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INTERSECTIONALITY AND CONSITUTIONAL JUSTICE: ADDRESSING MULTIPLE DISCRIMINATION IN INDIA

K. P. Praveena*

Abstract

The Indian Constitution is founded upon the principles of equality, dignity, liberty and social justice. Yet, discrimination in Indian society frequently operates through multiple and overlapping identities such as caste, gender, disability, religion, tribal identity, class and sexual orientation. Traditional approaches to equality often examine these grounds separately, thereby failing to capture the complex experiences of individuals who suffer discrimination because of the intersection of two or more identities. The concept of intersectionality, developed principally through the work of Kimberlé Crenshaw, provides an essential framework for understanding such multiple and interconnected forms of disadvantage. Constitutional jurisprudence of India has gradually moved from general equality towards substantive equality. Art. 14, 15 and 16 provide the constitutional foundation for combating discrimination, while Art. 17, 21, 38, 39, 46 and other provisions reinforce the commitment to social justice. The Honourable SC of India has increasingly recognised the significance of structural and indirect discrimination. In *Patan Jamal Vali v. State of AP*, the Court explicitly engaged with intersectionality in the context of caste, gender and disability. Similarly, *Lt. Col. Nitisha v. UOI* recognised indirect discrimination as inconsistent with substantive equality. This article examines the constitutional basis of intersectionality in India, analyses judicial developments concerning multiple discrimination, and evaluates the limitations of existing legal frameworks. It argues that constitutional justice requires a shift from a single-axis understanding of discrimination towards an intersectional approach capable of identifying cumulative disadvantage. The article proposes an intersectional constitutional framework based on substantive equality, dignity, reasonable accommodation, anti-stereotyping, representation and transformative constitutionalism.

Keywords - Intersectionality, Constitutional Justice, Substantive Equality, Multiple Discrimination, Caste, Gender, Disability, Social Justice, Transformative Constitutionalism.

I. INTRODUCTION

Equality is the most foundational principle of the Indian constitutional order. The Preamble promises justice— social, economic and political— and equality of status and opportunity. Part III of the Constitution provides enforceable fundamental rights designed to protect people against arbitrary action and discriminatory practices of the state. Art. 14, 15 and 16 constitute the core constitutional guarantees of equality and non-discrimination.[1] However, the experience of discrimination is rarely confined to a single category. A woman belonging to a Scheduled Caste may experience

* Assistant Professor, School of Excellence in Law, Tamil Nadu Dr. Ambedkar Law University, Chennai 600113, Tamil Nadu, India.

[1] Constitution of India, arts. 14–16. The official constitutional text provides Article 15's prohibition on discrimination on specified grounds and Article 16's guarantee of equality of opportunity in public employment.

discrimination differently from a woman belonging to a socially dominant group. Similarly, a person with a disability belonging to a Scheduled Tribe may experience barriers that cannot adequately be understood either through disability discrimination or caste discrimination considered independently. This phenomenon is described through the concept of intersectionality.

Intersectionality recognises that social identities do not exist in isolated compartments. Caste, gender, disability, class, religion, ethnicity and other characteristics may intersect to create distinctive forms of disadvantage. The result is not merely the addition of different forms of discrimination; rather, the interaction between identities may produce a qualitatively different experience of exclusion. Kimberlé Crenshaw famously used the concept of intersectionality to explain how Black women could experience discrimination that was inadequately captured by legal frameworks treating race and sex as separate categories.[2]

Intersectionality evolved beyond its initial conception to provide a broader lens through which structural inequalities and overlapping forms of disadvantage can be understood. Indian constitutional jurisprudence has increasingly moved in this direction. The SC specifically examined the intersection of caste, gender and disability and emphasised the significance of an intersectional understanding of discrimination.[3] The judgment represents an important development because it recognises that discrimination cannot always be understood through a specific protected characteristic. The central question, therefore, is whether Indian constitutional law can adequately respond to multiple and intersectional discrimination and, if not, how constitutional jurisprudence can evolve towards a more inclusive conception of justice.

II. MEANING OF INTERSECTIONALITY

Intersectionality gradually evolved into a comprehensive analytical framework for examining how multiple and overlapping forms of identity interact to produce and reinforce structural inequality. It challenges the assumption that categories such as gender, caste, race, disability or class operate independently. Crenshaw's early scholarship distinguished between different dimensions of intersectionality, particularly structural intersectionality, political intersectionality and representational intersectionality. Structural intersectionality refers to circumstances in which social and institutional structures interact to produce distinctive forms of disadvantage. Political intersectionality concerns the ways in which individuals situated at the intersection of different disadvantaged groups may be inadequately represented by movements focused upon a single identity. Representational intersectionality concerns stereotypes and cultural representations that reinforce disadvantage.[4] In the Indian context, intersectionality is particularly relevant because social hierarchy is historically structured through caste, patriarchy, religious divisions, economic inequality and other forms of social stratification.

[2] Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 139 *University of Chicago Legal Forum* 139.

[3] Patan Jamal Vali vs. The State of Andhra Pradesh, MANU/SC/0323/2021.

[4] Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' (1991) 43 *Stanford Law Review* 1241.

Multiple Discrimination

Multiple discrimination occurs when an individual faces discrimination on more than one ground. However, intersectional discrimination goes further. For example, discrimination against a woman may be based upon gender. Discrimination against a Dalit person may be based upon caste. But discrimination against a Dalit woman may operate through a combination of caste and gender in a manner that cannot be completely explained by either category separately. Thus, intersectionality requires courts to ask not merely "Was the individual discriminated against because of gender?" but also "How did gender operate in combination with caste, disability, class or other social characteristics to produce the disadvantage?" This distinction is essential for constitutional adjudication.

III. CONSTITUTIONAL FOUNDATIONS OF INTERSECTIONAL JUSTICE IN INDIA

Article 14 and Substantive Equality

Article 14 guarantees equality before the law and equal protection of the laws. Initially, equality jurisprudence was substantially interlinked with the doctrine of reasonable classification. Over time, however, the SC expanded Art. 14 beyond formal classification to encompass arbitrariness, dignity and substantive equality. The contemporary understanding of Art. 14 recognises that treating equals alike is not always sufficient to achieve genuine equality. Where individuals begin from structurally unequal positions, identical treatment may perpetuate rather than eliminate inequality. Intersectionality therefore complements the doctrine of substantive equality. It requires the judiciary to examine the actual social consequences of apparently neutral laws, policies and institutional practices.

Article 15 - Multiple Grounds of Discrimination

Art. 15(1) prohibits discrimination against citizens on grounds only of religion, race, caste, sex and place of birth.[5] Art. 15(3), 15(4), 15(5) and 15(6) permit specific forms of affirmative action. The wording of Art. 15 is particularly significant because it identifies several prohibited grounds. However, a narrow interpretation could treat these grounds as independent categories. An intersectional interpretation requires recognition that the grounds may operate together. For instance, caste and gender may combine to create a distinct form of disadvantage for Dalit women. Similarly, disability and gender may interact to produce obstacle that are not adequately captured by either disability law or gender equality law alone.

Article 16 - Equality of Opportunity

Art. 16 ensures the equality of opportunity in matters of public employment.[6] The provision is important because social disadvantage often translates into unequal access to education, employment and public institutions. Reservations for SC/ST and other disadvantaged groups represent a constitutional commitment to substantive equality rather than merely formal equality. An

[5] Constitution of India, art. 15(1). Article 15 also permits specified forms of affirmative action through clauses (3), (4), (5) and (6).

[6] Constitution of India, art. 16.

intersectional approach, however, requires attention to individuals who experience disadvantage within disadvantaged communities themselves.

Article 21 and Dignity

The right to life and personal liberty under Article 21 has been interpreted expansively by the Honourable SC to include dignity, autonomy, privacy and other dimensions of human development. Intersectional discrimination frequently affects not merely economic opportunities but also dignity and personal autonomy. Consequently, Article 21 provides an important constitutional foundation for an intersectional conception of justice.

Directive Principles and Social Transformation

Articles 38 and 46 are particularly relevant to intersectional justice. Article 38 instructs the State to promote the welfare of the people and minimise inequalities, while Article 46 instructs the State to promote the educational and economic wellbeing of weaker sections, particularly SC/ST.[7] These provisions demonstrate that the Constitution is not only concerned with preventing individual discrimination. It also seeks to revamp social structures that reproduce inequality.

IV. FROM FORMAL EQUALITY TO SUBSTANTIVE EQUALITY

Formal equality generally focuses on treating similarly situated persons alike. Although important, this model can overlook structural inequalities. Consider two candidates applying for employment. A formally equal recruitment rule may apply exactly the same criteria to both. However, if one candidate has historically experienced exclusion from education and employment because of caste, gender or disability, identical treatment may reproduce existing inequality. Substantive equality seeks to address this problem.

The Supreme Court's jurisprudence increasingly reflects this shift. The Court rejected a paternalistic restriction on women's employment and emphasised that laws based on gender stereotypes cannot be justified merely on the basis of purported protection.[8] The judgment is important for intersectionality because stereotypes often operate differently depending upon the social position of the individual.

V. JUDICIAL RECOGNITION OF INTERSECTIONALITY IN INDIA

Patan Jamal Vali v. State of AP[9]

This is the most significant Indian decision expressly engaging with intersectionality. The court concerned a woman belonging to a Scheduled Caste who was also a person with visual disability and had been sexually assaulted. The SC examined the interaction between caste, gender and disability. Justice D.Y. Chandrachud's judgment contains a detailed discussion titled *"Intersectionality: The Different Hues of Identity."* The Court analysed that when a woman's identity intersects with caste, class, religion, disability or sexual orientation, she may face discrimination and

[7] Constitution of India, arts. 38 and 46.

[8] *Anuj Garg v Hotel Association of India*, MANU/SC/8444/2007. The Supreme Court rejected legislation based upon sex stereotypes and considered the impact of such restrictions on women's equal citizenship.

[9] Patan Jamal Vali vs. The State of Andhra Pradesh, MANU/SC/0323/2021.

violence on multiple grounds. The Court recognised that the experience of a Scheduled Caste woman with a disability could not be adequately understood by examining caste, gender or disability separately. This became a significant conceptual development in Indian constitutional jurisprudence. The Court also cautioned against a narrow understanding of Art. 15 that would artificially separate different grounds of discrimination. Such an approach could fail to capture the actual operation of discrimination. The significance of *Patan Jamal Vali* lies in its recognition that constitutional adjudication must be sensitive to interlocking systems of power.

Lt. Col. Nitisha v. UOI [10]

The Honourable SC represents another major development in substantive equality. The case involved the denial of permanent commission to women officers in the Indian Army. The Court examined whether apparently neutral assessment criteria could nevertheless produce discriminatory effects. The Court recognised indirect discrimination, explaining that facially neutral criteria can be discriminatory when their underlying effects are ignored. The Court connected indirect discrimination with substantive equality and recognised that apparently neutral institutional structures may reproduce historical disadvantage. This approach is particularly relevant to intersectionality. Intersectional discrimination frequently operates through institutional rules that appear neutral on their face but disproportionately affect persons situated at the intersection of multiple disadvantaged identities. For example, a general requirement relating to physical ability, working hours, language, mobility or educational qualifications may appear neutral while creating disproportionate barriers for individuals experiencing combined disadvantages. The Court's recognition of indirect discrimination therefore provides a doctrinal basis for developing intersectional constitutional review. Scholarly analysis of *Nitisha* has similarly identified its importance in formally recognising indirect discrimination under Articles 14 and 15(1), while also noting unresolved questions concerning causation, comparators and justification.[11]

VI. INTERSECTIONALITY, GENDER AND CASTE

Caste and gender constitute two of the most significant structures of social hierarchy in India. Women from historically marginalised caste communities may experience discrimination within both caste and gender structures. Their experiences cannot necessarily be represented adequately either by mainstream women's rights discourse or by caste-based social justice discourse. The problem becomes especially visible in relation to, access to education, employment, land and property, political participation, sexual violence, access to healthcare, digital access, institutional representation and access to justice.

An intersectional approach requires the State and courts to examine how caste and patriarchy operate together. The SC & STs (Prevention of Atrocities) Act, 1989, is a significant legislative mechanism addressing caste-based violence. However, the effectiveness of such legislation must also be

[10] Nitisha and Ors. vs. Union of India (UOI) and Ors. (25.03.2021 - SC) : MANU/SC/0216/2021

[11] Vandita Khanna, 'Indirect discrimination and substantive equality in Nitisha: Easier said than done under Indian constitutional jurisprudence' (2022) 22(1) *International Journal of Discrimination and the Law* 74–86.

assessed from the perspective of women and other persons who experience overlapping forms of disadvantage.

VII. INTERSECTIONALITY AND DISABILITY

Disability provides another important dimension of intersectional constitutional justice. The RPD Act, 2016, reflects India's movement towards a rights-based understanding of disability.[12] However, disability rarely exists in isolation. A woman with a disability may experience gender discrimination, accessibility barriers, economic exclusion, violence, lack of educational opportunities and institutional paternalism. A person with disability belonging to a Scheduled Tribe may encounter geographical isolation in addition to caste and disability-based barriers. Therefore, disability rights must increasingly incorporate an intersectional perspective. The SC has also recognised the importance of reasonable accommodation and the limitations of a "one-size-fits-all" approach to disability.[13]

VIII. INTERSECTIONALITY AND TRIBAL COMMUNITIES

Intersectionality is particularly relevant to Scheduled Tribes and indigenous communities. Tribal women may experience overlapping disadvantage arising from tribal identity, gender, geographical isolation, poverty, lack of educational access, displacement, land alienation, inadequate healthcare and limited political representation. Article 46 specifically requires the State to promote the educational and economic interests of SC & STs and protect them from social injustice and exploitation.[14] The Fifth and Sixth Schedules further reflect the constitutional recognition of the distinct socio-cultural and administrative circumstances of tribal communities.

An intersectional constitutional framework must therefore recognise that tribal women cannot be treated merely as a subcategory of either women or Scheduled Tribes. Their experiences may be distinctive because of the interaction between gender, tribal identity, geography and economic disadvantage.

IX. INTERSECTIONALITY - SEXUAL ORIENTATION

The Supreme Court's recognition of gender identity and sexual orientation has expanded the constitutional understanding of equality and dignity. The constitutional morality protects individual autonomy, dignity and equality irrespective of sexual orientation.[15] Similarly, *NALSA v. UOI* recognised the constitutional rights of transgender persons and emphasised equality, dignity and self-identification.[16] These judgments provide an important foundation for intersectional constitutionalism because LGBTQ+ persons may simultaneously experience discrimination based

[12] Rights of Persons with Disabilities Act 2016.
[13] Ravinder Kumar Dhariwal and Ors. vs. The Union of India (UOI) and Ors., MANU/SC/1275/2021The SC rejected a simplistic "one-size-fits-all" approach to disability & recognised that disability is shaped by the interaction between impairment and social, economic and historical barriers.
[14] Constitution of India, art. 46.
[15] Navtej Singh Johar and Ors. vs. Union of India (UOI) and Ors, MANU/SC/0947/2018.
[16] *National Legal Services Authority (NALSA) v UOI*, MANU/SC/0309/2014.

on gender identity, caste, disability, religion or economic status. A person cannot be understood solely through one identity.

X. INTERSECTIONALITY AND TRANSFORMATIVE CONSTITUTIONALISM

The Indian Constitution has increasingly been interpreted as a transformative document. Transformative constitutionalism requires the Constitution to challenge entrenched structures of social hierarchy rather than merely regulate State power. Intersectionality strengthens this approach because structural inequality is rarely produced by a single institution or social category. The Supreme Court's decisions in cases concerning privacy, sexual orientation, gender equality, disability and caste demonstrate an expanding constitutional emphasis on dignity and substantive equality. The objective should therefore be to move from formal equality → substantive equality → transformative equality → intersectional constitutional justice. Intersectionality can thus be interpreted as an analytical tool through which transformative constitutionalism can become more responsive to the lived realities of disadvantaged communities.

XI. THE INTERSECTIONAL MATRIX IN THE INDIAN CONTEXT

Caste and Gender: The Double Burden

The intersection of caste and patriarchy—often termed *brahmanical patriarchy*—demonstrates how gendered violence and economic subjugation reinforce caste purity and social hierarchies.[17] Dalit and Adivasi women endure forms of violence that are qualitatively distinct from those faced by upper-caste women or Dalit men. Sexual violence against lower-caste women is frequently deployed as instrument of political control and community enforcement rather than an isolated gendered offense.[18] When the legal machinery evaluates such acts purely through the lens of gender-based violence (e.g., under the Bharatiya Nyaya Sanhita or the former Indian Penal Code) or purely through the lens of caste atrocities (e.g., under the SC & STs Prevention of Atrocities Act, 1989), it often overlooks how caste power dynamics explicitly shape sexual exploitation.[19]

Religious Identity, Gender, and State Bureaucracy

Religious minority women in India inhabit a complex legal and social landscape where patriarchy within personal laws intersects with systemic marginalisation driven by socio-economic pressures.[20] A single-axis framework forces individuals to choose between gender rights and community identity, obscuring how structural violence operates at their intersection.

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[17] Uma Chakravarti, 'Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State' (1993) 28(14) *Economic and Political Weekly* 579, 581.

[18] Human Rights Watch, *Broken People: Caste Violence Against India's "Untouchables"* (Human Rights Watch 1999) 45–52; Dalit Women Speak Out, *Violence against Dalit Women in India* (National Campaign on Dalit Human Rights 2011).

[19] Indira Jaising, 'Intersectionality of Caste and Gender' (2014) *The Hindu*.

[20] Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999) 88–102.

Disability, Queer, and Transgender Marginalisation

Non-normative sexualities, gender identities, and physical abilities add additional layers of marginalisation. Persons with disabilities within lower socio-economic or lower-caste backgrounds face compound barriers to physical access, employment, and legal agency.[21] Similarly, despite legal recognition, transgender individuals from Dalit or lower-income backgrounds continue to face disproportionate police violence and housing discrimination due to the compound burden of caste and gender variance.[22]

XII. JUDICIAL PRECEDENTS AND LEGAL BLIND-SPOTS

Indian jurisprudence has historically struggled to integrate intersectional analysis, though recent shifts show signs of transformation. The SC recognized that discrimination under Article 15(1) must account for overlapping identity factors, noting that discrimination is rarely categorical or single-dimensional.[23]

However, legislative design remains largely compartmentalized:

- Reservation and Affirmative Action: The quota system under Article 15(4) and Article 16(4) operates primarily on single-axis categories (SCs, STs, OBCs, etc,). While horizontal reservations exist for groups like women or persons with disabilities, their operational implementation across intersecting vertical categories remains inconsistent.[24]
- Workplace Harassment: Laws such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 treat "women" as a uniform demographic, failing to account for how caste status or informal employment conditions drastically reduce a worker's capacity to seek redress.[25]

XIII. TOWARDS SUBSTANTIVE EMPOWERMENT: POLICY RECOMMENDATIONS

To bridge the gap between formal rights and substantive justice, structural reforms across legal and administrative domains are essential:

1. *Statutory Anti-Discrimination Framework:* India requires comprehensive, unified anti-discrimination legislation that explicitly recognizes compound and intersectional discrimination across private and public sectors.[26]

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[21] Anita Ghai, *Rethinking Disability in India* (Routledge 2015) 64–78. Ghai highlights how physical disability in India is exacerbated by structural poverty and lower-caste marginalisation.

[22] *National Legal Services Authority (NALSA) v UOI, MANU/SC/0309/2014*; *see also* Gee Imaan Semmalar, 'Unpacking Transphobia in the Context of Caste' (2014) 49(43/44) *Economic and Political Weekly* 32.

[23] *Navtej Singh Johar and Ors. vs. Union of India (UOI) and Ors, MANU/SC/0947/2018*, paras 422–425 (opinion of Chandrachud, J., emphasizing that discrimination based on sex under Article 15 must encompass intersecting grounds of sexual orientation and personal autonomy).

[24] Madhav Khosla, *The Indian Constitution* (Oxford University Press 2012) 85–92.

[25] Kalpana Kannabiran, *Tools of Justice: Non-discrimination and the Indian Constitution* (Routledge 2012) 210–225.

[26] Centre for Law and Policy Research (CLPR), *Equality Bill, 2019: Draft Bill to Prohibit Discrimination* (CLPR 2019). The draft proposal advocates for explicit legal coverage of intersectional discrimination.

2. *Disaggregated Data Collection:* Policy planning and welfare allocation must rely on disaggregated data that tracks intersecting identities (e.g., literacy and employment rates specifically among Dalit women or rural persons with disabilities) rather than aggregate categories.[27]
3. *Reform in Judicial Evaluation:* Courts and statutory bodies (such as National Human Rights Commission and National Commissions for Women and Scheduled Castes) must incorporate intersectional impact assessments when evaluating rights violations and policy outcomes.[28]

XIV. CONCLUSION

Intersectionality provides an important framework for understanding the complex nature of discrimination in Indian society. Caste, gender, disability, tribal identity, religion, class and sexual orientation frequently interact to produce forms of disadvantage that cannot be adequately understood through single-axis approaches.

The Constitution of India possesses substantial resources for addressing these inequalities. Art. 14, 15 and 16 establish the fundamental equality framework, while Article 21 protects dignity and autonomy. Articles 38 and 46 reinforce the constitutional commitment to social justice and the advancement of disadvantaged communities.

The Supreme Court's jurisprudence has progressively strengthened this framework. *Anuj Garg* challenged gender stereotypes; *Navtej Singh Johar* expanded the constitutional protection of dignity and equality; *Lt. Col. Nitisha* recognised indirect discrimination; and *Patan Jamal Vali* expressly introduced intersectionality into constitutional reasoning.

The future of constitutional justice in India therefore lies not merely in preventing discrimination based upon isolated characteristics but in recognising how multiple structures of disadvantage interact. Intersectionality should consequently become an integral component of substantive equality and transformative constitutionalism. A constitutional democracy can achieve genuine equality only when it recognises the lived experiences of those located at the intersections of multiple forms of disadvantage. The constitutional promise of equality should ultimately mean more than equal treatment. It should mean the creation of conditions in which every individual, regardless of intersecting identities, can enjoy equal dignity, equal opportunity, equal participation and equal citizenship.

[27] Rohini Somanathan, 'Caste Reviews and Statistics' (2010) 45(3) *Economic and Political Weekly* 12.
[28] Jayna Kothari, 'Social Rights Jurisprudence and Intersectional Discrimination in India' (2019) 15(2) *Law, Social Justice & Global Development* 45.