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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **BEYOND THE BINARY: INTERSECTIONALITY AND THE LIMITS OF INDIAN GENDER JURISPRUDENCE**

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## **I. Introduction**

Gender jurisprudence in India has undergone significant transformation over the past few decades, marked by landmark judicial pronouncements and progressive statutory developments aimed at addressing gender-based discrimination and violence. Yet, these legal strides often remain tethered to a limited understanding of gender as a singular, isolated category of identity. As a result, the lived experiences of individuals at the intersection of multiple marginalities—such as caste, class, religion, sexuality, and disability—continue to remain underrepresented or entirely invisible within mainstream legal discourse.<sup>1</sup>

The concept of **intersectionality**, first theorised by African-American legal scholar Kimberlé Crenshaw in 1989, offers a critical framework to understand how various forms of systemic oppression coalesce to shape unique experiences of injustice.<sup>2</sup> Crenshaw's intervention exposed the limitations of anti-discrimination law in addressing the compounded discrimination faced by Black women, and it has since been widely adopted in feminist legal studies to illuminate how law often excludes those who do not fit dominant categories of identity.<sup>3</sup>

In the Indian context, where structures of caste and patriarchy are deeply intertwined, intersectionality offers a powerful lens through which to examine the shortcomings of legal protections that treat gender in isolation.<sup>4</sup> For instance, while laws such as the Protection of Women from Domestic Violence Act, 2005<sup>5</sup> and the Sexual Harassment of Women at

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<sup>1</sup> See *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1 (India) (recognizing the need for a more substantive equality approach in gender jurisprudence); *Independent Thought v. Union of India*, (2017) 10 SCC 800 (India).

<sup>2</sup> Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

<sup>3</sup> Id.; See also Katherine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990).

<sup>4</sup> See Kalpana Kannabiran, *Tools of Justice: Non-Discrimination and the Indian Constitution* 110–12 (2012); Sharmila Rege, *Dalit Women Talk Differently: A Critique of 'Difference' and Towards a Dalit Feminist Standpoint Position*, 33(44) ECON. & POL. WKLY. 39 (1998).

<sup>5</sup> The Protection of Women from Domestic Violence Act, No. 43 of 2005

Workplace Act, 2013<sup>6</sup> are important milestones, they often fail to address how women from Dalit, Adivasi, Muslim, or queer communities encounter discrimination in distinctly layered ways that remain legally unacknowledged.<sup>7</sup>

This paper aims to critically evaluate Indian gender jurisprudence through an intersectional lens. It begins by situating intersectionality within feminist legal theory and tracing its relevance in Indian social and legal contexts. It then examines how existing gender-related statutes and landmark judicial decisions have addressed—or failed to address—intersectional concerns. The paper argues that a reorientation of legal reasoning is necessary to ensure that constitutional protections are not merely formal or symbolic, but substantively inclusive of those most vulnerable to structural marginalisation.<sup>8</sup>

By integrating intersectionality into gender jurisprudence, this research seeks to contribute toward a more holistic and responsive legal framework—one that recognizes the complexity of identity and the reality of compounded discrimination in contemporary India.

## II. Theoretical Framework

The theoretical foundation of this paper is rooted in **intersectionality theory**, as situated within the broader domain of **feminist legal theory** and critical jurisprudence. This framework seeks to deconstruct the limitations of legal formalism and to foreground how law often reproduces existing power hierarchies by privileging dominant identities and marginalising those located at multiple axes of subordination.

### 2.1. Feminist Legal Theory

Feminist legal theory challenges the ostensibly neutral and objective character of law by revealing how legal systems often reinforce patriarchal norms.<sup>9</sup> It argues that law has historically been constructed from the standpoint of dominant male experiences, thereby

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<sup>6</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013

<sup>7</sup> See Swati Bidhan Baruah, *Intersectionality in Queer and Dalit Movements: Legal Recognition and Its Limits*, 5(1) INDIAN L.J. & LEGAL REV. 13 (2023); Nivedita Menon, *Seeing Like a Feminist* 103–08 (2012).

<sup>8</sup> See B. Sivaramayya, *Inequalities and the Law*, in *Gender Justice in India: A Review of Selected Judgments* 17–19 (Indira Jaising ed., 2004); Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* 224–28 (2019).

<sup>9</sup> Deborah L. Rhode, *Justice and Gender: Sex Discrimination and the Law* 23–25 (1989); Carol Smart, *Feminism and the Power of Law* 3–5 (1989).

rendering the specific experiences of women and gender minorities invisible or irrelevant.<sup>10</sup> Pioneers such as Catharine MacKinnon and Martha Fineman have critiqued how legal doctrines often perpetuate systemic gender inequalities through their claims of neutrality, individualism, and formal equality.<sup>11</sup>

However, **mainstream feminist legal theory** has itself been critiqued for failing to account for the diversity of women's experiences, especially those shaped by caste, race, class, and sexuality.<sup>12</sup> In this context, **intersectional feminism** offers an evolved and more inclusive framework.<sup>13</sup>

### 2.2.2 Intersectionality Theory

Coined by **Kimberlé Crenshaw** in her seminal 1989 paper "Demarginalizing the Intersection of Race and Sex," intersectionality refers to the ways in which different systems of oppression—such as racism, sexism, casteism, and classism—interact to produce unique forms of discrimination.<sup>14</sup> Crenshaw illustrated how anti-discrimination law in the United States failed to capture the specific experiences of Black women, who faced overlapping oppressions that could not be understood by analyzing race or gender in isolation.<sup>15</sup>

Intersectionality, therefore, is not merely a theory of identity but a structural analysis of power.<sup>16</sup> It critiques the additive model of discrimination—where each axis of oppression is considered separately—and instead promotes a framework that is **integrative and contextual**, emphasizing how the convergence of multiple identities produces qualitatively different experiences of marginalisation.<sup>17</sup>

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<sup>10</sup> See Catharine A. MacKinnon, *Toward a Feminist Theory of the State* 237–39 (1989); Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* 29–31 (1990).

<sup>11</sup> Catharine A. MacKinnon, *Difference and Dominance: On Sex Discrimination*, in *Feminism Unmodified* 32–45 (1987); Martha Albertson Fineman, *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies* 8–10 (1995).

<sup>12</sup> Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585–88 (1990).

<sup>13</sup> Sumi Madhok, *Intersectionality and Its Discontents: Intersectional Contestations and Feminist Debates*, 18(2) FEMINIST THEORY 189, 191–94 (2017).

<sup>14</sup> Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

<sup>15</sup> *Id.* at 143–49.

<sup>16</sup> See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244–46 (1991).

<sup>17</sup> Patricia Hill Collins, *Intersectionality's Definitional Dilemmas*, 41 ANN. REV. SOC. 1, 2–6 (2015); Sirma Bilge, *Intersectionality Undone: Saving Intersectionality from Feminist Intersectionality Studies?*, 13(2) DU BOIS REV. 45, 49–52 (2016).

### 2.3. Indian Context: Dalit Feminism and Critical Caste Theory

Intersectionality in India must be understood through the lens of **caste**, which fundamentally structures gendered experiences in the subcontinent.<sup>18</sup> **Dalit feminist scholars** such as Ruth Manorama, Sharmila Rege, and Gopal Guru have critiqued both the upper-caste biases of mainstream feminist movements and the gender blindness of Dalit activism.<sup>19</sup> Dalit feminism emphasizes that the social location of Dalit women produces a distinct experience of oppression—one that cannot be understood through the frameworks of either gender or caste alone.<sup>20</sup>

Similarly, **Adivasi women, Muslim women, queer and transgender persons, and women with disabilities** face intersecting and institutionally reinforced exclusions that often remain beyond the scope of conventional gender rights discourse.<sup>21</sup> Any meaningful application of intersectionality in Indian gender jurisprudence must therefore attend to these intersecting hierarchies of caste, religion, economic status, and ability.<sup>22</sup>

### 2.4. Relevance to Legal Interpretation

An intersectional lens also critiques the narrow, compartmentalised way in which legal claims are often framed. Indian courts, for instance, have adjudicated matters of gender justice largely through the lens of formal equality under Articles 14, 15, and 21 of the Constitution. However, these interpretations frequently ignore the **contextual disadvantages** that multiply for persons at intersecting margins.<sup>23</sup> Intersectionality demands that constitutional adjudication evolve from a purely abstract rights-based model to one that is rooted in **substantive equality** and **social realities**.<sup>24</sup>

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<sup>18</sup> See Gopal Guru, *Dalit Women Talk Differently*, 33(44) ECON. & POL. WKLY. 39, 39–41 (1995); Sharmila Rege, *Dalit Feminist Standpoint*, in *Sociology of Gender: The Challenge of Feminist Sociological Knowledge* 136–43 (2011).

<sup>19</sup> Ruth Manorama & Gail Omvedt, *Seeking Justice, Speaking Truth: Caste and Gender in the Democratic Indian State*, in *Gender and Caste: Issues in Contemporary Indian Feminism* 263–74 (Anupama Rao ed., 2003).

<sup>20</sup> Sharmila Rege, *Writing Caste, Writing Gender: Narrating Dalit Women's Testimonios* 14–19 (2006).

<sup>21</sup> See Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* 78–83 (2004); Arpita Das & Anurima Banerji, *Gender, Disability and the Indian Legal Framework*, 50(22) ECON. & POL. WKLY. 61 (2015).

<sup>22</sup> Vrinda Marwah, *An Intersectional Lens to Gender Justice: Moving Beyond Binary Legal Frames*, 5(1) INDIAN FEMINIST J. L. & SOC'Y 21, 25–27 (2023).

<sup>23</sup> See Kalpana Kannabiran, *Tools of Justice: Non-Discrimination and the Indian Constitution* 112–18 (2012).

<sup>24</sup> Sandra Fredman, *Substantive Equality Revisited*, 10 INT'L J. CONST. L. 712, 717–18 (2012).

### III. Gender Jurisprudence in India – A Brief Overview

The development of gender jurisprudence in India reflects the evolving tension between formal constitutional guarantees of equality and the persistent realities of patriarchal social structures. While the Indian legal system has, over time, enacted statutes and delivered judgments that seek to advance gender justice, these interventions often fall short of engaging with the complexities of intersecting marginalities. This chapter provides a critical overview of the statutory and judicial landscape of gender rights in India, setting the stage for an intersectional critique in subsequent chapters.

#### 3.1 Constitutional Foundation

The Indian Constitution enshrines gender equality as a fundamental right. Article 14 guarantees equality before the law and equal protection of the laws, Article 15 prohibits discrimination on grounds including sex, and Article 15(3) permits affirmative action in favour of women and children. Article 21, interpreted expansively by the judiciary, forms the basis for the right to life and dignity, forming the normative bedrock for gender jurisprudence.<sup>25</sup> Despite these constitutional assurances, the judicial application of these rights has varied in depth and scope.<sup>26</sup>

#### 3.2 Key Statutory Frameworks

A number of progressive statutes have been enacted to respond to the gender-specific needs of women and gender minorities:

- **The Protection of Women from Domestic Violence Act, 2005:** This law marked a shift from viewing domestic violence merely as a criminal offence to recognising it as a broader issue of power and control. It acknowledges physical, emotional, verbal, and economic abuse. However, it is largely heteronormative and fails to address the unique vulnerabilities of women in same-sex relationships or trans persons.<sup>27</sup>
- **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:** Stemming from the Vishaka Guidelines laid down by the Supreme Court in *Vishaka v. State of Rajasthan* (1997),<sup>28</sup> the POSH Act addresses sexual harassment in formal and informal workplaces. While a landmark move, the Act

<sup>25</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

<sup>26</sup> See *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1

<sup>27</sup> Ratna Kapur, *The (Im)Possibility of Queering the DOMESTIC*, 24(2) AGENDA 12 (2010).

<sup>28</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

uses a binary gender framework and is largely silent on the intersectional experiences of caste-based and class-based workplace harassment.<sup>29</sup>

- **The Transgender Persons (Protection of Rights) Act, 2019:** Though purporting to protect the rights of transgender individuals, the Act has been criticised for failing to adhere to the *NALSA v. Union of India* (2014) guidelines, particularly in its flawed definition of “transgender” and in making the right to self-identification conditional on certification.<sup>30</sup>
- **The Indian Penal Code, 1860,** particularly Section 375 (rape), remains gender-specific and excludes men, trans persons, and non-binary individuals from the ambit of sexual violence protections.<sup>31</sup>

### 3.3 Pivotal Judicial Pronouncements

Indian courts have played a pivotal role in shaping gender jurisprudence, often adopting an activist stance to fill legislative gaps. Some key decisions include:

- **Vishaka v. State of Rajasthan (1997):** The Court laid down binding guidelines to prevent workplace sexual harassment, invoking international law (CEDAW) in the absence of domestic legislation. This case established the judiciary’s proactive role in gender justice.<sup>32</sup>
- **NALSA v. Union of India (2014):** This landmark judgment recognised the rights of transgender persons, affirming gender identity as part of the right to dignity under Article 21. The Court emphasised the right to self-identify one’s gender, but the implementation of this principle remains weak in subsequent statutory law.<sup>33</sup>
- **Navtej Singh Johar v. Union of India (2018):** The decriminalisation of consensual same-sex relations under Section 377 IPC marked a watershed moment in LGBTQIA+ rights jurisprudence, affirming dignity, autonomy, and non-discrimination for queer individuals.<sup>34</sup>

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<sup>29</sup> See Nivedita Menon, *Seeing Like a Feminist* 115–17 (2012).

<sup>30</sup> Arvind Narrain, *The Transgender Persons (Protection of Rights) Act, 2019 and the NALSA Judgment: Divergence and Disregard*, 55(1) ECON. & POL. WKLY. 28 (2020).

<sup>31</sup> Priya Misra & Danish Sheikh, *Rethinking Rape Law in India*, 16 NUJS L. REV. 1, 4–5 (2023).

<sup>32</sup> *Vishaka v. State of Rajasthan*, supra note 28.

<sup>33</sup> *NALSA v. Union of India*, (2014) 5 SCC 438 (India).

<sup>34</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

- **Joseph Shine v. Union of India (2018):** In striking down the offence of adultery under Section 497 IPC, the Court foregrounded autonomy and equality within marital relationships, dismantling patriarchal assumptions embedded in colonial criminal law.<sup>35</sup>
- **Shayara Bano v. Union of India (2017):** The triple talaq case reaffirmed gender justice within personal laws, though it has also sparked debate over majoritarian influences in legal reform.<sup>36</sup>

While these cases represent important judicial milestones, they often fall short of applying a rigorously intersectional lens. Marginalised subgroups—such as Dalit women, queer trans persons, or disabled women—rarely see their unique experiences of compounded discrimination reflected in legal reasoning or remedies.<sup>37</sup>

### 3.4 Limitations of the Current Approach

The dominant paradigm of gender jurisprudence in India remains grounded in formal equality and identity-specific protections.<sup>38</sup> The law treats gender as a stand-alone category and fails to adequately respond to structural inequalities shaped by caste, class, religion, and sexuality. Even progressive judgments often assume a universal subject of rights, inadvertently reinforcing the invisibilisation of those at the intersection of multiple oppressions.

This gap necessitates a more critical, intersectional approach to understanding and advancing gender justice in India. The next chapter will explore how the absence of intersectionality in law and adjudication produces structural silences and systemic exclusions, and what an intersectional jurisprudence might require.

## IV. Intersectional Silences in Indian Jurisprudence

Despite formal commitments to gender equality and a corpus of progressive judgments, Indian jurisprudence continues to exhibit a pervasive silence on intersectionality. Legal reasoning often isolates gender from other social hierarchies such as caste, class, religion, sexuality, and disability, leading to partial understandings of discrimination and incomplete redressal of harms.<sup>39</sup> This chapter critically explores the ways in which the Indian legal system erases or

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<sup>35</sup> *Joseph Shine v. Union of India*, (2018) 2 SCC 189

<sup>36</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1

<sup>37</sup> Vrinda Marwah, *supra* note 22, at 26–29.

<sup>38</sup> See B. Sivaramayya, *Gender Justice under the Indian Constitution*, in *Gender Justice in India* 6–10 (Indira Jaising ed., 2004).

<sup>39</sup> Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* 76–80 (2004).

marginalizes intersectional experiences, drawing on case studies and legislative shortcomings to expose the limits of existing gender justice frameworks.

#### 4.1 Gender as an Isolated Category

Much of Indian gender jurisprudence proceeds on the assumption that discrimination occurs along a single axis—usually male-female—without accounting for how this interacts with other forms of oppression.<sup>40</sup> For example, laws like the POSH Act and the IPC's provisions on sexual assault presuppose a cisgender, upper-caste, able-bodied woman as the normative subject of harm, thereby excluding trans persons, Dalit women, disabled individuals, and others whose identities do not conform to this legal archetype.<sup>41</sup>

By treating gender in isolation, courts and lawmakers reinforce a hierarchical model of vulnerability that privileges certain kinds of harms and erases others. This not only creates blind spots in adjudication but also leads to legal remedies that are inaccessible or irrelevant to those most at risk.<sup>42</sup>

#### 4.2 The Invisibility of Caste and Class

Caste remains a crucial axis of social stratification in India, but it is rarely acknowledged in gender-based adjudication.<sup>43</sup> **Dalit women**, for instance, experience a unique form of structural violence that cannot be adequately captured by gender-neutral or even gender-specific legal protections. Incidents of sexual violence against Dalit women, such as the **Khairlanji massacre (2006)** or the **Hathras case (2020)**, reveal how caste operates as a tool of domination that amplifies gender-based harms.<sup>44</sup> Yet, judicial responses to such cases often frame them as individual criminal acts rather than as manifestations of caste-based patriarchal control.<sup>45</sup>

Similarly, **working-class and domestic workers**, many of whom are women from oppressed

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<sup>40</sup> See Ratna Kapur, *Gender, Sovereignty and the Rise of a Sexual Security Regime in International Law and Postcolonial India*, 14 MELB. J. INT'L L. 317, 330–32 (2013).

<sup>41</sup> Gopal Guru & Sundar Sarukkai, *The Cracked Mirror: An Indian Debate on Experience and Theory* 97–103 (2012).

<sup>42</sup> Anand Teltumbde, *Khairlanji: A Verdict on Dalit Women?*, 42(52) ECON. & POL. WKLY. 10 (2007); Anusha Rizvi, *The Hathras Horror and the Crisis of India's Legal Institutions*, THE WIRE (Oct. 2020).

<sup>43</sup> Meena Kandasamy, *The Gypsy Goddess* 245–47 (2014) (fictionalized account based on Dalit massacres and judicial silences).

<sup>44</sup> Harsh Mander, *Invisible Workers, Visible Exploitation: Informal Women Workers and the Law*, 48(43) ECON. & POL. WKLY. 65 (2013).

<sup>45</sup> *NALSA v. Union of India*, (2014) 5 SCC 438 (India); *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

castes and communities, face sexual and economic exploitation in informal workspaces. The POSH Act does nominally include informal sectors, but in practice, redressal mechanisms are inaccessible to those without literacy, job security, or social capital.

### 4.3 Neglect of Queer and Transgender Experiences

Although *NALSA* and *Navtej Johar* have expanded the scope of constitutional protections for transgender and queer persons, subsequent jurisprudence has not meaningfully incorporated these identities into mainstream gender discourse.<sup>46</sup> For instance, the **Transgender Persons (Protection of Rights) Act, 2019** requires medical and bureaucratic gatekeeping for legal gender recognition, contradicting the Supreme Court's self-identification standard laid out in *NALSA*.<sup>47</sup>

Furthermore, queer and trans persons from Dalit and Adivasi backgrounds—particularly **trans sex workers, queer Muslims, and Bahujan LGBTQ+ persons**—face multiple layers of stigma, policing, and violence.<sup>48</sup> Their experiences are rarely addressed in courts or policy debates, rendering them doubly invisible within both gender and queer rights movements.<sup>49</sup>

### 4.4 Disability and Gendered Violence

Women and girls with disabilities are disproportionately vulnerable to sexual and institutional violence, yet their access to justice is significantly curtailed by physical, communicative, and procedural barriers.<sup>50</sup> The criminal justice system often fails to provide interpreters, accessible infrastructure, or trauma-informed mechanisms. Despite the Rights of Persons with Disabilities Act, 2016, disability is still largely understood in medical or welfare terms rather than as a site of rights-based discrimination intersecting with gender.<sup>51</sup>

In cases like *Devidas v. State of Maharashtra* (2017), involving the rape of a woman with intellectual disability, the court showed sensitivity to her condition but failed to frame the issue

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<sup>46</sup> Sukhdeep Singh, *Being Queer and Dalit: The Forgotten Voices in the Pride Parade*, THE SWADDLE (June 2021); Anish Gawande, *Bahujan Queer Politics in India*, DECCAN HERALD (Aug. 2020).

<sup>47</sup> Shraddha Chatterjee, *Queer Politics in India: Towards Sexual Subaltern Subjects* 88–91 (2018).

<sup>48</sup> Human Rights Watch, *Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India* (Apr. 2018).

<sup>49</sup> The Rights of Persons with Disabilities Act, No. 49 of 2016, INDIA CODE (2016); see also Shivani Gupta, *From Charity to Rights: Disability, Gender and Law in India*, 52(17) ECON. & POL. WKLY. 15 (2017).

<sup>50</sup> *Devidas v. State of Maharashtra*, 2017 SCC OnLine Bom 8703

<sup>51</sup> Anita Ghai, *Disability in South Asia: Knowledge and Experience* 134–38 (2018).

in terms of intersectional discrimination.<sup>52</sup> The absence of jurisprudential recognition of these intersecting oppressions leaves disabled women at the periphery of both gender and disability justice frameworks.<sup>53</sup>

#### 4.5 Structural Exclusion from Legal Institutions

The judiciary itself often lacks diversity across gender, caste, and sexuality, which further reinforces its blind spots.<sup>54</sup> The absence of **Dalit women judges, transgender lawyers, or queer feminist advocates** in spaces of adjudication and policymaking limits the interpretive possibilities of the law.<sup>55</sup> Legal discourse remains tethered to dominant worldviews that fail to accommodate marginalised lived realities.<sup>56</sup>

Moreover, legal education continues to present gender justice as a siloed issue, without integrating intersectional approaches in teaching, research, or clinical practice.<sup>57</sup> This contributes to a jurisprudential tradition that is intellectually progressive but experientially exclusionary.<sup>58</sup>

The persistence of intersectional silences in Indian gender jurisprudence reflects a structural failure to recognise the plurality of identities and oppressions. While progressive judgments and legislative reforms mark important milestones, they remain insufficient in the absence of a jurisprudence that is attentive to lived experiences at the margins. This chapter has illustrated how caste, class, sexuality, and disability intersect with gender to create complex patterns of discrimination that remain legally unaddressed.

The next chapter will turn to comparative frameworks and international human rights approaches to explore how other jurisdictions have grappled with intersectionality in law, and what lessons India might draw from them in building a more inclusive jurisprudence.

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<sup>52</sup> Radhika Roy, *Why Diversity on the Bench Matters*, LIVE LAW (May 2021); Indira Jaising, *From Representation to Recognition: Towards a Feminist Jurisprudence* (2020).

<sup>53</sup> Swethaa Ballakrishnen, *Accidental Feminism: Gender Parity and Selective Mobility Among India's Professional Elite* 109–12 (2021).

<sup>54</sup> Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* 27–30 (2014).

<sup>55</sup> Dhanda, Amita, *Legal Education in the Age of Intersectionality*, 4(2) INDIAN J. LAW & PUB. POL'Y 43, 49–51 (2018).

<sup>56</sup> Menon, *Recovering Subversion*, supra note 45, at 104–07.

<sup>57</sup> Catharine A. MacKinnon, *Intersectionality as Method: A Note*, 46 SIGNS 1019 (2021).

<sup>58</sup> See Yuvraj Joshi, *Intersectionality and Comparative Equality Law*, 73 HASTINGS L.J. 169 (2021).

## V. Comparative Perspectives and International Norms

Intersectionality has gradually been recognised in legal systems across jurisdictions and in international human rights discourse as a vital lens through which to understand and remedy compounded forms of discrimination.<sup>59</sup> While India's constitutional jurisprudence is slowly evolving in this direction, valuable insights may be drawn from the experiences of other jurisdictions and international legal frameworks that have incorporated intersectionality into both doctrine and policy. This chapter explores comparative approaches—primarily from the United States, Canada, and the United Kingdom—and examines relevant international norms such as CEDAW and the Yogyakarta Principles.<sup>60</sup>

### 5.1 United States: Origin and Selective Application

The concept of intersectionality originated in the United States through the scholarship of **Kimberlé Crenshaw**, who critiqued anti-discrimination law under Title VII of the Civil Rights Act, 1964.<sup>61</sup> In *DeGraffenreid v. General Motors* (1976), Black women plaintiffs were unable to succeed on either race or gender discrimination grounds because the court failed to recognise that their harm occurred at the intersection of both identities.<sup>62</sup> Crenshaw used this case to highlight how legal frameworks that treat race and gender as separate grounds of discrimination fail those who exist at their intersection.<sup>63</sup>

Since then, U.S. courts have inconsistently applied intersectional reasoning.<sup>64</sup> While some recent judgments acknowledge the compounding effects of discrimination (particularly in employment or education law), intersectionality is yet to be formally entrenched in American jurisprudence as a distinct legal doctrine.<sup>65</sup> Nevertheless, **advocacy groups and academic circles** continue to push for its recognition in structural reform and policy-making—especially in relation to police violence, reproductive rights, and healthcare access for Black and Indigenous women and trans persons.<sup>66</sup>

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<sup>59</sup> Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. CHI. LEGAL F. 139.

<sup>60</sup> *DeGraffenreid v. Gen. Motors*, 413 F. Supp. 142 (E.D. Mo. 1976).

<sup>61</sup> Crenshaw, *supra* note 59, at 143–50.

<sup>62</sup> Jessica Clarke, *Against Immutability*, 125 YALE L.J. 2, 20–25 (2015).

<sup>63</sup> *Id.*

<sup>64</sup> Kimberlé Crenshaw, *Say Her Name: Resisting Police Brutality Against Black Women*, African American Policy Forum (2020).

<sup>65</sup> Canadian Human Rights Act, R.S.C., 1985, c. H-6; Canadian Charter of Rights and Freedoms, s. 15, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982.

<sup>66</sup> *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497.

## 5.2 Canada: Codification of Intersectionality

Canada represents one of the more robust applications of intersectionality in legal analysis. The **Canadian Human Rights Act** and the **Canadian Charter of Rights and Freedoms** have been interpreted by courts and human rights commissions in a manner that acknowledges multiple grounds of discrimination.<sup>67</sup> In *Law v. Canada* (1999), the Supreme Court emphasised the need to account for context and the lived realities of claimants when adjudicating equality claims.<sup>68</sup>

Notably, **Section 15 of the Charter** (equality rights) allows claims based on multiple and overlapping forms of discrimination.<sup>69</sup> The **Ontario Human Rights Commission** has issued specific guidelines on intersectionality in investigating discrimination complaints, especially in cases involving racialised women, LGBTQIA+ persons, and persons with disabilities.<sup>70</sup> Canada's jurisprudence illustrates how statutory and judicial acknowledgment of intersectionality can lead to more meaningful access to justice.<sup>71</sup>

## 5.3 United Kingdom: Structural Barriers to Intersectional Claims

In the United Kingdom, the **Equality Act, 2010** consolidated anti-discrimination law and introduced a “protected characteristics” model, covering grounds such as sex, race, religion, sexual orientation, and disability.<sup>72</sup> However, the Act does **not formally recognise intersectional claims**—claimants must base their complaints on a single ground or bring multiple claims separately.<sup>73</sup>

While the **UK Equality and Human Rights Commission** has acknowledged intersectionality as a useful analytical tool, the courts have been reluctant to embrace it as a legal doctrine.<sup>74</sup> Nonetheless, feminist and anti-racist scholars in the UK continue to advocate for reform,

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<sup>67</sup> Beverley Baines, *Equality's Nemesis? How Canadian Feminism Lost Its Way*, 20 SOC. & LEGAL STUD. 61, 66 (2011).

<sup>68</sup> Ontario Human Rights Commission, *Policy on Preventing Discrimination Based on Creed*, available at [www.ohrc.on.ca](http://www.ohrc.on.ca) (last visited July 2025).

<sup>69</sup> Colleen Sheppard, *Inclusive Equality: The Relational Dimensions of Systemic Discrimination in Canada* 95–99 (2010).

<sup>70</sup> Equality Act, 2010, c. 15 (U.K.).

<sup>71</sup> Sandra Fredman, *Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law*, EUR. NETWORK OF LEGAL EXPERTS IN GENDER EQUALITY (2016).

<sup>72</sup> UK Equality and Human Rights Commission, *Research Report 79: Barriers to Justice for Discrimination Victims* (2012).

<sup>73</sup> Amina Wadud, *Inside the Gender Jihad: Women's Reform in Islam* 56–59 (2006).

<sup>74</sup> CEDAW General Recommendation No. 28 on the Core Obligations of States Parties, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010).

especially in areas such as gender-based violence against women of colour, migrant domestic workers, and Muslim women facing Islamophobia.<sup>75</sup>

#### 5.4 International Human Rights Law

Intersectionality has gained significant traction in international human rights forums. Notable developments include:

- **CEDAW General Recommendation No. 28 (2010):** This explicitly recognises intersectional discrimination and calls upon State Parties to address the “compounded forms of discrimination” that affect women from marginalised communities, including Indigenous women, women with disabilities, and lesbian women.<sup>76</sup>
- **Yogyakarta Principles +10 (2017):** These principles, dealing with sexual orientation and gender identity, underscore how individuals face distinct and multiple forms of discrimination on the basis of race, caste, religion, HIV status, and socio-economic background in addition to SOGIESC status.<sup>77</sup>
- **UN Special Rapporteurs** have consistently incorporated intersectional frameworks in their thematic reports on violence against women, extreme poverty, and health, urging governments to collect disaggregated data and design policies that address complex social inequalities.<sup>78</sup>

#### 5.5 Lessons for India

The comparative and international experiences reveal three key insights for Indian gender jurisprudence:

1. **Codifying Intersectionality:** Legal frameworks must explicitly recognise intersectional discrimination, whether through constitutional interpretation, human rights legislation, or policy guidelines.<sup>79</sup>
2. **Contextual Adjudication:** Courts must be encouraged—through legal education and judicial training—to adopt interpretive approaches that centre lived experiences, not just formal rights claims.<sup>80</sup>

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<sup>75</sup> Yogyakarta Principles plus 10, Principle 30 (2017), available at [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org).

<sup>76</sup> UN Special Rapporteur on Violence Against Women, *Intersectional Discrimination and Structural Inequality*, A/HRC/47/38 (2021).

<sup>77</sup> Vrinda Marwah, *supra* note 22, at 30–33.

<sup>78</sup> Dhanda, *supra* note 55.

<sup>79</sup> Shivangi Misra, *Why India Needs Disaggregated Data for Gender Justice*, ARTICLE 14 (Mar. 2023).

<sup>80</sup> Sandra Fredman, *Substantive Equality Revisited*, 14 INT’L J. CONST. L. 712, 715–18 (2016).

3. **Data and Policy Reform:** Collection of disaggregated data and community consultation must be mandated for designing gender justice schemes that address layered vulnerabilities.<sup>81</sup>

Intersectionality is not merely a theoretical tool but a practical necessity in addressing the structural inequalities that shape access to justice. Comparative jurisdictions, particularly Canada, offer valuable models for integrating intersectionality into statutory interpretation and human rights enforcement. International human rights frameworks reinforce the normative legitimacy of this approach. As India grapples with its own complex matrices of caste, gender, religion, and sexuality, the adoption of intersectional jurisprudence becomes both timely and imperative.

## VI. Reimagining Gender Jurisprudence in India – A Way Forward

The persistence of intersectional silences in Indian gender jurisprudence highlights a systemic failure to address the multiplicity of social identities that shape experiences of discrimination. While the Constitution of India articulates an egalitarian vision through Articles 14, 15, and 21, the interpretation and application of these rights often fall short of achieving substantive equality for individuals at the intersection of caste, gender, class, sexuality, religion, and disability. In order to move towards a more inclusive, responsive, and transformative legal system, it is essential to reimagine gender jurisprudence through an explicitly intersectional lens.

This chapter outlines key recommendations for integrating intersectionality into legal reasoning, adjudication, policy-making, and legal education in India.

### 6.1 Adopting Substantive Equality as a Judicial Standard

Indian courts must shift from a **formal equality** model—focused on equal treatment under the law—to a **substantive equality** model that examines the actual, lived consequences of legal rules for differently situated individuals.<sup>82</sup> This approach requires:

- Context-sensitive adjudication that accounts for the interplay between gender and other marginalised identities.

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<sup>81</sup> Kalpana Kannabiran, *Tools of Justice: Non-Discrimination and the Indian Constitution* 102–06 (2012).

<sup>82</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

- Recognition of how historical and structural inequalities—particularly caste and economic deprivation—shape the ability of individuals to access and exercise rights.<sup>83</sup> Judgments such as *Navtej Johar*<sup>84</sup> and *NALSA*<sup>85</sup> signal this shift, but they must evolve into a coherent jurisprudential standard that can be consistently applied.<sup>86</sup>

## 6.2 Intersectional Reading of Fundamental Rights

Courts should develop a doctrine of **intersectional discrimination** under Articles 14 and 15(1), allowing litigants to bring claims that reflect their composite identities.<sup>87</sup> For instance:

- Article 15(1)'s prohibition of discrimination on “grounds only of” religion, race, caste, sex, or place of birth should be interpreted to include **multiple grounds**, not just single categories.<sup>88</sup>
- Article 21's guarantee of dignity must be understood as encompassing the social realities of caste- and gender-based violence, state surveillance, and economic marginalisation.<sup>89</sup>

Such an interpretive shift would allow the judiciary to better address the realities of Dalit queer persons, Muslim women, trans sex workers, and others at the margins.<sup>90</sup>

## 6.3 Legislative Reform and Inclusive Law-Making

Statutes addressing gender-based rights must be re-drafted to reflect intersectional concerns. Key reforms include:

- Amending the **Transgender Persons Act, 2019** to remove medical and bureaucratic gatekeeping, in line with *NALSA*'s self-identification standard.<sup>91</sup>
- Revising the **POSH Act, 2013** to be gender-inclusive and to incorporate caste- and class-based workplace power dynamics.<sup>92</sup>

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<sup>83</sup> *NALSA v. Union of India*, (2014) 5 SCC 438.

<sup>84</sup> Jayna Kothari, *The Supreme Court's LGBT Verdict and the New Doctrine of Constitutional Morality*, 3(2) INDIAN L. REV. 140, 145 (2019).

<sup>85</sup> Dhanda, Amita, *supra* note 55.

<sup>86</sup> Gautam Bhatia, *The Transformative Constitution* 112–18 (2019).

<sup>87</sup> Vrinda Marwah, *Law, Dignity and the Everyday Politics of Inclusion*, 46(6) SOC. CHANGE 856 (2016).

<sup>88</sup> Swati Bidhan Baruah, *Reforming Transgender Rights in India: Towards Inclusive Citizenship*, 11 NUJS L. REV. 89, 92–94 (2018).

<sup>89</sup> Arvind Narrain, *supra* note 30.

<sup>90</sup> Rajalakshmi Vijayakumar, *POSH Act and the Limits of Binary Law*, ECON. & POL. WKLY., Vol. 55, Issue 17 (2020).

<sup>91</sup> Tarunabh Khaitan et al., *The Equality Bill, 2021* (Centre for Law and Policy Research & Vidhi Centre for Legal Policy).

<sup>92</sup> Centre for Law and Policy Research, *Comments on the Equality Bill*, available at [www.clpr.org.in](http://www.clpr.org.in) (last visited July 2025).

- Codifying intersectionality as a protected ground under proposed anti-discrimination laws, such as the **Equality Bill, 2021** drafted by legal scholars and civil society groups.<sup>93</sup>

Parliamentary committees and ministries must actively include voices from Adivasi, Dalit, queer, disabled, and working-class communities in the drafting process to ensure grounded, responsive legislation.<sup>94</sup>

#### 6.4 Data Disaggregation and Policy Design

Effective policy requires **accurate data** that captures the intersectional nature of marginalisation. The State should:

- Collect disaggregated data across caste, gender identity, religion, disability, and income while ensuring privacy and consent.<sup>95</sup>
- Design gender justice schemes (such as shelter homes, legal aid, and rehabilitation support) with input from those most affected, using participatory frameworks.<sup>96</sup>
- Expand the remit and capacity of institutions like the **National Commission for Women** and **National Commission for Scheduled Castes** to handle intersectional complaints.<sup>97</sup>

Intersectionality should become a guiding principle in evaluating government schemes under frameworks like the Sustainable Development Goals (SDGs) and gender budgeting.<sup>98</sup>

#### 6.5 Reimagining Legal Education and Institutional Representation

A long-term shift toward intersectional jurisprudence requires rethinking how law is taught and practiced:

- Legal curricula must include intersectional feminist theory, Dalit and Adivasi jurisprudence, queer legal studies, and disability rights.<sup>99</sup>
- Law schools should partner with grassroots organisations to expose students to real-world experiences of legal exclusion and injustice.<sup>100</sup>

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<sup>93</sup> Shivangi Misra, *supra* note 79.

<sup>94</sup> UN Women, *Intersectionality Resource Guide and Toolkit*, Asia-Pacific Office (2022).

<sup>95</sup> National Commission for Women Annual Report 2022–23, available at [www.ncw.nic.in](http://www.ncw.nic.in).

<sup>96</sup> Ministry of Women and Child Development, *Gender Budgeting Handbook* (2020), Govt. of India.

<sup>97</sup> Dhanda, Amita, *Legal Pedagogy and the Margins*, 44(2) ECON. & POL. WKLY. 85 (2009).

<sup>98</sup> Menaka Guruswamy & Arundhati Katju, *Law and Lawyering in the Supreme Court of India*, 10 NUJS L. REV. 57 (2017).

<sup>99</sup> Radhika Roy, *supra* note 52.

<sup>100</sup> Radhika Roy, *supra* note 54.

- Bar councils, judicial appointments, and commissions must work toward **diversifying legal institutions**, ensuring representation of women, Dalits, Adivasis, religious minorities, persons with disabilities, and queer persons in lawmaking and adjudication bodies.

Such efforts would cultivate a generation of lawyers, judges, and scholars equipped to challenge the dominant paradigms of exclusion and formalism in Indian law.

To meaningfully uphold constitutional values of justice, liberty, equality, and dignity, India's gender jurisprudence must be reimagined in ways that centre intersectional realities. Legal institutions must become spaces of epistemic inclusion, recognising that rights cannot be realised in abstraction from the identities and oppressions that shape people's lives. Reforms in law, policy, and pedagogy must work together to dismantle the exclusions embedded in dominant legal discourse and build a truly inclusive legal system.

## VII. Conclusion

This research set out to interrogate the gender jurisprudence of India through the lens of intersectionality. Drawing from feminist legal theory, critical race and caste scholarship, and global human rights standards, the paper has demonstrated that Indian legal frameworks, while progressively evolving on questions of gender equality, continue to fall short of addressing the complex, layered realities of marginalised identities. Gender, as interpreted and enforced in law, is too often treated as a siloed category—detached from the socio-economic, caste, religious, and sexual hierarchies that condition its meaning and effects.

Through a close examination of landmark judgments, statutory regimes, and institutional mechanisms, this paper has highlighted the structural exclusions that persist within Indian jurisprudence. The absence of intersectional reasoning has led to blind spots in both adjudication and legislation, rendering invisible the compounded discrimination faced by Dalit women, Adivasi girls, queer and trans persons, Muslim women, and persons with disabilities. The result is a body of law that proclaims universality but often only serves those whose experiences conform to dominant normative frameworks.

Comparative insights from jurisdictions such as Canada, and the evolving corpus of international human rights law, reaffirm that intersectionality is not merely an academic

concept but a practical necessity for realising substantive equality. These experiences underscore the importance of codifying intersectional protections, collecting disaggregated data, and fostering institutional sensitivity to difference and marginalisation.

This paper has argued for a reimagining of gender jurisprudence in India—one that actively centres intersectionality in judicial interpretation, statutory reform, policy design, and legal education. Such a shift requires a fundamental reorientation of the law: from abstract neutrality to contextual sensitivity; from formal equality to transformative justice; from dominant voices to the peripheries.

As India continues to grapple with its pluralities and deep-rooted hierarchies, intersectional gender jurisprudence is not just a theoretical aspiration—it is a constitutional imperative. A legal system that ignores the multiple, overlapping forms of exclusion fails not just its most vulnerable citizens but the promise of justice itself.

