

# Social Exclusion And Criminal Law

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“At the present, as well as any other time, the centre of gravity of legal development lies not in legislation nor in juristic science nor in judicial decision but in society itself”. (Ehrlich 1936)

**T**he Indian Penal Code was drawn up, which was intended to provide for a general Penal Code for India. In addition to the Indian Penal Code, there are a large number of penal legislations both pre Independence and post Independence, national and State specific on specific issues enacted from time to time. To what extent did the basic criminal law initially take note of the aspects of social discrimination in Indian society, particularly caste-based discrimination? To what extent did exploitation of labour figure in the Penal Code? The Constitution of independent India incorporated a number of mandates for the elimination of the inequities and inequalities prevalent in the Indian society and for promoting equality and social justice.

Following the stipulation in Article 17 of the Constitution, the Untouchability (Offences) Act was enacted in 1955, five years after the Constitution came into force. This was replaced by the comprehensive Protection of Civil Rights Act enacted in 1976, a quarter of a century after the Constitution. Even forty years after their Constitutional prohibition, untouchability and atrocities continued to be so widely prevalent that the State enacted a special law - the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in the year 1989 (which came into effect from 30 January 1990). The term “ Atrocity” was not a term of law until 1989.

An important point to be noted is that crimes by the dominant sections of the community against the weaker sections, have been treated on a special footing. In fact, the same crime defined in the Indian Penal Code, becomes an enhanced crime, so to speak, in view of the relations of power. This can be seen more clearly from Section 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989.

The Constitution assured the dignity of the individual human being in its very Preamble. But it was only four decades later that a statutory prohibition of manual scavenging was provided for through the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act which was passed in 1993. Article 23 of the Constitution prohibits traffic in human beings and begar and similar forms of forced labour and declares it a punishable offence. It took a quarter of a century for the Bonded Labour System (Abolition) Ordinance to be promulgated in 1975 and the Bonded Labour System (Abolition) Act to be enacted in 1976. While on the one hand, the Courts have elevated the right to minimum wages to a fundamental right and even construed non payment of minimum wages as forced labour, the law on minimum wages - the Minimum Wages Act - which was enacted in the year 1948 well before the Constitution was adopted is yet to be brought in line with the Constitutional commitment for ensuring a living wage.

This chapter will examine the network of constitutional and penal provisions on the question of social exclusion and will explore the implications of these realities for an understanding of criminology in India.