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Discrimination at the Intersection: Challenges Faced by Dalit Women in India

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The complex dynamics of identity-based discrimination are examined in this article, along with the pressing need for a thorough grasp of intersectionality in the fight for equality. It highlights how discrimination is complex, breaking down barriers based on caste, gender, sexual orientation, class, race, and religion. The discussion revolves around Kimberle Crenshaw's theory of intersectionality, which emphasizes how interconnected the discriminations that people experience are. After that, the emphasis turns to the Indian context, highlighting the distinct intersectionality between gender and caste hierarchies. The suffering that Dalit women endure at the hands of different types of violence highlights how serious intersectional discrimination is. Examining the legal side reveals legal loopholes that need to be filled in order to adequately combat intersectional discrimination. Constitutional provisions recognize the need for specific legislation, as suggested by the Equality Acts, which acknowledges the limitations while providing a comprehensive solution. The essay emphasizes how crucial it is to identify and deal with the subtleties of prejudice in order to promote a society that is more just and equal.

Keywords: *gender-based violence, discrimination, caste, women, dalit women.*

INTRODUCTION

A person's identity is a complex web made up of many different strands, including race, religion, class, caste, sexual orientation, and culture. In the continuous fight for equality, understanding the complex interactions between these variables is essential. The quest for equality is based on recognizing the complex network of linked discriminations that different populations, particularly the underprivileged, must contend with, rather than on trying to bring disparate forces together behind a single issue. Caste, gender, sexual orientation, class, race, and religion are all covered by this site. For example, the knowledge of sexism that women experience is not as often recognized as the fact that there are specific groups of women who face particular problems. Transgender women face discrimination, while women with disabilities deal with sexism and ableism. Examining transgender, disabled and Dalit women simultaneously and navigating the intersections of casteism, ableism and transphobia reveals further complexity. When violence is not examined from the perspective of many identities, the difficulties encountered are portrayed inaccurately, which may impede the implementation of appropriate remedies.

It is critical to comprehend the complex nature of discrimination. Every layer of identification adds complexity to people's lives, and understanding these subtleties is crucial for a thorough strategy to achieve equality. We open the door to more inclusive advocacy and focused initiatives to address the unique difficulties experienced by distinct identity groups by recognizing the variety within marginalized communities and the range of prejudice they suffer. This detailed knowledge is essential to breaking down the intricate systems of inequality and promoting a society in which every person, regardless of background or identity, may prosper.

THEORY OF INTERSECTIONALITY

Kimberle Crenshaw first coined the theory of intersectionality in the context of racial discrimination faced by women in the USA.¹ She describes the concept with the following

¹ Kimberle Crenshaw, 'Demarginalizing The Intersection Of Race And Sex : A Black Feminist Critique Of Anti Discrimination Doctrine, Feminist Theory, And Anti-Racist Policies' (1989) 1989(1) University of Chicago Legal Forum <<https://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>> accessed 11 November 2023

hypothetical in her major work on the subject: *“Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination.”*²

In her thesis, Crenshaw argues that laws against discrimination based on race and gender, as well as the American legal precedents she studied, are designed to cater to the interests of the most advantaged members of the targeted groups. She contends that gender discrimination is multifaceted, emphasizing that rape’s usage as a means of instilling racial dread is overlooked when it is solely focused on as a symbol of male supremacy over female sexuality. According to Crenshaw, the current legal frameworks may overlook the complex difficulties experienced by people who deal with several forms of discrimination because they prioritize the experiences of those who are at the intersection of privilege. Her analysis essentially emphasizes the need for a more thorough comprehension of discrimination that goes beyond crude classifications, advocating a recognition of the intersecting dynamics of gender and race in legal discourse.³

Gender-based violence is a common form of targeted discrimination that dehumanises women from underprivileged socioeconomic groups. According to Gauthier De Beco⁴, intersectionality enables a concrete understanding of structural discrimination in an unequal society. By doing this, the real-life struggles of repressed women are highlighted.

INTERSECTIONALITY IN INDIA

When interpreted in the Indian context, intersectionality represents a particularly unique and diverse interpretation of the idea. It imbibes the colour of caste and religion, as well as other opposing diverse characteristics that are vaguely present in international literature. In Indian

² *Ibid*

³ *Ibid*

⁴ Nandini Ramanujam & Nicholas Caivano, ‘Centering economic inclusion in policy for realizing disability rights in India’ (2023) *Disability & Society* 1-24 <<https://doi.org/10.1080/09687599.2023.2198664>> accessed 11 November 2023

society, caste and gender hierarchies are inextricably intertwined, since the 'purity of caste' is preserved through exercising control over women's bodies.

In India, Dalit women are largely affected by the phenomenon of intersectional discrimination. Being caught in a highly caste-based patriarchal culture, these women are marginalised not just on the basis of gender, but also on the basis of social discrimination against Dalits. These various levels of oppression combine and make Dalit women more vulnerable. It then progresses to difficulty with the police in registering accusations against upper-caste criminals, and finally to a lack of judicial action against the said perpetrators. A study conducted by International Dalit Solidarity Network on 500 Dalit women from across India who experience violence shows that 62.4% of them have faced one or more incidents of verbal abuse, 54.8% have faced physical assault, 46.8 % had faced sexual harassment and assault, 43% of them faced domestic violence and 23.2% were victims of rape.⁵ Fearing additional prejudice by police or a lack of court action, many of these instances go unreported, making it difficult to assess the true magnitude of the issue. Even the types of violence that Dalit women face are horrifying and awful. They have to go through verbal abuse, naked parading, mutilation, being forced to drink urine and eat faeces, branding, etc. Higher caste members also coerce them into the devadasi system, rape threats and sexual assaults and even members of their own communities all contribute to the violence.

No matter how socially privileged a woman is, being raped is one of the most horrific experiences any woman can undergo. However, the assault experiences of a woman who belongs to a Scheduled Caste community differ because the assault is the consequence of the interlocking of distinct power structures at work. When a woman's identity intersects with her caste, class, religion, disability, and sexual orientation, she may experience violence and prejudice on two or more grounds. In such a situation, it is crucial to analyse the interplay between various oppressions to determine how a Scheduled Caste woman's experience of subordination is unique.

⁵ Shonotra Kumar, 'Intersectional Discrimination: Understanding the Indian Perspective' (*Nyaaya*, 15 February 2022) <<https://nyaaya.org/guest-blog/intersectional-discrimination-understanding-the-indian-perspective/>> accessed 12 November 2023

LEGAL ASPECT

Article 14 of the Indian constitution ensures the right to equality and non-discrimination⁶. However, the legal environment is far from fulfilling this constitutional commitment. The current constitutional and legal framework does not address intersectional⁷ and horizontal discrimination since discrimination legislation statutes are fragmented and cumbersome.

Multiple marginalising identities can exacerbate disadvantages for persons who belong to more than one disadvantaged group, a phenomenon known as intersectional discrimination. Article 15⁸ of the Indian constitution makes no mention of intersectional discrimination. It only prohibits discrimination on the basis of race, religion, class, sex, or place of birth.

In the case of *Anjali Roy v State of West Bengal*⁹, a college's policy of not granting admission to women was challenged. The court ruled as follows: “... *the discrimination which is forbidden [in Article 15(1)]¹⁰ is only such discrimination as is based solely on the ground that a person belongs to a particular race or caste or professes a particular religion or was born at a particular place or is of a particular sex and on no other ground. Discrimination based on one or more of these grounds and also on other grounds is not hit by the Article.*”

This reasoning was reinforced in the case of *AIR India v Nargesh Mirza*¹¹, in which the constitutionality of the Air India Employees Service Regulations was challenged. The court stated,

“What Articles 15(1)¹² and 16(2)¹³ prohibit is that discrimination should not be made only and only on the ground of sex. These Articles of the Constitution do not prohibit the State from making discrimination on the ground of sex coupled with other considerations.”

⁶ Constitution of India 1950, art 14

⁷ Kumar (n 5)

⁸ Constitution of India 1950, art 15

⁹ *Anjali Roy v State of West Bengal* AIR 1952 Cal 822

¹⁰ Constitution of India 1950, art 15(1)

¹¹ *AIR India v Nargesh Mirza* (1982) SCR (1) 438

¹² Constitution of India 1950, art 15(1)

¹³ Constitution of India 1950, art 16(2)

Legislations such as the Rights of Persons with Disabilities Act 2016¹⁴, the Schedule Castes and Schedule Tribes Prevention of Atrocities Act 1989¹⁵, the Transgender Persons (Protection of Rights) Act of 2019¹⁶, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013¹⁷ protect different characteristics and operate in silos, removing the possibility of filing an intersectional discrimination claim. Multiple sections are applied for jurisprudence, but scattered laws do nothing to combat horizontal discrimination.

The majority of the fundamental rights guaranteed by the Indian Constitution, including Article 15¹⁸, are only applicable to the state and not to private individuals or companies. The sole exceptions are Articles 15(2)¹⁹ and 17²⁰, which are likewise applicable to private enterprises. The scope of these two articles, however, is limited.

At best, these laws provide a half-baked framework for enforcing fines on entities that discriminate against the specific identifiers protected by them. Nonetheless, none of these laws include a positive responsibility to protect equality and diversity.

CONCLUSION

Even with more stringent regulations in place, violence against women still occurs in India, which is a worrying fact. The majority of sexual abuse occurs to women from disadvantaged socioeconomic backgrounds, especially during events such as caste-based violence or communal rioting. There is a tendency in Indian discourse to downplay the complexity of gender-based violence, particularly as it affects women belonging to marginalized communities. The intricacy of the problem is increased by the way patriarchy interacts with discriminating markers like caste, religion, and ableism inside India's hierarchical social structure.

¹⁴ Rights of Persons with Disabilities Act 2016

¹⁵ Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act 1989

¹⁶ Transgender Persons (Protection of Rights) Act 2019

¹⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013

¹⁸ Constitution of India 1950, art 15

¹⁹ Constitution of India 1950, art 15(2)

²⁰ Constitution of India 1950, art 17

Enacting a thorough Equality Act could be beneficial in addressing this difficulty. The Center for Legal Policy and Professor Tarunabh Khaitan has produced two laws ²¹to address these concerns, demonstrating the need to understand the nuances of prejudice. Regretfully, MP Shashi Tharoor's maiden bill, which he introduced in parliament, expired.

Although they acknowledge that they cannot totally end discrimination, both proposals call for a stronger state response. These proposals provide more measures in addition to constitutional protections, such as particular ways of enforcing the law, payment schedules, and penalties. Interestingly, they include clauses that address intersectional²² forms of prejudice as well.

A more sophisticated and all-encompassing strategy to address gender-based violence and discrimination in India is embodied in the proposed legislation. The bills emphasize the value of multifaceted strategies that incorporate legal safeguards and targeted measures to address the various challenges faced by women, especially those from disempowered backgrounds and minority groups. They acknowledge the limitations of completely eliminating such deeply rooted issues. By addressing the interconnecting causes that contribute to the perpetuation of gender-based violence; this holistic approach seeks to create a society that is more equal and just.

²¹ P Y Lo, 'Book Review: A Theory of Discrimination Law by Tarunabh Khaitan' (2017) 47(3) Hong Kong Law Journal 1023-1030

²² Anchal Bhateja, 'Why India Needs an Equality Act to Tackle Intersectional Discrimination' (*FII*, 22 September 2022) <<https://feminisminindia.com/2022/09/22/why-india-needs-an-equality-act-to-tackle-intersectional-discrimination/>> accessed 15 November 2023