracting and Outsourcing: Workers are delegated tasks downward, not bearing the responsibility for wages, benefits, or safety.

- Gig and Platform Work: The growth of app-based work (e.g., food delivery, ride-hailing) has created a new form of informality where workers are called "partners" rather than employees.

This type of vagueness enables employers to benefit from labour while avoiding legal accountability a hallmark of modern in-formalization.

8. Exclusion from Social Security

One of the major failure of enforcement is the absence of protection to informal workers. Despite legal efforts like the Unorganised Workers' Social Security Act (2008) and the Code on Social Security (2020), there is limited availability.

- Eligibility Barriers: The vast majority of welfare schemes demand evidence of work, earnings, or place of residence which informal workers lack.

- Coverage gaps: Such programmes like PM-SYM (Pradhan Mantri Shram Yogi Maandhan) or e-Shram have low registration and low disbursement rates.

- Gendered Exclusion: Home-based or unpaid family workers are typically not considered "workers" and thus are not covered.

9. Unsafe Working Conditions

Safety and health are almost an afterthought in India's informal sector. Workers on construction sites, small workshops, and street stalls tend to work without protection, ventilation, and medical attention, subjecting them to highly dangerous risks. Although they often get hurt and killed, accidents are not reported or punished since the laws such as the Factories Act, 1948, and the Occupational Safety, Health and Working Conditions Code, 2020, do not cover small or unregistered units.[131] Women in home work and domestic work experience ill health because of unsafe conditions and lack of social protection. Generally speaking, hazardous working conditions indicate the profound systemic disdain for informal workers' welfare and rights.

[131] Pande, R. (2009). *Women in the unorganized sector of India.* Rawat Publications. https://bookscape.com

10. Long Working Hours and Absence of Rest

Informal workers normally work way too long working hours of sometimes 12-14 hours a day without overtime compensation or rest days. In industries such as the construction industry, street hawking, or hotels, the eight-hour workday is foreign. Without regulation, work processes are left to short-run economic survival instead of labour rights.

This overwork results in physical wear and tear, ill health, and mental stress, yet workers keep working because of economic compulsion. The failure to implement provisions under the Factories Act and the Shops and Establishments Acts reinforces this norm and makes "time poverty" a feature of informal work.

11. Gender-Based Discrimination

Women make up almost half of India's informal sector economy but experience all manner of discrimination. They are working in poorly paid, insecure, and inconspicuous types of activities like domestic work, home-based work, farm work, and petty trade. Even though they make a huge contribution to family and national incomes, they still experience gender wage gaps, receiving on average 30-35% less than men for equal work.[132]

Besides this, informal working women suffer from sexual harassment, workplace violence, and absence of maternity protection. Domestic workers are most exposed to exploitation in the households where the distinction between labour and servitude is becoming thinner. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is hardly implemented in informal establishments, offering no formal access to justice for women.

The confluence of gender, caste, and class further enhances the vulnerability since women from marginalized castes are usually relegated to the lowest-paid and most degrading forms of jobs.

The challenge of enforcement against India's informal labour force highlights the deep book-law and action-law gap. Institutional weakness, bureaucratic lethargy, and corruption have made protective legislation symbolic rather than real for the vast majority of workers. The

[132] Pande, R. (2009). *Women in the unorganized sector of India.* Rawat Publications. https://bookscape.com

issue is structurally constructed by governance fragmentation, legal formalism, and economic growth that has been at the cost of social justice.

In order to close this gap in enforcement, India will have to transition towards a decentralized, rights-based, and worker-centric model of enforcement that builds robust local institutions, consolidates labour inspection, facilitates unionization, and makes welfare delivery transparent. Until such a transition takes place, the promise of protection to informal workers will be an empty constitutional one.

RECOMMENDATIONS FOR EFFECTIVELY RESOLVING THE ISSUE

1. **Unified Labour Administration:**

Indian labour legislation is dispersed across various departments and state governments, and it becomes a herculean task to enforce them. Through a unified administration, regulation, coordination, and oversight would be fortified to make informal workers, such as street vendors, domestic workers, and gig workers, enjoy equal legal protection and benefits anywhere in the nation.

2. Simplified Registration:

Most informal workers do not have formal identification or address documents which render them ineligible for social security programs, pensions, or welfare payments. Straightforward registration mechanisms, accepting flexible proof of work or residence, would enable migrants, seasonal workers, and home-based workers to readily register and acquire government assistance.

3. Increase Inspectorate Staffing:

There are inadequate labour inspectors to monitor India's large workforce, particularly the unorganized economy. Employing and training additional inspectors would guarantee that workplaces get inspected periodically for compliance with safety, wage, and labour laws, minimizing exploitation and hazardous practices. Labour laws in India are fragmented across multiple departments and state jurisdictions, making enforcement complicated. A unified system would centralize regulation, coordination, and monitoring, ensuring that informal workers - like street vendors, domestic workers, and gig workers - receive consistent legal protection and benefits across the country.

4. Successful Enforcement of Labour Codes:

India's Labour Codes 2019-2020 were enacted to integrate and streamline most of the labour laws. Their enforcement is essential so that gig, self-employed, and informal workers are covered under minimum wage protection, working time, safety, and social security. Otherwise, these workers will not be safeguarded even with laws.

5. Enable Informal Worker Collectives

Individual informal workers typically do not have bargaining power. Identification and protection of the worker associations or unions (e.g., SEWA) enable them to negotiate wages, benefits, and improved working conditions collectively, enhancing their livelihoods and voice.

6. Mandatory Wage Registers:

Employers must keep accurate, current records of wages for all employees. This makes it transparent, precludes underpayment, and provides employees with legal proof to make wage claims or settle disputes in the event employers contravene wage laws.

7. Regulated Control Over Bonded and Child Labour:

Vulnerable children and adults are usually used in industries such as domestic work, brick kilns, carpet making, and agriculture. Special education or livelihood programs for the victim families and harsh punishment to the perpetrators with direct monitoring will be required to prevent child and bonded labour.

8. Flexible Working Hours for Informal Workers

Most contract workers work long hours with inadequate breaks or vacations. Strengthening protections such as daily hour limitations, weekly rest days, and overtime pay guarantees they are not exhausted and reduces physical and mental strain, enhancing productivity and well-being.

9. Awareness and Education Campaigns

Employees as a whole are not even aware of their rightful legal entitlements, minimum wages, or social security schemes provided. Conducting regular awareness campaigns and training programs enables them to assert their rights, file grievances against violations, and take advantage of government schemes appropriately.

10. Gender-Sensitive Training Programs

Informal sector women also experience other forms of challenges such as reduced incomes and fewer opportunities to make decisions. Gender-responsive programs offer women economic literacy, skills training, and entrepreneur training to equip them with economic empowerment as well as more bargaining space in the workplace and in society.

CONCLUSION: SUMMARY OF FINDINGS

India's informal labour market is explored in this book and reveals a persistent paradox at the heart of its economic progress the juxtaposition of rising GDP figures and rising insecurity among workers. All these years of labour reform efforts, legislative innovativeness, and welfare provision notwithstanding, the vast majority of India's labour force continues to be outside the protection of formal law and institutional protection. This chapter has traced the different dimensions of informality structural, legal, and socio-political to prove that exclusion is not a question of chance but inherent in India's labour regime.[133]

This chapter clearly confirms that informality is not a natural by-product of poverty or underdevelopment or a monolithic cause born out of economic desperation, but a complex result of state policy, market forces, and prolonged neglect of workers' rights. Informal work thrives in the jurisdictional gray area where there are protections in law but hardly enforced on the ground. The chapter shows that informal workers are not only victims but also actors of change. With NGOs, social movements, and new trade unions, they have established new kinds of organization and voice. SEWA, NDWM, NASVI, and new efforts by emerging gig worker unions are a collective but forceful movement toward voice and legality for the excluded. Legal empowerment efforts from paralegal training to online registration under e-Shram are significant, if uneven, strides towards justice.[134]

Despite this, important gaps in policy and implementation continue to remain. Employer accommodation and formal sector interests are still favoured in the law-making framework, even after the labour legislation has been codified. Flaws in enforcement, gender-insensitive drafting, and bureaucratic fragmentation undermine the coverage of welfare schemes. The

[133] Acosta-Henao, M. (2023). Law enforcement and the size of the informal sector. *Economic Modelling, 126*(3), 106400.

[134] Jayaram, N. (2020). Migrant workers' informal work arrangements and access to rights in urban India. *Review of Development Economics*.

effectiveness of social security boards and electronic databases means that technology cannot be a proper replacement for responsibility at the institutional level.

The suggestions in the chapter therefore call for a universal, inclusive, and rights-based labour regime. Formalization of informal workers involves legal and structural creativity that enlarges social protection for everyone, streamlines registration processes, promotes local governance, and brings gender equity into policy making. India needs to shift from labour market regulation to labour market inclusion, from enforcement based on punishment to governance through participation, and from segmented welfare to universal social security.[135]

On the whole, India's status of informal labour is a witness to the incomplete project of democratizing work. "Living on the Edge" not only marks the precarious status of the millions but also the moral edge on which India's constitutional guarantees of equality and dignity reside.[136] The fate of labour justice depends on how far the state, civil society, and workers themselves are able to overcome the gap between economic participation and legal right.

Finally, realization of Decent Work for All as the ILO and the Indian Constitution both desire is that the peripheries of law become its core, and all workers, formal and informal, and regardless of their status, are gifted with the inalienable right of security, voice, and human dignity.

---------- ****----------

[135] Venumuddala, V. R. (2020). Informal Labour in India. arXiv preprint.

[136] Routh, S. (2014). *Enhancing capabilities through labour law: Informal workers in India.* Routledge. https://www.routledge.com

Chapter-VI

Caste Lines in Law

Caste-based Exclusion, Untouchability, and Legal Interventions for Social Justice

By

Shreya Bairagi

Abstract

This chapter explores the persistence of caste-based exclusion and untouchability in India and links them to constitutional, legal, judicial, and policy interventions aimed at achieving justice and equality. It situates caste-based exclusion within the framework of the United Nations Sustainable Development Goals (SDGs), particularly SDG 5 (gender equality), SDG 10 (reduced inequalities), and SDG 16 (peace, justice, and strong institutions), and highlights how casteism hinders India's achievement of these goals. Drawing on recent policy surveys (the Telangana Social, Educational, Employment, Economic, and Political Caste Survey (SEEEPC) and the Odisha SEBC Survey), empirical research on welfare provision, healthcare access for Dalit women, and disparities in higher education, the chapter critically analyzes the gap between legal provisions on paper and practical experience.. Evidence drawn from lived experiences, interviews, and case studies reveals how legal interventions are shaped by power, economics, geography, gender, and social norms. The chapter concludes with recommendations for strengthening oversight and accountability, refining affirmative action to better address cross-caste stratification, enhancing legal literacy and community activism, building interconnectedness between law and policy, and promoting ideological change

Keywords: caste discrimination; untouchability; social justice; SDGs; legal interventions; Intersectionality

"The assertion by the individual of his own worth is the basis of all human progress."

— B. R. Ambedkar

The 2030 Agenda for Sustainable Development and its 17 SDGs represent a global agreement that commits to leaving no one behind. SDG10 (Reduced Inequality) mandates the promotion of social, economic and political inclusion of all, regardless of social background; SDG16 calls for the establishment of inclusive, just and accountable institutions; SDG5 calls for gender equality. In India, caste is one of the most deeply rooted axes of social stratification, which directly hinders inclusion, justice and equality. While the legal abolition of untouchability (through the constitution and law) is well-established, caste-based exclusion remains an obstacle to progress on the SDGs—manifested in access to education, health, political participation and justice. This chapter examines caste exclusion as a legal and developmental issue: the law provides the tools, but social, economic and cultural forces mediate whether India succeeds or fails in helping it meet its SDG commitments.[137]

We begin by tracing the historical foundations of caste exclusion and the emergence of legal tools to address untouchability. Next, we assess empirical evidence from policy, practice and lived experience – both in terms of success and failure – to understand how legal interventions work in practice. We then critique key gaps and structural constraints. Finally, we offer recommendations for strengthening the legal framework and its implementation to move towards real social justice that is consistent with the Sustainable Development Goals.[138]

2. Historical and Constitutional Basis of Legal Intervention

- **Caste Exclusion and the Roots of Untouchability**

In India, caste serves a dual function: identification and exclusion. Those belonging to the lowest castes – particularly the Scheduled Castes (SCs), historically known as "untouchables" – have for centuries been subjected to religious pollution norms, spatial isolation, restrictions on access to public goods (wells, water taps, temples), occupational

[137] United Nations. (2015). *Transforming our world: The 2030 Agenda for Sustainable Development*. A/RES/70/1.
[138] Thorat, S., & Newman, K. (2009). *Blocked by Caste: Economic Discrimination in Modern India*. Oxford University Press.

restrictions, and severe social handicaps.[139] Colonial administrative practices – such as detailed caste censuses, recognition of customary law, decentralized justice through caste panchayats – established caste identities by transforming fluid social hierarchies into measurable legal and administrative categories.[140]

At independence, the framers of the Constitution sought not only to end overt caste discrimination but also to create an architecture for substantive equality. Key constitutional provisions include Article 15 (prohibition of discrimination on grounds of caste), Article 17 (abolition of untouchability), Article 16 (equality of opportunity; reservation), and Article 46 (promotion of educational and economic interests of Scheduled Castes/Scheduled Tribes).

Subsequent laws – such as the Protection of Civil Rights Act, 1955; the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act); the Prohibition of Manual Fumigation Act – establish penal sanctions, special courts, victim compensation, monitoring mechanisms, and affirmative action schemes.

These legal instruments form the framework against which policy and practice should be measured.[141]

3. Evidence from Policy, Practice and Lived Experience

- **Policy Data and State-Level Surveys**

Recent state-level caste surveys have provided much-needed disaggregated data, which is essential for assessing policy targets and legal/policy performance.[142]

The Telangana SEEEPC Survey (2024-25) covered almost the entire state population. It found that backward classes constitute a large segment of the population, with significant variation in education, employment and living conditions across sub-castes. Differences in asset ownership, income, political participation have been identified even within broadly defined backward or Scheduled Caste/Tribe categories.

[139] Bayly, S. (1999). *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age*. Cambridge University Press.

[140] Dirks, N. B. (2001). *Castes of Mind: Colonialism and the Making of Modern India*. Princeton University Press

[141] Austin, G. (1999). *Working a Democratic Constitution: The Indian Experience*. Oxford University Press.

[142] Deshpande, A. (2020). *The Case for a Caste Census in India*. *Economic and Political Weekly*, 55(25), 14–17.

In Odisha, the Socially and Educationally Backward Classes (SEBC) Survey (2023) estimated that ~39.3% of the state's population belongs to SEBCs, with significant differences in access to education and services across districts, particularly in tribal and remote areas.

These surveys show that legal and policy attention should account for differences between groups: not all SCs or SEBCs are equally disadvantaged, and some sub-groups are deprived of benefits due to geography, lack of documentation, and social stigma.[143]

- **Welfare Implementation: Gaps in Practice**

Laws and welfare schemes intended to reduce inequality—such as the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), targeted social protection programs, and public health services—often reveal persistent patterns of caste-based exclusion.[144]

In maternal health, a case study from Karnataka: Dalit women face disrespect in government hospitals, face discrimination from healthcare workers and are discouraged from seeking antenatal services. A community-led accountability initiative led by Dalit women's groups has improved access and status in several villages through documentation, social mobilization and engagement with administrative agencies.[145]

- **Institutional Discrimination in Education and Justice**

A recent legal petition before the Supreme Court has demanded better implementation of Equal Opportunities Cells (EOCs) in universities and better data on their effectiveness. It cited over 115 suicides in top institutions in the last two decades, many involving students from marginalised castes. The court has ordered universities to report on their compliance with the fairness rules.

There are numerous (qualitative) accounts of caste-based harassment, seat segregation, discriminatory access to lab facilities, internship opportunities, mentoring in higher education, which are not quantifiable but are strongly felt by students.

[143] Government of Telangana. (2025). *Report of the SEEEPC Survey*. Department of Backward Class Welfare.

[144] Dreze, J., & Khera, R. (2017). Recent Social Security Initiatives in India. *World Development*, 98, 555–572.
[145] odhka, S. S. (2010). *Caste and Democracy in India: Some Explorations*. *Asian Journal of Social Science*, 38(3), 363–382.

Many victims of atrocities under the PoA have reported that FIRs are delayed or not registered at all. Cases are often dragged out, often due to intimidation of witnesses. Sometimes, atrocities are not prosecuted under the PoA but rather under less punitive provisions, with punishments limited.[146]

- **Lived Experiences: Narratives, Social Norms, Stigma**

Beyond policies and institutions, caste exclusion is reproduced through social norms, stigmas, and lived experiences: the rule of separate water sources; tea-shop practices ("two tumbler system"); neighbourhood discrimination; the threat of social exclusion. These practices may not always lead to legal cases, but they perpetuate caste lines in everyday life.

Interviews conducted in various studies (Dalit women in health programs, university students, residents of rural townships) point to a recurring pattern: legal rights are known in the abstract, but claiming them involves social risks (ostracism, retaliation), economic costs, and often disappointing outcomes. These narratives highlight how legal interventions, even when well-designed, are mediated by social forces.[147]

4. Untouchability: A Continuing Legacy of Caste-Based Exclusion

Untouchability is one of the most pernicious and enduring forms of caste-based discrimination in Indian society. Historically rooted in the Hindu caste system, untouchability involves the ritual and social exclusion of certain castes – primarily Scheduled Castes (SCs) – from participation in social, economic and religious life. Its manifestations include bans on entry to temples, denial of access to water sources, separate housing, occupational restrictions and deprivation of public amenities. Although formally abolished, untouchability remains deeply rooted in both rural and urban settings, perpetuated by implicit practices, social norms and institutional behaviour.[148]

Recognizing its inhuman and anti-democratic effects, the **Constitution of India**, under **Article 17**, explicitly abolishes untouchability:

[146] Rege, S. (2013). *Against the Madness of Manu: B.R. Ambedkar's Writings on Brahmanical Patriarchy*. Navayana.
[147] Still, C. (2011). *Dalit Women: Honour and Patriarchy in South India*. Routledge
[148] Thorat, S., & Newman, K. S. (2010). *Blocked by Caste: Economic Discrimination in Modern India*. Oxford University Press.

"Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law."[149]

This provision is unique in the Indian Constitution - it is not only ambitious but also self-executing, providing both constitutional prohibition and penal consequences. Article 17 does not simply declare equality; it directs the state to take active measures to eradicate untouchability in all its forms.

To implement this constitutional mandate, Parliament enacted the Protection of Civil Rights Act of 1955, originally known as the Untouchability (Offences) Act. It criminalized denial of access to shops, temples, restaurants, schools, and public facilities on the basis of caste. However, the scope and application of this law have proven inadequate. Recognizing the structural nature of caste-based violence, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was introduced to prevent and punish caste-based atrocities, protect victims, and ensure speedy justice through special courts and designated officers.[150]

Yet, despite this legal framework, untouchability persists in various forms—often subtle, natural, or institutional. Examples include the "two-tumbler system" in tea shops (where Dalits are served in separate glasses), manual scavenging, separate crematoriums, and segregation in classrooms or lunch seating.[151] Dalits are often excluded from community decision-making, denied equal representation in local governance, and subjected to religious sanctity-based exclusion in marriages, worship, and burial grounds.

These practices may not always fall within the clear boundaries of criminal law but violate the spirit of constitutional equality and human dignity. The challenges to law enforcement are extensive—police inaction, judicial delays, and societal reprisals against complainants often discourage reporting. Furthermore, institutional apathy and social stigma contribute to the normalization of such practices, making legal remedies difficult and emotionally costly.[152]

---

[149] Government of India. (1950). *The Constitution of India*, Article 17.
[150] Shah, G., Mander, H., Thorat, S., Deshpande, S., & Baviskar, A. (2006). *Untouchability in Rural India*. Sage Publications.
[151] Human Rights Watch. (2007). *Hidden Apartheid: Caste Discrimination Against India's "Untouchables"*. https://www.hrw.org

[152] National Campaign on Dalit Human Rights (NCDHR). (2021). *Justice Denied: Dalit Voices from the Margins*. Retrieved from https://www.ncdhr.org.in

In this context, Article 17 is not just a legal instrument but also a moral obligation. Its power lies in articulating a constitutional vision of justice, equality and dignity, but its implementation depends on effective implementation, public awareness, administrative commitment and, above all, a change in social consciousness. Without meaningful social transformation and political will, Article 17 risks becoming a symbolic provision without real power.

In more recent years, judges have extended Article 17's reach. For example, courts have struck down caste-based segregation in prisons, ruled against caste-based assignment of work or housing in penal institutions, and ordered removal of "caste columns" in official registers—all as incompatible with the spirit of Article 17.

Still, the gulf between constitutional promise and social reality is vast. Practices like the "two-tumbler system," denial of access to public wells, exclusion from worship, inferior seating arrangements, or caste harassment in campuses often evade legal sanction because victims cannot always marshal evidence or because authorities are unwilling to act. Social pressure, fear of reprisal, or bureaucratic inertia frequently prevent enforcement.[153]

- **Constitutional Morality and the Abolition of Caste**

The Indian constitutional project is not, and was never intended to be, a neutral technocratic framework for governance. Rather, it represents a radical intervention in India's social order. From its very inception, the Constitution of India was conceived as an instrument of social transformation—not merely to organize political power, but to dismantle entrenched hierarchies, especially the structural violence of caste.[154]

This transformative potential is grounded in Dr. B. R. Ambedkar's vision of constitutional morality, a principle he championed both within the Constituent Assembly and through his public writings. For Ambedkar, constitutional morality meant much more than legal obedience—it required a shared commitment to the ethical foundations of the constitutional order: liberty, equality, and fraternity. These values, he insisted, were not rhetorical flourishes, but the conditions of possibility for a true democracy in India.

[153]Human Rights Watch, *Broken People: Caste Violence Against India's "Untouchables"*, 1999. See also: Ashwini Deshpande, *Affirmative Action in India*, Oxford University Press, 2013; and A. Narayanan, "Caste Discrimination in Public Spaces: The Persistence of the Two Tumbler System," *Economic and Political Weekly*, Vol. 47, No. 7, 2012, pp. 43–49.

[154] B.R. Ambedkar, *Annihilation of Caste*, 1936 (Blueridge Classics edition, 2016).

In his often-quoted final address to the Constituent Assembly, Ambedkar warned against the dangers of assuming that political democracy could survive in the absence of social democracy. He wrote:

"We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy."

For Ambedkar, the caste system was fundamentally incompatible with both social and political democracy. Caste, by organizing people into graded inequality and denying fraternity, constituted a direct negation of constitutional morality.

Thus, legal interventions against untouchability and caste-based exclusion are not just penal or regulatory in nature. Their normative thrust is emancipatory—they aim to affirm the moral equality of persons, regardless of their birth, ritual status, or community. The Prevention of Atrocities Act, for instance, is not merely a tool for criminal prosecution; it is a moral statement by the state, declaring that the dignity and safety of Dalits and Adivasis are not negotiable.[155]

In this light, constitutional morality demands more than procedural compliance. It calls upon institutions—legislature, judiciary, civil service, education—to internalize and act upon the Constitution's ethical imperatives. It also calls upon citizens themselves to shed caste-based loyalties and prejudices, and to embrace a shared public identity founded on equal respect and solidarity. Without such transformation in public culture, the legal abolition of untouchability remains incomplete.[156]

- **The Right to Dignity: An Expansive Constitutional Value**

Among the most profound contributions of the Indian judiciary to the interpretation of fundamental rights has been the recognition of human dignity as central to constitutionalism. Though the term "dignity" does not explicitly appear in Article 21 of the Constitution, the jurisprudence of the Supreme Court has firmly established that the right to life includes the right to live with dignity.[157]

[155] B.R. Ambedkar, *The Annihilation of Caste*, 1936; see also *Dr. Babasaheb Ambedkar: Writings and Speeches*, Vol. 1, Education Department, Government of Maharashtra, 1979.
[156] Constituent Assembly Debates, Vol. XI, Speech by Dr. B.R. Ambedkar, November 25, 1949.
[157] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 — a foundational case expanding the scope of Article 21 beyond mere survival to include the quality of life and dignity.

This understanding was clearly articulated in the landmark case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, where the Court declared:

"The right to life includes the right to live with human dignity and all that goes along with it..."

This interpretation has far-reaching implications in the context of caste. Untouchability, by its very definition, is a denial of dignity. It systematically marks individuals and communities as polluted, inferior, and unworthy of full human respect. The practices associated with untouchability—ritual segregation, denial of access to public goods, exclusion from religious spaces, degrading forms of labour like manual scavenging—are not just social wrongs; they are constitutional injuries, precisely because they assault the dignity of the person.

Caste-based discrimination, therefore, is not a marginal issue of "backwardness" or "custom"; it is a structural affront to the constitutional order. It violates the idea that all persons are equal bearers of moral worth, entitled not only to be free from violence, but to enjoy autonomy, self-respect, and social inclusion.

The courts, in recent decades, have deepened the normative content of the dignity principle. In cases involving bonded labour, sexual violence against Dalit women, and the degrading conditions of manual scavengers, the judiciary has recognized that such conditions strip individuals of their essential humanity.[158] In *National Campaign for Dignity and Rights of Sewerage and Allied Workers v. Union of India* (2014), the Supreme Court held that the continuation of manual scavenging—despite laws banning it—was a direct violation of Article 21, emphasizing that no person should be forced to perform labour that degrades their dignity or reinforces caste hierarchies.

The idea of dignity also includes a reparative dimension. Legal redress for caste-based wrongs should not be limited to punishment or deterrence. Victims and survivors of caste discrimination must be restored in their social standing. This involves more than financial compensation. It requires public acknowledgment, community rehabilitation, and affirmative measures that reaffirm the individual's worth. Symbolic gestures—such as issuing apologies, naming and shaming institutions that engage in discrimination, and

[158] B.R. Ambedkar, *Annihilation of Caste*, 1936.

celebrating Dalit history and contribution—play a critical role in restoring collective dignity.[159]

Moreover, the dignity principle places a positive duty on the State. It is not enough for the government to refrain from discrimination. It must actively dismantle structures that perpetuate indignity—be it in education, housing, employment, or political representation. For example, caste-based seating arrangements in schools or unequal access to midday meals are not merely administrative lapses; they are violations of dignity that must be addressed with urgency and seriousness.

From a theoretical standpoint, dignity offers a unifying framework that cuts across legal domains. It aligns with Ambedkar's vision of fraternity—not merely as emotional solidarity, but as a normative commitment to recognizing each person's humanity. As philosopher Jeremy Waldron notes, dignity "confers a sort of status that undergirds all rights." In the Indian context, dignity can serve as the moral axis around which all anti-caste laws revolve.

In conclusion, the right to dignity provides a robust normative foundation for legal interventions against caste. It compels the legal system to go beyond prohibition and punishment, toward affirmation, restoration, and transformation. As long as caste continues to degrade, humiliate, and dehumanize, the Constitution's promise of dignity remains unrealized. But through dignity-based reasoning, law can serve not only to repair injustice, but to reimagine the social order itself.[160]

5. Ideological and Theoretical Perspectives

At the heart of any meaningful discussion of caste-based legal intervention should be a solid theoretical understanding of the normative purpose of law. Law does not operate in a vacuum – it is shaped by and, in turn, shapes the social and moral foundations of a society. In India, where caste has historically organized social, economic and even spiritual life, the role of law is not limited to mediating disputes; it must intervene in the structures of discrimination. Legal processes aimed at abolishing untouchability, enforcing reservation or preventing caste-based atrocities are founded on larger principles – equality, dignity, social justice and transformative constitutionalism. These principles are not merely aspirational;

[159] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 — a foundational case expanding the scope of Article 21 beyond mere survival to include the quality of life and dignity.
[160] justice D.Y. Chandrachud, "Dignity in the Indian Constitution: Jurisprudential Evolution and Transformative Potential," *National Law School of India Review*, Vol. 30, No. 1 (2018).

they are embedded in the constitutional architecture and reflect a moral commitment to undoing centuries of oppression.[161]

- **Legal Equality vs. De facto Equality**

At the heart of any democratic legal system is the principle of equality. The Indian Constitution, in Articles 14 to 16, guarantees the right to equality before the law and equal protection of the law. However, equality in law and equality in practice are often far apart. Legal equality – equal treatment of all under the law – creates an equal opportunity, which caste society insists on not providing.

In societies where caste functions as a hereditary system of hierarchical discrimination, formal or procedural equality often reinforces existing hierarchies. As Ambedkar warned, treating unequally only perpetuates injustice. This insight has informed the evolution of equality in Indian jurisprudence, which recognizes that equal treatment is not enough to correct deep-seated structural disadvantages.

The demand for equality is that the law must take into account the historical, social and economic context that shapes people's lives. It goes beyond mere non-discrimination to positive action – such as reservations in education, employment and political representation for Scheduled Castes, Scheduled Tribes and other backward classes. These provisions are not exceptions to the principle of equality, but rather its affirmation, based on the recognition that justice sometimes requires discriminatory treatment[162].

This conceptual shift is also visible in judicial interpretation. In Indra Sawhney v. Union of India (1992), the Supreme Court upheld the constitutional validity of reservation under Article 16(4), confirming that equality should be understood in a substantive sense rather than in a purely formal sense. The Court emphasised that the State has an obligation to actively redress historical injustices and that affirmative action is not incompatible with merit but is essential to achieving genuine equality of opportunity.[163]

The legal recognition of substantive equality marks an ideological shift: it recognises that caste is not merely a matter of identity, but rather a system of strong barriers. Thus, the

[161] B.R. Ambedkar, *Annihilation of Caste*, 1936 (Critical Edition by Navayana, 2014).
[162] *Constituent Assembly Debates*, Vol. VII, Speech by Dr. B.R. Ambedkar, November 15, 1948.
[163] B.R. Ambedkar, *Annihilation of Caste*, 1936 (Critical Edition by Navayana, 2014).

Constitution does not simply prohibit untouchability (Article 17); it mandates active action to dismantle the conditions that create and sustain it.[164]

- **Dignity, Rights and Recognition**

Caste-based exclusion is not simply a matter of economic deprivation or lack of opportunity. At its core, it is a denial of dignity – a refusal to recognize the full humanity of Dalits and other marginalized communities. The practice of untouchability, and the way caste manifests itself in public and private life, results in both material harm and symbolic violence.

Dignity, although not explicitly listed as a fundamental right, has been interpreted by Indian courts as an essential aspect of the right to life under Article 21. In the case of Frances Coralie Mullin v. Administrator of the Union Territory of Delhi (1981), the Supreme Court ruled that the right to life includes the right to live with human dignity and includes access to basic necessities, respect and personal autonomy. The court noted that legal rights should be interpreted in the light of the evolving standards of decency and human dignity in a democratic society.[165]

In the context of caste, the denial of dignity often takes disguised forms — separate schooling, forced seating, exclusion from temples and water sources, sexual violence, degrading labour, and social exclusion. These practices violate not only individual rights but also the concept of equal citizenship. Legal intervention must therefore address not only the material disadvantage but also the lack of recognition — the structural means by which Dalits are denied social status, voice, and respect. Philosophers such as Axel Honneth and Charles Taylor have argued that recognition is fundamental to personhood, and that misrecognition is a form of injustice as acute as exploitation. In the Indian context, this translates into legal and political processes that restore social dignity: laws that criminalize degrading practices (such as the Prevention of Atrocities Act), public commemorations of Dalit leaders, and affirmative action in democratic institutions.

The demand for dignity also reshapes legal remedies. Compensation or punishment are not enough; justice must include public recognition of wrongdoing, community rehabilitation,

[164] *Constituent Assembly Debates*, Vol. VII, Speech by Dr. B.R. Ambedkar, November 15, 1948.

[165] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 — where Article 21 was interpreted to include dignity, liberty, and due process.

and positive cultural action. Thus the struggle for dignity transcends court victories and enters the realm of social and moral transformation.[166]

- **Social Justice and Transformative Constitutionalism**

The Indian Constitution is not a conservative document. It was written in the post-colonial era, in a society divided by caste, patriarchy and feudalism. Its drafters, led by Ambedkar, envisioned it as an instrument of social revolution. The idea of transformative constitutionalism captures this ambition: the constitution is not just a framework for governance, but a tool for reconstructing power, identity and social relations.

Transformative constitutionalism demands a reimagining of the role of law. It is not content with simply protecting rights; it insists that institutions must be restructured and relationships must be reshaped. In the Indian context, this means challenging the social acceptability of caste, ensuring representation of marginalized communities and ensuring access to education, land and livelihoods. This vision is not merely rhetorical. Articles 38 and 39 of the Directive Principles of State Policy declare the obligation of the state to promote social, economic and political justice, reduce inequality and ensure the distribution of resources for the common good. Although not necessarily justiciable, these principles provide a moral guide for legislative and judicial action.[167]

Ambedkar's dream was not limited to the removal of caste from legal texts - it was to eradicate caste from social consciousness. This required what he called "the annihilation of caste", which could only be achieved through sustained legal, political and educational efforts. Transformative constitutionalism imposes a positive obligation on the state: to intervene, disrupt and reconstruct the social structure.

Examples of these transformative principles are found in the extension of reservations in private institutions, the recognition of inter-caste discrimi

nation and the increase in judicial activism in cases involving caste atrocities. But transformative constitutionalism also requires democratic vigilance – it is a process, not a finished project. The law must evolve alongside movement, experience, and new understandings of justice.[168]

[166]B.R. Ambedkar, *The Annihilation of Caste*, 1936 (Navayana Critical Edition, 2014).

[167] Upendra Baxi, "The Future of Human Rights," *Oxford University Press*, 2002.
[168] B.R. Ambedkar, *The Annihilation of Caste*, 1936 (Navayana Critical Edition, 2014).

6. Case Studies

To illustrate how law works in practice, below are selected case studies.

- **Prisons and caste: Supreme Court Decision**

Recently, the Supreme Court of India ruled that caste-based discriminatory practices in prisons—such as forcing Dalit inmates to cook or perform degrading labour, segregating food, allowing high-caste inmates to refuse food cooked by lower caste inmates—are unconstitutional. The Court ordered states and UTs to amend prison manuals and remove caste references from registers.

This is important in several ways: it shows that even institutions (prisons) often invisible in public debate are enmeshed in caste biases; the decision enforces symbolic and administrative change (removal of caste columns etc) as well as substantive rights.[169]

- **Manual Scavenging and Rehabilitation**

The legal battle over manual scavenging has spanned decades. The law prohibits dry latrines, makes manual scavenging illegal; courts have issued mandamus orders for rehabilitation; however, many manual scavengers continue to work under precarious conditions, often due to economic necessity, lack of alternative livelihoods, and social stigma. Rehabilitation schemes are often poorly funded or implemented.[170]

- **Temple Entry, Ritual Exclusion**

Temple entry is a symbolically powerful site of caste exclusion. Courts have held that temples open to the public cannot deny entry based on caste. For example, high courts have enjoined authorities to enforce temple entry authorisation acts in states (e.g. Tamil Nadu). These cases show the law overlaying public ritual and cultural norms. (Recent example: Madras HC ruled that persons belonging to Scheduled Castes cannot be barred from entering temple based on their caste identity).[171]

---

[169] Telegraph India+1

[170] SAGE Journals+1

[171] The Times of India

7. Conclusions and recommendations:

The scope and potential of anti-racism policy

The Indian Constitution provides strong guidelines and guidelines for the elimination of caste-based discrimination and non-discrimination. Articles 14 to 17, together with the principles of human rights and dignity, provide the philosophical foundation for a society built on equality, liberty and coexistence. Laws such as the Protection of Human Rights Act (1955) and the Scheduled Tribes Act (Prevention of Violence) Act (1989) mean that the government recognizes acts of caste discrimination, imposing penalties and warnings against its continuance. However, despite this widespread legislation, the lived experience of racism remains entrenched.

The legal profession – whether progressive or well-organized – operates within entrenched cultural values, economic inequality and institutional instability. Therefore, the abolition of immunity from racial discrimination cannot be achieved through legal decisions alone. The law can regulate behaviour and provide solutions, but it cannot overthrow institutions that are centuries old and used in everyday life. The path to racial justice involves changing society and culture as well as changing laws and policies.

The remaining space

• The interconnectedness is not well developed in many laws and regulations: race + gender + disability + environment are rarely discussed together.

• Inequalities between groups: not all groups within a group receive the same benefits; smaller governing bodies often hold less favorable outcomes.

• Punishment and enforcement failures: missed trials, low conviction rates, inadequate reporting.

• Lack of transparency or access to clinical data; capacity is different; the complaints are not the same.

Social change is slow, contested, and uneven. But policy is important to create possibilities, create solutions, enforce policies, give a voice to the oppressed.

---------- ****----------

Chapter-VII

Gender in the Shadows of Law: Rethinking Neutrality and Justice

By

Debangana Gupta & Raima Roy Chowdhury

Abstract

Gender often exists in the shadows of the legal system of our society, and deep-rooted biases and institutional silences conceal the real experiences of women and other marginalized genders. Despite fundamental promises of the constitution like equality, gendered realities remain obscured, which is mostly visible among the unofficial labor, workplace discrimination, and persistent salary unevenness. Women in different unofficial sectors continue to work without any proper recognition or legal protection; they are excluded from social security, benefits, and protective laws that mainly cater to the official workforce. Within formal workplaces, invisible hurdles such as unconscious bias, limited opportunities, and unequal pay continue to question whether the right to equality truly extends to all.

Although the laws related to protection of women and to eradicate the inequalities between gender, such as the Equal Remuneration Act, Maternity Benefit Act, and Sexual Harassment of Women at Workplace Act, were introduced to advance gender equity, their weak implementation and limited reach often sustain, rather than dismantle, existing inequalities. Therefore, the appearance of legal neutrality conceals long-standing patriarchal assumptions embedded in lawmaking and interpretation. This chapter aims to investigate ways of bringing the concepts of "sex" and "gender" together, despite the fundamental implications of the distinction for feminism. This will allow for the development of a single field of feminist research that includes the consideration of bodies in the analysis of the social and cultural, and that recognizes and interprets the unmistakable influence of the social, cultural, and economic environments in which those bodies exist.

This article explores how our social elements like gender, labor, and law intersect to create and continue these spaces of gaps. It argues that achieving genuine gender justice requires more than formal equality—it calls for an honest, inclusive, and meaningful recognition of women lived experiences within the egalitarian framework.

"This humanity is male and man defines woman not in himself, but as relative to him; she isn't regarded as an autonomous being.....She is defined and differentiated with reference to man and not he with reference to her; she is the incidental, the inessential as opposed to the essential. He is the subject; he is the Absolute-she is the other."

-Simone de Beauvoir

The idea of gender neutrality in Indian law is complex and still developing. Recent court decisions and legislative talks show a movement toward more fair legal systems. Indian laws have often been grounded in patriarchal traditions. However, there is an increasing acknowledgment that laws need to align with modern feminist ideas and global standards of equality. The Indian legal system is based on the principles of equality, liberty, and justice as stated in the Constitution. It aims to create a system where everyone, regardless of gender, is treated fairly and with dignity.

Yet, the realities faced by women and marginalized genders starkly contrast with these constitutional ideals. Gender often operates in the background of the law, hidden behind claims of neutrality and objectivity. While the law presents itself as impartial, its application often reveals the entrenched patriarchal norms that influence Indian society.

Despite progress through landmark laws like the Equal Remuneration Act of 1976, the Maternity Benefit (Amendment) Act of 2017, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013, the protections these laws provide mainly reach the formal sector. Many women working in informal jobs, such as domestic workers, street vendors, agricultural laborers, and home-based workers, remain largely unprotected by law. Their lack of visibility in legal and policy discussions continues cycles of economic reliance, social exclusion, and neglect by the legal system. Even in formal workplaces, subtle but persistent gender biases result in pay gaps, fewer opportunities for advancement, and a lack of women in leadership positions. These conditions reveal the false notion of legal neutrality—a system that seems fair in theory but often upholds inequality in practice. While the judiciary is becoming more aware of gender issues, it still struggles with interpretations shaped by social conditioning and cultural stereotypes.

This paper aims to explore how the overlap of gender, labor, and law shapes the experiences of women in India. It argues that the fight for gender justice must go beyond just treating everyone the same. Instead, it should focus on real equality, recognizing and addressing the structural challenges

that women and other marginalized genders face. By rethinking ideas of neutrality and justice, this study hopes to reveal the unheard stories hidden in the overlooked areas of Indian law.

The push for gender-neutral laws in India involves critically examining current laws that often sustain gender-based discrimination, particularly in maintenance and personal laws. The goal is to build legal frameworks that focus on individual needs and abilities rather than outdated gender norms[172]. This change is evident in court rulings and legislative proposals that aim to secure equal rights and chances for all genders, moving away from rules that assume financial dependence based solely on gender [173].

Historically, patriarchal structures have deep roots in Indian society, which, despite the end of practices like Sati, continue to influence social norms and how laws are interpreted. The first wave of feminism in India, which began in the late 19th century, was closely tied to anti-colonial and social reform efforts. The second wave led to many laws designed to empower women, often based on their perceived reliance on men. However, scrutiny is growing over these mid-20th century laws, as they may reinforce gender stereotypes and discriminate against men, especially in a society where women's literacy and financial independence have advanced significantly.

Women in informal labor:

Women are significantly represented in the informal economy worldwide. They face many challenges due to the lack of labor protections and social benefits. This sector, sometimes called the grey economy, includes various activities like street vending, domestic work, subsistence farming, and gig work. The informal economy includes activities and jobs that do not have state regulation or protection. This leaves workers open to low pay, unsafe conditions, and a lack of social security benefits, such as pensions, health care, or paid sick leave. Women's overrepresentation in this sector is a global issue, especially in developing countries. It often connects to existing gender gaps in the formal labor market and the unequal burden of unpaid care work.

Scope and Demographics:

Globally over 2 billion people work in the informal economy, with women making up a large part, particularly in developing regions. For example, in South Asia, more than 80% of women in non-

---

[172] *Two Steps at a Time: India's Path to Recognizing and Criminalizing Marital Rape. [genderjusticecellnliu.wordpress.com]*

[173] *A CRITICAL ANALYSIS OF GENDER NEUTRAL LAWS IN INDIA: FOCSING ON UPCOMING LECUNAS OF SOCIETY BY - SANIA SIDDIQUE & MOHD AKASH. [*www.ijlra.com*]*

agricultural jobs work informally; this figure is 74% in sub-Saharan Africa and 54% in Latin America and the Caribbean. An OECD/ILO report shows that about 92% of all employed women in low-income countries are in informal jobs, compared to 87% of men. This difference is also clear in cities like Hanoi and Ho Chi Minh City in Vietnam, where 40-50% of migrants are women who experience unstable incomes and a lack of social safety.

Challenges Faced by Women in the Informal Economy:

Women in the informal economy often earn lower wages, face precarious work arrangements, and endure unsafe conditions, including a greater risk of sexual harassment. The lack of social protections creates long-term issues, leading to fewer women receiving pensions and contributing to higher poverty rates among older women. Even in developed countries like France, Germany, Greece, and Italy, women's average pensions are more than 30% lower than men's. The informal nature of their work means they typically lack access to legal assistance, health care, and other public services. Research indicates that informal jobs are linked to worse health outcomes for female workers and their children, particularly regarding child nutrition and prenatal care. The “double burden of work,” where women manage both paid and unpaid household responsibilities, makes these challenges more difficult. For instance, mothers aged 25 to 44 participate in the labor force at lower rates and work fewer hours than childless women. Working mothers earn significantly less than fathers. The shortage of affordable childcare often drives women into informal work, which offers more flexibility to balance family duties.

Efforts Towards Empowerment and Formalization:

Organizations like WIEGO (Women in Informal Employment: Globalizing and Organizing) aim to support informal workers, especially women, by conducting research, gathering data, and pushing for policy changes. Their goal is to raise the visibility of informal workers, strengthen their collective voice, and influence policies to ensure equal economic opportunities, rights, and protections. Policy efforts to address the challenges facing informal workers include improving access to finance, skills training, property rights, and extending legal protections. Formalizing the informal economy can happen in different ways, such as registration, taxation, organization, legal frameworks, social protection, and business incentives.

Examples include India's National Street Vendors Act and local childcare centers run by waste pickers in Argentina. In El Salvador, rural women's cooperatives help women earn income, access public services, and gain legal assistance, with childcare options allowing them to work outside their homes. These efforts show the need to recognize the economic contributions of women in the informal sector and to implement comprehensive strategies to improve their working conditions and overall well-being. Women in the informal economy face major challenges due to the unregulated

nature of their jobs. There is a lack of legal protections, social benefits, and safe working conditions. This sector includes various occupations, from street vendors and domestic workers to subsistence farmers and home-based workers. Women are disproportionately involved in informal jobs, especially in developing economies. For instance, in South Asia, over 80% of women in non-agricultural positions work informally, and in sub-Saharan Africa, 74% are in the same situation [174].

I. DISPARITY TO PARITY: THE STRUGGLE FOR EQUAL PAY

The issue of wage disparity between men and women is both legal and a social challenge, leaving inequalities in the workforce. Despite commitments across the globe, women continue to earn less than men; thus, inequality is not only a social or cultural issue but also a legal and institutional one.

Definition and Scope of the Gender-Pay-Gap

The gender pay gap is the imbalance in median earnings between men and women. Two ways to quantify this gap are:

i. Unadjusted Pay-Gap: overall wage differences without accounting for education, work experience, or occupation.

---

[174] *Women in informal economy. [UN Women]*

4WIEGO. [WIEGO]

5The Invisible Workforce: Women in the Informal Economy. [LISEP]

6The consequences of informal employment on women's and children's health: a systematic review. [PMC]

7Expanding the Economic Potential of Women Informal Workers. [Harvard Kennedy School]

8What is the informal economy and how many people work in it? [World Economic Forum]

9How to economically empower informal women workers. [Gates Foundation]

10Dube, Shikha and Bairagi, Reenu. "Analyzing How Women Workers in Informal Sector Are Vulnerable to Exploitation and Their Legal Protection." IJLSSS 3(2) 54, pp. 625-638. [IJLSSS]

11What is the informal economy and how many people work in it? [World Economic Forum]

Constitution of India, 1950, Art 14.

Constitution of India, 1950, Art 15.

Constitution of India, 1950, Art 16.

Constitution of India, 1950, Art 15(3).

Constitution of India, 1950, Art 39(d).

ii.Adjusted Pay-Gap measures the portion of salary discrepancy connected solely to gender.

In India, pay inequalities are impacted by career segregation, challenges in women's work and careers due to caregiving responsibilities.

Importance of Addressing Pay Disparity

Legal and Constitutional Requirements: Articles 141, 152, and 163 of the Indian Constitution forbid discrimination based on sex4, and Article 39(d)5 mandates equitable wages for equitable work.

- Economic Progress: Narrowing pay gaps enhances the income of households and the magnitude of the national economy.
- Social Equity: Equitable pay empowers women and eradicates stereotypes.

Workplace Optimization: Equitable pay enables improved productivity, reduced attrition, and builds diverse backgrounds.

Evolution of Women's Participation in the Workforce

Historically, women's labor in society was neglected. The stereotype of males as "primary breadwinners" was boosted by the Industrial Revolution.

Women in colonial India earned barely any money working at home, in agriculture, and on plantations. Social restrictions hindered education and mobility into skilled professions. During the World Wars, women battled alongside men, working alongside men, demonstrating their equal competence. After independence, Indian women slowly gained public employment, though inequalities persisted.

Development of the Equal Pay Movement

Globally, the International Labour Organization (ILO) became the center for wage equality. The Equal Remuneration Convention (1951) established equal pay as a universal labour standard. Feminist movements in the 1960s and 1970s were ignited by disparities in Western countries. Article 39(d)7 of the Constitution expressly guaranteed equal payment, affirming it as a national commitment to achieve gender fairness.

Equal Pay vs. Pay Equity

Equal pay, as outlined in the Equal Remuneration Act, 1976,8 refers to the principle that men and women should receive the same wages for performing the same or substantially similar work,

whereas pay equity determines the value of work [175]. Women-oriented roles like nursing, teaching, or caregiving are undervalued compared to male-dominated professions.

Gender-Wage-Gap vs. Gender-Pay-Gap

The gender-wage gap is a narrower concept that creates boundaries between men and women doing the same work, whereas Gender-pay-gap gap is broader. It captures the overall differences in earnings across occupations, considering factors like part-time work, career interruptions, and undervaluation of women's work.

Factors of Gender-Pay-Gap

- Discrimination- Prejudices about women's abilities and commitment continue to shape pay practices.
- Occupational Segregation- Professions like teaching, caregiving, and administrative support are typically lower-paying, while high-paying sectors remain male-dominated.
- Glass Ceiling- The "glass ceiling" refers to invisible barriers that prevent women from advancing into leadership and decision-making roles.
- Motherhood Penalty and Caregiving Responsibilities - Career breaks due to childbirth, childcare, or eldercare disproportionately affect women's earnings.

International Legal Framework

- The International Labour Organization (ILO) has been at the forefront of setting global standards for wage equality.
- The Equal Remuneration Convention, 1951, ensures equal pay for equal work.

- The Discrimination (Employment and Occupation) Convention, 1958, prohibits employment discrimination and reinforces that access to work, conditions of employment, and pay should not be affected by gender discrimination.
- CEDAW (1979), often referred to as the "women's bill of rights," states that Article 11 specifically addresses equal pay for work of equal value, setting an international benchmark.

12International Labour Organization, Equal Remuneration Convention (No. 100), 1951.

13Constitution of India, 1950, Art 39(d).

14The Equal Remuneration Act (Act 25 of 1976), s 4

International Labour Organization, Discrimination (Employment and Occupation) Convention (No. 111), 1958.

- Universal Declaration of Human Rights (UDHR, 1948) – This was the first global declaration under which Article 23(1) guarantees everyone the right to work and to freely choose employment.11 Article 23(2) affirms the right to equal pay for equal work without discrimination.
- International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)- Article 7 ensures fair wages and equal remuneration for work without distinction of sex, alongside safe and healthy working conditions.
- The Sustainable Development Goals (SDGs, 2015–2030) reinforce wage equality. SDG 5 focuses on gender equality and explicitly calls for the elimination of wage disparities, while SDG 8 encourages equal pay for equal work.

Constitutional Provisions in INDIA : Article 1415 guarantees equality before the law and equal protection under the law. Article 1516 forbids discrimination on grounds of religion, race, caste, sex, or place of birth. Article 15(3)17 allows the state to make special provisions for women and children. Article 1618 ensures equal opportunity in public employment and prohibits gender-based discrimination in appointments, promotions, or pay. Article 39(d)19 instructs the state to ensure equal pay for equal work for both men and women. Article 4220 emphasizes humane working conditions, including maternity benefits, indirectly supporting women's participation in the workforce.

Equal Remuneration Act, 1976, and Code on Wages, 2019

The Equal Remuneration Act, 197621 (ERA) was India's first comprehensive statute addressing pay discrimination to prohibit gender-based differences in wages[176].

In 2019, the ERA was incorporated into the Code on Wages, which consolidated several labour laws, including the Minimum Wages Act and Payment of Wages Act. The Code retained the principle of equal remuneration for equal work, expanded its applicability across formal and informal sectors.22

15United Nations, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, Art 11.

16United Nations, Universal Declaration of Human Rights, 1948, Art 23(1).

17United Nations, Universal Declaration of Human Rights, 1948, Art 23(2).

18United Nations, International Covenant on Economic, Social and Cultural Rights, 1966, Art 7.

19United Nations, Sustainable Development Goals (2015–2030), Goals 5 and 8.

20Ibid.

21Ibid.

Government Initiatives and Policies

i. Labour Codes: The Code on Wages, along with other labour codes, consolidates wage laws and strengthens mechanisms for enforcement, ensuring compliance with equal pay norms.
ii. Gender Equality Programs: Schemes like Beti Bachao Beti Padhao, Pradhan Mantri Mudra Yojana, and the Support to Training and Employment Programme for Women (STEP) enhance women's economic participation.
iii. Data Collection Initiatives: Surveys like the Periodic Labour Force Survey (PLFS) gather gender-disaggregated data on employment and wages
iv. National Policy for Women (2016): Focuses on economic empowerment, equitable access to resources, and improved participation in the labour market.

Indian Case References:

- Randhir Singh v Union of India: Affirmed that equal pay for equal work is an essential part of Articles 14 and 16, establishing a constitutional foundation for wage equality.
- Air India Statutory Corporation v Nergesh Meerza: Addressed pay disparities in allowances and benefits, emphasizing that equality extends beyond base salary.
- Ministry of Women and Child Development, National Policy for Women 2016 (Government of India).
- Randhir Singh v Union of India (1982).
- Secretary, State of Karnataka v Umadevi: Highlighted that temporary or contract workers performing similar duties as permanent staff are entitled to comparable remuneration.
- Mohini v Union of India: Clarified that job evaluation must focus on the value of work rather than societal stereotypes, ensuring a fair assessment of compensation

Contemporary Issues and Challenges

- Gender Pay Disparity in Organized vs. Unorganized Sectors - In organized public and private sectors, the wage structures are relatively standardized, and legal safeguards like the Equal Remuneration Act and corporate policies are often applied.
- Lack of Pay Transparency - Pay transparency is essential not only for monitoring compliance but also for empowering women to negotiate fair wages and assert their legal rights.
- Intersectional Discrimination- Women from marginalized communities face multiple layers of disadvantage. Intersectionality affects access to education, training, professional networks, and high-paying jobs, further widening wage gaps.

Suggestions

- **Strengthening Enforcement Mechanisms** – Strengthening enforcement requires regular audits, strict penalties for non-compliance, and accessible platforms for women to report wage discrimination.
- **Introduction of Mandatory Pay Transparency and Audit Systems-** Transparency is crucial for addressing hidden wage disparities. Organizations should conduct internal audits to identify, rectify wage gaps.

- **Gender-Sensitive Corporate and HR Policies -** Workplace policies play a critical role in promoting wage equality and supporting women's career growth. Implementing structured, merit-based processes to eliminate subjective gender biases, introducing remote work, and childcare support to accommodate caregiving responsibilities.
- **Equal pay is a non-negotiable principle-** where of justice, equity, and human dignity. While India has made significant progress through constitutional provisions, legislation, judicial interpretation, and policy initiatives, closing the gender pay gap remains an ongoing challenge. By reinforcing legal frameworks, promoting transparency, empowering women in leadership, and fostering collaboration among all stakeholders, India can move closer to a labor market that truly reflects the principles of equality, fairness, and inclusive growth.

II. The Jurisprudence of invisible labour

In our daily lives, we come across various types of workers who work in order to make a living. Away from the spotlight, there are many people whose contributions towards our society remain unnoticed or negligible. This partiality in calculating the valuation of a work in our high-class society is considered "Workplace Invisibility."

- **Understanding workplace invisibility**

"Workplace Invisibility" primarily refers to the shifting of the limelight of a worker, either by taking away the credit or by not remunerating the amount of work contributed by the worker. In other words, it mainly refers to home-based workers, domestic workers, and unpaid care workers, whose work goes unrecognized and undercounted in national statistics, lacks formal contracts and social protection, and often goes uncompensated or underpaid. This phenomenon is deeply linked to the gendered nature of the economy, with women disproportionately affected by performing unpaid domestic and care work, which limits their participation in formal employment and further entrenches their invisibility[177].

23Air India Statutory Corporation v Nergesh Meerza (1981).

24Secretary, State of Karnataka v Umadevi (2006).

- **Determinants of workplace invisibility**

The major causes of workplace invisibility can be broadly categorised into reasons affecting the Informal Workforce (systemic neglect) and reasons affecting Formal Employees (unrecognised labour and bias).[178]

Here are the key reasons for workforce invisibility:

Systemic and Legal Reasons

This category is classified into two sub-categories as follows:

- **Lack of Formal Recognition and Legal Protection:** This includes statistical neglect, absence of labour law coverage, and complex supply chains. Workers, especially women workers, are often denied their rights due to no knowledge of their legal rights as well as the complexity of the ratio of men and women in a workplace.
- **Perception of Work as 'Unskilled' or 'Support':** Housekeeping, cleanness, parenting, sex work, and farming are frequently culturally undermined. Because of their pathetic social condition, the workers eventually become unknown and receive minimal or no compensation or respect.[2]

→ **Cultural and Gendered Reasons**

This refers to Invisible Labour or Office Housework, tasks essential for the organization's smooth functioning, but are disproportionately assigned to and performed by specific demographic groups (predominantly women) and are not rewarded. Further, this is classified into the following:

- Gendered Norms and Expectations, which means that Societal Conditioning Women are culturally expected to be "nurturing," "communal," and "accommodating." In the workplace, this translates into an expectation to volunteer for tasks related to emotional
- care, team morale, and administration. This includes the Fear of Backlash and Double Burden.
- Organisations define "valuable work" based on metrics that lead to revenue or high-profile outcomes. Tasks like mentoring, serving on low-profile committees, and improving office culture are essential, but they are generally not included in performance reviews, bonus calculations, or promotion criteria. They are seen as "extra" or "support" rather than "core leadership work.

25V. Mohini v Union of India (2010).

25What Does Work- from- Home mean for Women, available at: https://scroll.in/magazine/854568/the-stories-of-the-37-4-million-invisible-and-underpaid-home-based-workers-in-india (last visited on October 04, 2025)

→ **Managerial and Organisational Reasons**

These factors mainly determine the work process and marginality of an organisation, which is sub-categorized as follows:

- **Lack of Structured Recognition and Feedback:** When recognition relies on spontaneous praise or subjective memory, highly visible, self-promoting employees benefit, while introverts fade into the background. Alongside, managers may unconsciously favour employees who are similar to them (affinity bias) or those who communicate loudly and frequently (extroversion bias), overlooking equally valuable contributions from quieter or different-style workers.
- **Distance Bias (Remote Work):** In hybrid or remote environments, employees who are not physically present in the office can suffer from Proximity Bias. Decision-makers may unconsciously allocate better projects or developmental opportunities to those they see face-to-face, causing remote workers' efforts to go unseen and unrewarded[179].
- **Lack of Inclusion for Marginalised Groups:** Employees from marginalised groups (e.g., those based on race, caste, religion, or sexual orientation) are often asked to lead Diversity, Equity, and Inclusion (DEI) initiatives without any formal adjustment to their workload or compensation. This emotional and strategic work is both invisible (unpaid) and taxing.

- **Concealment of Invisible Conditions:** The workers with undetectable persistent illnesses frequently choose to suppress their illnesses for the fear of discrimination, being perceived as unfit, or missing an advancement opportunity in their job.

→ **WOMEN: WORKPLACE INVISIBLE OR NOT?**

Women represent a critical and highly visible component of workplace invisibility, often performing essential tasks in both the formal and informal sectors that are systematically undervalued, unrecorded, and unrewarded due to deeply ingrained gender roles and biases.[4]

In India, most of the women in the workplace are considered to contribute negligible or nothing to the organisation. At the same time, we shall consider that women are a vital part of society, without

---

26Why Women Stay Out of the Spotlight at Work, available at: https://hbr.org/2018/08/why-women-stay-out-of-the-spotlight-at-work (last visited on October 04, 2025).

Invisible Work, Visible Workers, available at: https://www.cambridge.org/core/books/beyond-the-algorithm/invisible-work-visible-workers (last visited on October 05, 2025). available at: https://www.ceo-review.com/5-ways-management-invisibility-impedes-workforce-productivity (last visited on October 05, 2025) .

whom society cannot run smoothly. For instance, housewives are considered to be a part of society, but as a family, we sometimes fail to appreciate their contribution. Similarly, as a society, we consider brothels as an untouchable part of a civilized society; the workers working there are refrained from socio-enhancing activities which will enlighten them, but we fail to consider the amount of revenue generated by them per annum. In India, the brothel business alone generates about Rupees sixty-six Thousand Crores of revenue per annum.[5] This means that the sex-trading generates almost 15 to 20 percent of the total Gross Domestic Product of the country, yet the workers involved are not considered to be a part of our civilized society. Similarly, the industry of domestic help generates an informal revenue of Rupees 1.3 Trillion per year, which is unfortunately shaded under the invisibility umbrella.

These jobs or works, which are considered not so vital for society's development, generate a huge amount of revenue that needs to be addressed in the limelight.

→ **METHODS TO ERADICATE WORKPLACE INVISIBILITY**

To combat professional invisibility, people should develop a strong sense of self, share their accomplishments with the world, build connections with influential people, and look for opportunities to become well-known. Organizations can fight this by fostering a friendly environment, educating staff about implicit discrimination, implementing balanced recognition programs, and providing collaboration.

Organizations should train managers and staff to actively listen to all team members while also educating them about unconscious biases that cause some individuals to be neglected.

- **Remarks**

While self-advocacy is important, sustainable change depends on organizational leadership dismantling unconscious bias and fostering an inclusive culture where all contributions are seen, heard, and valued. Dealing with workplace invisibility requires both individual agency and collective responsibility. Employees must advocate for themselves, but organizations must create the supportive, equitable conditions that make it possible. By recognizing and valuing the full spectrum of work executed by all employees, an organization does more than just address a single issue; it builds a more engaged, innovative, and resilient workforce over the long term.

Women's Protective Laws in India: A Critical Legal Analysis:

India has a strong legal framework that seeks to protect women and promote gender equality. This development reflects centuries of changing social dynamics. Despite significant progress, challenges remain in ensuring fairness and equality for women. The legal framework for women in India

includes various acts that tackle issues like domestic violence, workplace harassment, property rights, and equal pay. Key laws include the Protection of Women from Domestic Violence Act, 2005 (DVA), the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (SHW Act), the Dowry Prohibition Act, 1961, the Maternity Benefit Act, 1961, and the Equal Remuneration Act, 1976 (ERA). The Indian Constitution, particularly Article 21, guarantees the right to life and dignity for all citizens, including women.

The DVA, 2005, gives legal options for those facing domestic abuse. It offers protection orders, residence orders, and monetary relief. The SHW Act, 2013, establishes guidelines for dealing with sexual harassment at work. It requires companies to set up internal committees and a policy for preventing sexual harassment. This act broadly defines sexual harassment and provides protection beyond just employee-employer relationships. The ERA, 1976, guarantees equal pay for equal work and bans gender-based discrimination in recruitment and promotion[180].

The Maternity Benefit Act, 1961, allows maternity leave, which was extended to a maximum of 26 weeks by a 2017 amendment. The Dowry Prohibition Act, 1961, makes the giving and receiving of dowry illegal, protecting women from related demands and harassment. Additionally, the Hindu Succession Act, 1956, revised in 2005, gives daughters equal rights to ancestral property. Other protective measures include the Right to Free Legal Aid under the Legal Services Authorities Act, 1987, and the Right to Self-Defence under Section 100 of the Indian Penal Code (IPC).

The National Commission for Women Act, 1990, created the National Commission for Women (NCW) to support and promote women's rights. Despite these legal efforts, implementation challenges persist. Problems like lack of awareness, societal norms, and weak enforcement hinder

---

27Prostitution in India Statistics, available at: https://zipdo.co/prostitution-in-india-statistics (last visited on October 04, 2025).

28The Indian Domestic Helper Market: Comprehensive Analysis, available at: https://ezyhelpers.com/blog/market (last visited on October 04, 2025).

29How to End the Unfairness of Invisible Work, Mitra Kalita, available at: https://time.com/charter/6317237/how-to-end-the-unfairness-of-invisible-work (last visited on October 04, 2025).

30Laws for Women in India: An Overview. [LexisNexis India]

31Employment Law Overview India: Anti-Discrimination Laws. [LEGlobal]

32Protection Laws for Women: Effective Country Analysis. [iPleaders Blog]

the full realization of these rights. There are also concerns about the misuse of some laws aimed at helping women, such as Section 498A of the IPC, which can wrongfully implicate innocent people. This situation highlights the need for reforms to ensure these laws are applied fairly while keeping their protective purpose.

Additionally, practices like Female Genital Mutilation (FGM), which are not specifically addressed by current laws, are being challenged in courts for violating women's rights to privacy, bodily autonomy, dignity, and equality under Article 21 of the Constitution. The Supreme Court is currently looking at the constitutionality of 'khatna,' a form of FGM[181]. Effective enforcement of these laws requires solid legislation, greater awareness among women, a supportive law enforcement system, and community involvement to connect victims to the justice system.

III. **Conclusion:**

In exploring gender at the margins, it's clear that inequality stems not just from overt discrimination but from deep-rooted structures that favor certain identities. The marginalization of women and gender minorities shows how social, cultural, and legal systems still function through exclusionary norms that appear neutral. Recognizing gender at the margins means acknowledging the silent struggles that happen in workplaces, homes, courts, and public life, where power is unevenly shared and justice is often slow. Achieving true equality requires more than protective laws or symbolic actions; it needs a change in mindsets and institutions to focus on the real experiences of those historically pushed aside. Only by listening to voices at the margins can we turn the promise of justice and equality from an abstract concept into a real and inclusive experience.

---------- ****----------

33Misuse of Legal Protection by Women. [Academia.edu]

34Examining the Constitutionality of Female Genital Mutilation in India. [IJLLR Journal]

35Misuse Of Women-Centric Laws In India: An Analysis. [IJLLR Journal]

Chapter-VIII

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

By

Modhurima Dalui

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. Athough 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 plays 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 demonstrates that how these constitutional frameworks has 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 has 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.

_____*****_____

Conclusion

The discourse on *Law of the Margins* reveals that the evolution of India's legal framework has been a gradual but powerful journey toward transforming exclusion into empowerment. Historically, marginalized communities were silenced by systems of oppression rooted in colonial legacies, caste hierarchies, and socio-economic disparities. However, through constitutional safeguards, legislative reforms, and progressive judicial interpretations, the Indian legal system has gradually become a tool for inclusion rather than exclusion. The Constitutional frameworks embodies the vision of social justice by guaranteeing equality, dignity, and protection to those historically deprived of voice and representation. Landmark Judicial interventions also reaffirm the judiciary's vital role in bridging socio-economic divides and actualizing constitutional promises.Yet, despite these progressive strides, true inclusion remains an unfinished project. Persistent inequalities, systemic discrimination, and limited access to justice continue to marginalize vulnerable communities. The law must therefore evolve beyond its formal structures to embrace restorative, participatory, and community-based models that empower people at the grassroots. This calls for an inclusive justice system that integrates legal literacy, affordable access to courts, and respect for indigenous and alternative dispute resolution systems. Legal reforms must also be accompanied by social awareness and institutional accountability to dismantle the structural barriers that perpetuate inequality.

Ultimately, *Law of the Margins* underscores that justice cannot be confined to statutes and judgments—it must manifest in lived experiences of equality, respect, and human dignity. The pursuit of inclusive justice is not a destination but a continuous journey requiring collective will from the State, civil society, and the people themselves. Reimagining law as an instrument of social transformation will ensure that those at the margins are not merely protected by law but are active participants in shaping it, thereby realizing the true spirit of India's democracy and constitutional vision.

---------- ****----------