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ON THE TOPIC

**THE ROLE OF COURTS IN ADVANCING GENDER EQUALITY AND
PROTECTING THE RIGHTS OF MARGINALISED IDENTITIES AT THEIR
INTERSECTION.**

Under The Guidance and Supervision Of

Dr. ABHAYACHANDRAN K.

Associate Professor

The National University of Advanced Legal Studies, Kochi

Submitted by

AL HENA SAFEER

LM0124001

2024-25

CERTIFICATE

This is to certify that Ms AL HENA SAFEER, REG NO: LM0124001, has submitted his Dissertation titled “**The Role of Courts in Advancing Gender Equality And Protecting The Rights Of Marginalised Identities At Their Intersection**” partial fulfilment of the requirement for the Award of Degree in Master of Laws in Constitutional and Administrative Law to the National University of Advanced Legal Studies, Kochi under my guidance and supervision. It is also affirmed that the dissertation he submitted is original, bona fide, and genuine.

Date: 26-05-2025

Place: Ernakulam

DR. ABHAYACHANDRAN K
GUIDE AND SUPERVISOR
NUALS, KOCHI

DECLARATION

I, AL HENA SAFEER, do hereby declare that this dissertation work titled “**The Role Of Courts In Advancing Gender Equality And Protecting The Rights Of Marginalised Identities At Their Intersection**” researched and submitted by me to the National University of Advanced Legal Studies in Partial fulfilment of the requirement for the award of the degree of master of laws in under the guidance and supervision of Dr. Abhayachandran K, Associate Professor, The National University of Advanced Legal studies is an Original, Bonafide and Legitimate work. It has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree from this university or any other university.

AL HENA SAFEER

Register No: LM0124001

**LL.M (Constitutional and
Administrative Law)**

NUALS, Kochi

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AL HENA SAFEER

LM0124001

PREFACE

This dissertation is the culmination of an intellectual and personal journey into the complex intersections of law, identity, and justice. As a student of Constitutional and Administrative Law, I have been deeply influenced by the evolving discourse on gender equality and, more importantly, by the urgent need to foreground the lived realities of individuals who navigate multiple layers of marginalisation. The motivation for this research stems from a recognition that gender justice cannot be meaningfully pursued without acknowledging the overlapping structures of caste, class, sexuality, disability, and religion. In the Indian context marked by deep social stratifications these intersections are not merely academic constructs but palpable lived experiences. The judiciary, as a custodian of constitutional values, plays a critical role in either affirming or erasing these realities. This dissertation seeks to examine that role with rigour, empathy, and a commitment to transformative justice. Throughout this work, I have attempted to draw from both Indian and comparative perspectives to interrogate the extent to which courts have responded to intersectional claims of discrimination.

I am indebted to my guide and supervisor, Dr. Abhayachandran K., Associate Professor at NUALS, whose guidance was not only academic but also inspiring. His insights helped me refine my arguments and sustain clarity amid complexity. I am also grateful to my professors, peers, and family, whose encouragement helped bring this work to completion. It is my sincere hope that this dissertation contributes, in however modest a way, to the growing body of scholarship and advocacy committed to intersectional justice in law.

AL HENA SAFEER

LM0124001

2024-25

LIST OF ABBREVIATIONS

Abbreviation	Full Form
ADA	Americans with Disabilities Act
ADEA	Age Discrimination in Employment Act
Art./Arts.	Article/Articles
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CrPC	Code of Criminal Procedure (India)
DDA	Disability Discrimination Act (UK)
DoPT	Department of Personnel and Training (India)
ECHR	European Convention on Human Rights
Emp. Trib.	Employment Tribunal (United Kingdom)
EU	European Union
EWCA	England and Wales Court of Appeal
FLT	Feminist Legal Theory
GC	General Comment (UN Treaty Body)
HC	High Court
HRA	Human Rights Act 1998 (UK)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
I.J.	International Journal
I.R.L.R.	Industrial Relations Law Reports
IPC	Indian Penal Code
J.	Justice
L.J.	Law Journal
NALSA	National Legal Services Authority
NGO	Non-Governmental Organization
OHCHR	Office of the High Commissioner for Human Rights
OUP	Oxford University Press
PC	Permanent Commission (Indian Armed Forces)

PWD	Persons with Disabilities
S.C.C.	Supreme Court Cases (India)
SC/ST Act	Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
SCR	Supreme Court Reporter
U.K.	United Kingdom
U.N.	United Nations
U.S.	United States
U.S.C.	United States Code
UKHL	United Kingdom House of Lords
UKSC	United Kingdom Supreme Court
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
WP	Writ Petition
YP	Yogyakarta Principles
YP+10	Yogyakarta Principles Plus 10

LIST OF CASES

India

1. State of M.P. v. Babulal, AIR 1959 MP 100.
2. C.B. Muthamma v. Union of India, (1979) 2 SCC 706.
3. Tukaram v. State of Maharashtra, (1979) 2 SCC 143.
4. Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556
5. Vishaka v. State of Rajasthan, (1997) 6 SCC 241.
6. Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1.
7. NALSA v. Union of India, (2014) 5 SCC 438.
8. Jeeja Ghosh v. SpiceJet Ltd., (2016) 7 SCC 613 (India).
9. Shayara Bano v. Union of India, (2017) 9 SCC 1.
10. Shakti Vahini v. Union of India, (2018) 7 SCC 192.
11. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
12. Joseph Shine v. Union of India, (2019) 3 SCC 39.
13. Indian Young Lawyers Ass'n v. State of Kerala, (2019) 11 SCC 1.
14. Patan Jamal Vali v. State of Andhra Pradesh, (2021) 9 SCC 1.
15. Lt. Col. Nitisha v. Union of India, (2021) 15 SCC 125.
16. M. Sameeha Barvin v. Joint Sec'y, W.P. No. 16953 of 2021, High Court of Madras (India).

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1. Rex v. James Lloyd, (1836) 7 C. & P. 817 (Eng.).
2. Frontiero v. Richardson, 411 U.S. 677 (1973)
3. DeGraffenreid v. Gen. Motors Assem. Div., 413 F. Supp. 142 (E.D. Mo. 1976).
4. Dothard v. Rawlinson, 433 U.S. 321 (1977).
5. Payne v. Travenol Labs., Inc., 673 F.2d 798 (5th Cir. 1982).
6. Moore v. Hughes Helicopter, Inc., 708 F.2d 475 (9th Cir. 1983).
7. Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).
8. Lam v. Univ. of Haw., 40 F.3d 1551 (9th Cir. 1994).
9. Obergefell v. Hodges, 576 U.S. 644 (2015).
10. Bostock v. Clayton County, 590 U.S. ____ (2020).

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1. Ghaidan v. Godin-Mendoza, [2004] UKHL 30.
2. Bahl v. Law Society, [2004] EWCA Civ 1070.
3. Mackie v. Britannia Motor Co., [2004] IRLR 313 (UK Emp. Trib.).
4. Essop v. Home Office, [2017] UKSC 27.
5. Forstater v. CGD Europe, [2022] Emp. Trib. 2200909/2019 (UK).

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CHAPTER 1: INTRODUCTION

1.1 BACKGROUND AND CONTEXT

At the core of India's constitutional ethos is the principle of equality, which is not merely a formal declaration but a promise of dignity, non-discrimination, and inclusion for all. Yet, for many women in India, this promise remains partially fulfilled, especially for those who exist at the intersections of multiple vulnerabilities: caste, class, religion, disability, or non-conforming sexual and gender identities. Gender injustice in India is not monolithic. It is layered, contextually specific, and shaped by a matrix of simultaneously operating oppressions. Through Articles 14, 15, and 21, the Constitution of India provides foundational guarantees. Article 14¹ ensures equality before the law and equal protection of the law. Article 15² prohibits discrimination on the grounds of sex, caste, race, religion, or place of birth. Article 21³, most significantly, affirms the right to life and personal liberty, which the Supreme Court has expansively interpreted to include the right to dignity, privacy, and bodily autonomy.

Over the decades, the judiciary has played a transformative role in breathing life into these constitutional values. In *Vishaka v. State of Rajasthan*⁴, the Supreme Court laid down binding guidelines to combat workplace sexual harassment in the absence of specific legislation. The case arose from the gang rape of Bhanwari Devi., a Dalit social worker who was attacked for trying to stop a child marriage. Although her caste and social status were central to the violence she endured, the Court's reasoning erased this intersection, framing the issue only in terms of gender-based workplace discrimination.⁵ This omission highlights a central tension in Indian gender jurisprudence, the tendency to universalise women's experiences while ignoring how caste and class mediate gendered violence. To understand why such blind spots persist in the legal system, we must turn to intersectionality, a concept developed by legal scholar Kimberlé Crenshaw. In her seminal essay, *Demarginalizing the Intersection of Race and Sex*, Crenshaw critiqued U.S. antidiscrimination law for its inability to

¹ India Const. art. 14.

² India Const. art. 15.

³ India Const. art. 21.

⁴ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

⁵Id.

account for the unique experiences of Black women. She observed that: “Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.”⁶

Applied to India, Crenshaw’s framework underscores the failure of both the judiciary and social movements to adequately address how gender oppression is shaped by caste, class, and other axes. As Crenshaw later noted with co-authors Sumi Cho and Leslie McCall, intersectionality is not just about identity. It’s a structural diagnostic tool that interrogates how institutions assign and distribute vulnerability⁷. Legal discourse in India still largely reflects what feminist theorist Martha Fineman describes as the “limits of formal equality.” Fineman argues that formal equality treating everyone the same “fails to disrupt persistent forms of inequality” because it overlooks the institutional structures that privilege some and disadvantage others⁸. Instead, she offers the concept of the “vulnerable subject,” which challenges the liberal legal notion of the autonomous, independent individual: “Vulnerability is and should be understood to be universal and constant, inherent in the human condition.”⁹

Fineman’s theory resonates strongly in India, where caste, poverty, and patriarchy profoundly shape who is seen as “deserving” of protection. Her model invites a shift away from identifying narrow groups for protection toward recognising the universal vulnerability of human beings and the state’s responsibility to mediate structural disadvantage, not just interpersonal harm. Scholar Flavia Agnes, one of India’s foremost feminist legal theorists, similarly critiques the selective application of progressive legal reforms. She writes: “Making laws and laying down the rules for the community to follow has consistently been monopolised by men to their advantage.”¹⁰ Agnes warns that even well-intentioned legal reforms can reinforce patriarchal control when they fail to challenge more profound inequalities embedded in

⁶ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine*, 1989 U. Chi. Legal F. 139, 140.

⁷ Sumi Cho, Kimberlé Williams Crenshaw & Leslie McCall, *Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis*, 38 *Signs: J. Women Culture & Soc’y* 785, 796 (2013).

⁸ Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 *Yale J.L. & Feminism* 1, 4–5 (2008).

⁹ *Id.* at 8

¹⁰ Flavia Agnes, *Law and Gender Inequality: The Politics of Women’s Rights in India* 141 (Oxford Univ. Press 1999).

religion, property, and personal laws. Despite these critiques, there have been moments of progress. In *National Legal Services Authority v. Union of India (NALSA)*, the Supreme Court recognised the right of transgender persons to self-identify their gender, marking a significant departure from binary legal definitions. The Court invoked Articles 14, 15, 19, and 21¹¹ to argue that gender identity is integral to dignity and freedom.¹² While the judgment advanced trans rights, it too did not fully engage with how caste or class may further complicate access to these rights for poor or Dalit trans persons. A rare and more intersectional approach was taken in *Patan Jamal Vali v. State of Andhra Pradesh*¹³. Here, the Court addressed the rape of a blind Dalit woman and explicitly cited Crenshaw's work to acknowledge that: "A person who has multiple marginalised identities may face special or unique harms that cannot be understood by considering each of those identities independently."¹⁴ This case marked a doctrinal turning point. For the first time, the Supreme Court invoked intersectionality not merely as background theory but as a legal analytic essential to adjudicating constitutional harm. Still, such judgments are the exception rather than the norm.

As sociologist Leslie McCall notes, intersectionality remains complex and often contested in practice. She distinguishes between anti categorical approaches (which challenge rigid identity labels) and inter-categorical approaches (which use categories strategically to highlight inequality)¹⁵. Indian courts often lean toward the latter, but even then, their engagement is superficial, rarely disrupting the deep institutional arrangements that sustain exclusion. The challenge before us is not simply one of filling doctrinal gaps. It is a broader problem of judicial imagination. If courts are to uphold constitutional values meaningfully, they must move from formal to substantive equality, acknowledging that treating unequal equally often produces injustice. This study begins at that inflexion point: investigating how courts engage or fail to engage with intersectional claims and asking what kind of jurisprudence is needed to ensure that no one is left behind because of the complexity of their identity.

¹¹ India Const. arts. 14, 15, 19 & 21.

¹² *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438 (India).

¹³ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1 (India)

¹⁴ *Id.* at 34.

¹⁵ Leslie McCall, *The Complexity of Intersectionality*, 30 *Signs: J. Women Culture & Soc'y* 1771, 1773–78 (2005).

1.2 STATEMENT OF PROBLEM

Most studies focus on the role of courts and their role in gender equality without addressing intersectionality. Global human rights instruments like the Universal Declaration of Human Rights (UDHR)¹⁶, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹⁷, and the Yogyakarta Principles¹⁸ provide guidelines for advancing gender equality and protecting marginalised identities. These frameworks emphasise the duty of states, including their judicial systems, to ensure non-discrimination and equality. Despite constitutional guarantees and progressive legal frameworks aimed at promoting gender equality and protecting marginalised identities, systemic inequalities persist in society. Individuals at the intersection of multiple marginalised identities, such as women from backward castes, LGBTQ+ individuals, or persons with disabilities, face compounded forms of discrimination and exclusion.

1.3 RATIONALE AND SIGNIFICANCE OF THE STUDY

This study examines courts' critical role in advancing gender equality rights for individuals facing intersecting discrimination forms. Traditionally, courts have analysed discrimination through a single-axis approach, often treating gender, race, disability, and other factors as isolated categories. This approach fails to capture the unique challenges faced by those at the intersection of multiple marginalised identities. An intersectional approach is needed to address discrimination's complexities and ensure that legal protections genuinely reflect diverse lived experiences.

The significance of this study lies in its potential to contribute meaningfully to three areas:

1. This research bridges a critical gap in legal theory by examining how courts interpret and apply intersectionality. By systematically analysing critical cases and legal precedents, this study enhances the understanding of how intersectional discrimination is recognised (or overlooked) in judicial practice. It supports the growing body of

¹⁶ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (Dec. 10, 1948).

¹⁷ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

¹⁸ The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, International Commission of Jurists & Int'l Serv. for Human Rights (Mar. 2007), <https://yogyakartaprinciples.org>.

scholarship that advocates for an inclusive legal framework, encouraging courts to address multiple identities simultaneously rather than in isolation.

2. The study offers insights for legislators and policymakers seeking to craft laws that better protect marginalised communities. Documenting successful and unsuccessful judicial approaches to intersectional discrimination provides a foundation for more inclusive policies. This study can thus guide anti-discrimination law reform efforts to address complex forms of inequality, ensuring that legislative measures protect all aspects of an individual's identity.

3. This research raises awareness among judges and legal practitioners. It highlights the importance of recognising intersectional discrimination and can lead to more informed and equitable judicial decision-making. By showing how courts can effectively apply intersectionality, this study can improve judicial responsiveness to the needs of individuals with intersecting marginalised identities.

1.4 SCOPE OF THE STUDY

This dissertation focuses on the role of courts in advancing gender equality at the intersection of gender and other marginalised identities, including race, disability, and sexual orientation. It examines judicial decisions, legal frameworks, and landmark cases from selected jurisdictions, analysing how courts interpret and apply intersectional gender rights. The study explores how legal systems address compounded forms of discrimination and the effectiveness of judicial interventions in advancing gender equality.

1.5 CITATION STYLE

Bluebook citation.

1.6. THEORETICAL FRAMEWORK AND LITERATURE REVIEW

1.6.1 THEORETICAL FRAMEWORK

Intersectionality, a concept introduced by Kimberlé Crenshaw in 1989, provides the foundation for this dissertation. Developed initially to highlight how Black women experience unique forms of discrimination that cannot be understood solely by examining race or gender in isolation, intersectionality has since become a cornerstone for analysing compounded forms of discrimination across various identities. Feminist

legal theory examines how laws and legal systems perpetuate gender inequality and seeks to transform them to advance gender justice. Formal equality treats individuals as equal under the law but often fails to account for structural inequalities. Substantive equality, by contrast, aims to address those structural factors, promoting equity by acknowledging different starting points and lived experiences. Courts have traditionally approached equality from a formal perspective. Still, substantive equality aligns more closely with intersectional analysis, as it addresses systemic barriers and the compounded disadvantages faced by those at the intersections of multiple identities.

1.6.2 LITERATURE REVIEW

- 1 . Kimberlé Crenshaw, *On Intersectionality: Essential Writings* (The New Press 2019).

Kimberlé Crenshaw's collected writings are foundational to developing intersectionality as a theoretical and legal-analytical tool. Drawing from critical race theory and Black feminist thought, Crenshaw's work challenges the inadequacies of identity-blind legal reasoning. Her concept of intersectionality emerges from her critique of U.S. anti-discrimination law, particularly Title VII, where courts failed to acknowledge the dual discrimination faced by Black women based on both race and gender.

In her analyses of cases like *DeGraffenreid v. General Motors*, Crenshaw illustrates how courts often force plaintiffs to choose between singular categories of discrimination, erasing the unique harms experienced at their intersection. This body of work offers a comprehensive framework for analysing judicial blind spots and is especially instructive for this dissertation's methodological approach. It provides both a vocabulary and a logic for investigating how courts may overlook layered discrimination when constrained by rigid legal categories. While rooted in the U.S. context, the principles are readily transferable to other jurisdictions, including India, where caste, religion, and sexuality intersect in complex ways with gender.

2. Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 *Yale L.J.* 1281 (1991).

In this article, MacKinnon critiques the U.S. legal system's approach to sex equality,

highlighting those men historically made laws without considering women's perspectives. This, she argues, has perpetuated male dominance and overlooked women's interests, especially failing women of colour who face both racial and gender discrimination. MacKinnon calls for a legal overhaul that addresses the patriarchal roots of inequality and advocates for laws that genuinely represent and protect women's unique experiences. She emphasises the need for a shift towards substantive equality by redefining legal standards to disrupt entrenched gender hierarchies. Catharine MacKinnon's article is a critical touchstone for feminist legal theory and offers a deep interrogation of how law systematically reinforces gender hierarchies. Unlike Crenshaw, who focuses on intersectionality, MacKinnon zeroes in on substantive equality, arguing that the liberal legal tradition fails to capture the embedded structural disadvantages women face because it treats men's experiences as the normative legal standard.

Her work is particularly relevant for analysing how courts interpret "equality" under constitutional and statutory provisions. MacKinnon contends that the formal equality approach, where identical treatment is considered sufficient, ignores the context of inequality in which women live. Her theory, therefore, provides a conceptual foundation for questioning whether courts merely apply neutral rules or actively interrogate societal power imbalances. However, her analysis tends to centre cisgender, heterosexual, white women and does not explicitly engage with other marginalised identities such as race, caste, or sexuality. Thus, this dissertation builds on MacKinnon's insights while incorporating Crenshaw's intersectionality to develop a more inclusive and layered critique of judicial reasoning.

3. Rana Haq et al., *Diversity in India: Addressing Caste, Disability, and Gender*, 39 *Equality, Diversity & Inclusion* 585 (2020).

The document titled "Diversity in India: Addressing Caste, Disability, and Gender" is an academic paper that overviews diversity and equality issues in India, focusing on caste, disability, and gender. The paper is part of a special issue exploring Equality, Diversity, and Inclusion (EDI) in the Indian context. The authors conclude that while some Western EDI theories are relevant, many need reformulation to suit India's unique context, which is shaped by caste, religion, gender, and economic disparities. In this interdisciplinary article, Rana Haq and colleagues investigate how Indian institutions,

including the judiciary, handle issues of diversity and inclusion. Although their analysis spans educational and corporate institutions, it includes a focused critique of how legal structures reinforce systemic exclusions of caste, gender, and disability. The authors argue that even progressive legal frameworks fail to translate into inclusive practices because institutional actors, including judges, often lack sensitivity to intersectionality. What makes this article especially valuable is its empirical approach, drawing from case studies and institutional audits to reveal the limitations of policy implementation. The authors make a compelling case for incorporating intersectionality into legal doctrine, institutional training, and cultural shifts. This supports the dissertation's argument that transformative change in gender equality jurisprudence requires more than doctrinal shifts. It demands an institutional commitment to recognising complex identities. The work also enhances the comparative aspect of the dissertation by illustrating how Indian challenges mirror those in other postcolonial or structurally hierarchical societies.

4. Haq, R. (2013), "Intersectionality of gender and other forms of identity: Dilemmas and challenges facing women in India", *Gender in Management*, Vol. 28, No. 3, pp. 171- 184.

This paper aims to present the challenges facing women in India due to the intersectionality of gender and other forms of identities impacting their personal and professional lives by exploring the intersection of gender, colour, caste, ethnicity, religion, marital status, and class as sources of discrimination against women in Indian society and workplaces. Riffat Haq's article represents an important attempt to contextualise intersectionality within Indian society. She discusses how gender interacts with caste, religion, and economic class to create hierarchies of marginalisation that are often invisible in legal and policy discourses. Haq critiques Indian legal mechanisms for their failure to move beyond a one-size-fits-all approach to women's rights, arguing that the judiciary has often neglected to accommodate the specific needs of Dalit women, tribal communities, and queer individuals.

Unlike the earlier works reviewed, Haq explicitly applies an intersectional framework to critique the gaps in Indian legal and institutional structures. She uses examples from education, employment, and violence against women to show how policies ostensibly designed for "all women" often exclude those most vulnerable. Her work is especially relevant for the present dissertation as it directly supports the hypothesis that the Indian

judiciary and, by extension, courts in other jurisdictions tend to overlook the compounded nature of discrimination in their rulings. Her analysis offers empirical data and theoretical grounding that supports the need for legal reform grounded in intersectionality.

5. Gender justice - Chawla, Monica

Monica Chawla's text offers a comprehensive doctrinal overview of legal provisions related to women's rights in India, encompassing criminal law, family law, labour law, and constitutional law. The work is written from a legalistic perspective and extensively cites statutory developments and judicial precedents. Chawla's approach is more descriptive than analytical, but it serves as a valuable compendium for understanding the evolution of gender laws in India. What distinguishes this book is its effort to include a wide range of legal domains in its assessment of gender justice. However, it primarily operates within a formal equality paradigm, treating equal treatment under the law as synonymous with justice. This results in a limited capacity to engage with the more nuanced substantive equality model, which is crucial for understanding intersectional oppression. For instance, the book lacks critical engagement with how caste-based gender violence, queer identities, or disability rights intersect with mainstream gender jurisprudence. Thus, while Chawla's text is helpful for legal mapping, its lack of an intersectional or feminist critique underscores the need for a more layered analysis, which this dissertation seeks to provide.

1.7 CONTRIBUTION TO THE LITERATURE

This dissertation contributes in several key ways:

1. **Advancing Intersectionality in Legal Studies:** It expands the application of intersectionality within the legal context, providing a framework for how courts can incorporate intersectional analysis in gender equality cases, addressing the compounded discrimination faced by individuals with multiple marginalised identities.
2. **Broadening the Concept of Gender Equality:** It challenges traditional, binary notions of gender equality by integrating race, class, caste, sexuality, and disability, proposing a more inclusive and nuanced understanding of equality.
3. **Critiquing Judicial Practices:** By evaluating how courts handle intersectional claims,

the dissertation identifies judicial limitations and biases in addressing complex, multidimensional gender-based discrimination and calls for reforms to integrate intersectionality more effectively.

4. Proposing Legal Reforms: It offers practical recommendations for institutional reforms, such as specialised training for judges and creating intersectional legal frameworks, to better address marginalised communities' needs.

5. Providing a Global Perspective: Through comparative analysis of case law from India, the U.S., and the U.K., the research highlights global trends and challenges, contributing a broader perspective on how courts worldwide can improve gender equality practices.

6. Impact on Legal and Social Movements: The research supports ongoing advocacy for intersectional gender equality, offering insights and recommendations that can influence policy reform and social justice movements. In sum, the dissertation fills critical gaps by integrating intersectionality into legal analysis and proposing tangible reforms to advance gender equality in a more inclusive, just manner.

1.8. RESEARCH OBJECTIVE

The primary objective of this dissertation is to critically examine the court's role in the emergence and evolution of gender equality legislation. Specifically, the research aims to:

- To identify judicial decisions that have shaped gender equality and intersection.
- To compare courts in different jurisdictions' approaches to intersectional rights and gender equality.
- To analyse the court's reasoning on the intersection of gender with other marginalised identities, such as race, class, disability, and sexual orientation, in advancing gender equality rights

1.9. RESEARCH QUESTIONS

- How have judicial decisions contributed to the emergence of new rights related to gender equality?
- In what ways do judicial interpretations of existing laws expand or limit the

rights of marginalised gender groups?

- How does the court address the intersection of gender with other marginalised identities, such as race, class, disability, and sexual orientation, in advancing gender equality rights?
- What can be drawn from comparative analyses of the judiciary in different countries regarding promoting gender equality?

1.10 . HYPOTHESIS

Courts are inconsistent in recognising and addressing the compounded discrimination faced by individuals with multiple marginalised identities, resulting in uneven progress toward gender equality.

1.11 RESEARCH METHODOLOGY

Qualitative Case Study Approach

This research employs a qualitative case study approach to explore how courts address intersectional gender equality. This approach enables an in-depth examination of judicial reasoning and decision-making in cases where gender discrimination intersects with other marginalised identities, such as race, disability, or sexual orientation. Focusing on specific cases within selected jurisdictions, the study aims to reveal patterns, limitations, and successes in how courts conceptualise and enforce intersectional rights.

Comparative Legal Analysis

A comparative analysis across jurisdictions is included to understand different legal approaches to intersectional gender rights. This cross-jurisdictional comparison highlights how diverse legal frameworks and cultural contexts shape judicial responses to compounded discrimination.

Data Collection Primary Sources

- **Judicial Decisions:** The primary data consists of judicial opinions and rulings from selected cases across the U.S and EU courts. Landmark cases are chosen based on their relevance to gender equality and the inclusion of intersectional analysis or

multiple marginalised identities.

- **Legal Statutes and International Treaties:** Key statutes, such as anti-discrimination laws and equality rights provisions in constitutions, are analysed to understand the statutory framework within which courts operate. International treaties and conventions, such as CEDAW, are also reviewed to understand global standards for gender equality.

Secondary Sources

- **Scholarly Literature:** Academic journal articles, books, and legal reviews are analysed to understand theoretical perspectives and past research findings on gender equality, intersectionality, and judicial interpretation.
- **Government and NGO Reports:** Reports from government bodies, human rights organisations, and NGOs provide context on the real-world impacts of judicial decisions on marginalised communities.

Ethical Considerations

- **Transparency and Objectivity:** The study is conducted with a commitment to transparency in data collection and analysis. Interpretations of judicial decisions are made objectively, based on documented legal reasoning, and all sources are cited accurately.
- **Sensitivity to Marginalized Identities:** Special care is taken to approach intersectional issues with sensitivity, recognising the complex experiences of individuals at the intersection of multiple marginalised identities.

1.12 LIMITATIONS OF THE STUDY

1. **Jurisdictional Focus:** This research concentrates on a select group of jurisdictions chosen for their progressive legal frameworks on human rights and equality. While this allows for an in-depth exploration of how courts can support intersectional gender rights, it also means that experiences from other legal systems where these rights may face different or more entrenched *challenges* are not captured.
2. **Emphasis on Published Judicial Decisions:** The analysis is primarily based on published court decisions, particularly those from higher courts. These tend to be

more prominent or precedent-setting cases. Unfortunately, this focus may miss how intersectional issues are dealt with in lower courts or in cases that never progressed to appellate levels, potentially limiting our understanding of how such rights are handled more broadly across the judicial landscape.

3. **Complexity of Intersectionality:** Intersectionality is inherently complex. It involves multiple overlapping identities such as gender, race, disability, and sexual orientation that interact in nuanced ways. This complexity can make it challenging to fully capture the range of discrimination individuals face. While the study strives to reflect these layered experiences, it inevitably involves some generalisations that may not do justice to every unique situation.
4. **Qualitative Methods and Subjectivity:** This study uses qualitative techniques, including thematic and content analysis, to explore judicial reasoning and case outcomes. These methods provide rich, detailed insights, but they have limitations. Interpretation is, by nature, subjective, and different researchers might draw different conclusions from the same material.
5. **Time and Resource Constraints:** With a project timeline of five months, there were natural constraints on the scope and depth of the research. These limitations affected the extent of the comparative analysis and the number of cases that could be examined in detail. As a result, some areas that merit deeper exploration had to be approached more selectively.
6. **Evolving Legal and Social Landscapes:** Intersectional rights' legal and social understanding constantly evolves. New legislation, shifting social attitudes, and emerging judicial decisions continue to shape how these issues are approached in the courtroom. This study offers a snapshot of a particular moment in time and may need to be revisited as new developments arise.

1.13 STRUCTURE OF THE DISSERTATION

Chapter 1: INTRODUCTION

The first chapter of the dissertation focuses on the role of courts in promoting gender equality and protecting the rights of individuals with multiple marginalised identities. It establishes the constitutional and international legal foundations for gender equality, referencing key elements of the Indian Constitution Articles 14, 15, 19, and 21 and

international instruments like CEDAW, the UDHR, and the Yogyakarta Principles. The chapter highlights the need for intersectional analysis in legal discourse. It explains how traditional legal frameworks often overlook the complexities arising from various forms of discrimination, such as gender, caste, disability, and sexual orientation.

Chapter 2: DEFINITION AND COMPLEXITY OF INTERSECTIONALITY IN MARGINALISED IDENTITIES

Chapter two provides the theoretical foundation for the dissertation by unpacking key concepts and frameworks essential to understanding intersectional discrimination in the legal realm. It begins by explaining the concept of intersectionality developed by Kimberlé Crenshaw and further expanded by feminist scholars and critical race theorists. Intersectionality is explored not merely as a theoretical construct but as a pragmatic analytical tool for understanding how overlapping forms of disadvantage affect individuals differently based on the convergence of gender, race, caste, class, disability, and sexual orientation.

The chapter then discusses the broader idea of marginalisation, explaining how structural and institutional forces perpetuate social exclusion and hinder access to justice.

Chapter 3: JUDICIARY AND INTERSECTIONALITY.

In this chapter, the dissertation turns to a detailed analysis of landmark judicial decisions that have influenced gender equality jurisprudence in India, the United States, and the United Kingdom. The selected cases are examined not only for their outcomes but also for the reasoning employed by the courts in addressing or failing to address intersectional dimensions of discrimination. This chapter lays the empirical groundwork necessary to assess the broader trends and inconsistencies in intersectional legal reasoning.

Chapter 4: COMPARATIVE ANALYSIS OF JURISDICTIONS

This chapter offers a comparative analysis of how the judiciary in India, the United Kingdom, and the United States interpret and apply principles of intersectionality in gender equality cases. The legal systems are analysed in terms of their constitutional

frameworks, interpretive traditions, and the receptiveness of their courts to social justice arguments. By comparing case law, statutory provisions, and judicial culture, the chapter identifies patterns of progress and regression within each jurisdiction.

Chapter 5: SUGGESTIONS AND CONCLUSION

The final chapter synthesises the research findings and presents a coherent set of recommendations for enhancing the role of courts in addressing intersectional discrimination. It begins with a summary of key observations from the case law and theoretical analysis, reaffirming the hypothesis that courts have shown an inconsistent and often inadequate approach to intersectional gender justice. Finally, the dissertation concludes by reiterating the urgency of shifting from a formal to a substantive notion of equality that recognises difference not as a deviation but as a central concern of justice.

CHAPTER 2: DEFINITION AND COMPLEXITY OF INTERSECTIONALITY IN MARGINALISED IDENTITIES

2.1 Introduction

The concept of intersectionality has become indispensable in understanding how social identities such as gender, caste, class, race, sexual orientation, and disability interact to create overlapping and compounded forms of disadvantage. Articulated initially by Kimberlé Crenshaw, intersectionality critiques the law's tendency to treat forms of discrimination as separate and mutually exclusive, thereby rendering invisible the experiences of those situated at the confluence of multiple marginalised identities.¹⁹ Intersectionality provides a theoretical lens to examine how individuals experience discrimination in complex, interconnected ways that are not adequately addressed by a single-axis framework focusing solely on one dimension of identity, such as gender or race.²⁰ The Indian constitutional promise of equality under Articles 14, 15, and 21 aims to guarantee substantive equality and non-discrimination for all.²¹ However, these protections often falter when confronted with the realities of individuals who face intersecting vulnerabilities, such as Dalit women, queer persons with disabilities, or Muslim trans persons whose lived experiences remain marginalised in both law and policy.²² In such contexts, the judiciary is vital in developing a rights-based jurisprudence that acknowledges these compounded disadvantages and provides remedies tailored to their specific positionalities.²³ Intersectionality is not merely a descriptive tool but also a critical legal analysis method.

It exposes the structural limitations of a formal equality model that assumes a neutral subject and demands a more nuanced standard of substantive equality, considering individuals' and communities' diverse and unequal starting points.²⁴ Feminist legal theorists like Catharine MacKinnon and Flavia Agnes have long highlighted how laws

¹⁹ 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.

²⁰ Kimberlé Crenshaw, *On Intersectionality: Essential Writings* (The New Press 2019).

²¹ INDIA CONST. arts. 14, 15, 21.

²² Riffat Haq, *Intersectionality of Gender and Other Forms of Identity: Dilemmas and Challenges Facing Women in India*, 28 *Gender in Mgmt.* 171, 172–73 (2013).

²³ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1.

²⁴ Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 *Yale L.J.* 1281, 1285–87 (1991).

claiming neutrality often reflect dominant societal norms and silence subaltern voices.²⁵ Indian feminists such as Nivedita Menon have further argued that transformative feminist politics must deconstruct both patriarchy and state structures that institutionalise inequality.²⁶ The emergence of intersectionality in Indian legal discourse is still nascent, but landmark cases such as *Patan Jamal Vali v. State of Andhra Pradesh*.²⁷ and *Navtej Singh Johar v. Union of India*²⁸ Reflect a judicial willingness to consider multiple axes of oppression. International frameworks like CEDAW and the Yogyakarta Principles also urge states to adopt comprehensive anti-discrimination strategies that reflect the plurality of human identities.²⁹ This chapter seeks to lay the theoretical foundation for understanding intersectionality and the layered nature of marginalisation. It explores the evolution of intersectionality, its theoretical underpinnings, and its application in legal and constitutional frameworks particularly in the context of gender equality. By grounding this chapter in both Indian and comparative perspectives, it situates intersectionality as both a conceptual necessity and a legal imperative for ensuring justice to those historically and contemporaneously pushed to the margins.

2.2 Conceptualizing Intersectionality

The concept of intersectionality emerged as a response to the inadequacies of traditional frameworks in addressing the multifaceted experiences of discrimination faced by marginalised individuals. Initially introduced by Kimberlé Crenshaw in her seminal essay *Demarginalizing the Intersection of Race and Sex* (1989), intersectionality highlights how Black women's experiences were being overlooked both in antiracism and feminist discourses because both movements were framed around a single axis race or gender, but not both.³⁰ Crenshaw later expanded this concept in her influential work *Mapping the Margins* (1991), where she introduced structural, political, and representational intersectionality to capture the complex ways multiple systems of

²⁵ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford Univ. Press 1999).

²⁶ Nivedita Menon, *Seeing Like a Feminist* (Zubaan Books 2012).

²⁷ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1.

²⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

²⁹ Convention on the Elimination of All Forms of Discrimination Against Women, arts. 1, 2 & 5, Dec. 18, 1979, 1249 U.N.T.S. 13.; International Commission of Jurists, *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2006).

³⁰ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139.

oppression overlap.³¹ In her analogy, Crenshaw described identity categories as roads and discrimination as traffic that can hit individuals from any direction when they stand at the intersection, highlighting that the absence of recognition for this intersection often results in legal and policy blind spots.³²

Intersectionality moves beyond a single-axis framework, which considers only one category of identity (such as gender or race). It embraces a multi-axis approach, recognising that individuals hold multiple interacting identities that shape their social positioning and experiences of marginalisation.³³ This shift enables a more comprehensive understanding of discrimination, which is essential for crafting inclusive policies and judicial remedies. As noted by Patricia Hill Collins, intersectionality is not merely a theoretical abstraction but a lived reality for many who navigate intersecting systems of oppression.³⁴ In the Indian context, this concept takes on a distinctive dimension, with the intersections of caste, class, and gender being particularly salient. Dalit women, for instance, experience discrimination not only due to their gender but also because of entrenched caste hierarchies that intensify their social and economic vulnerability.³⁵ A study on Scheduled Caste girls in Haryana highlights how caste-based prejudice, coupled with gender norms and class constraints, leads to systemic educational exclusion and violence within institutional settings.³⁶ Despite constitutional guarantees under Articles 14, 15, and 21 and provisions such as Article 46 for the promotion of SC/ST interests, these guarantees often fail to protect Dalit girls from everyday caste-gender oppression in schools.³⁷

Moreover, intersectional feminism in India traced through the Dalit Women's Movement, the activism of Savitribai Phule, and more contemporary feminist mobilisations has brought to light the failure of upper-caste-dominated feminist movements to address the distinct challenges of marginalised women.³⁸ Scholars argue

³¹ Kimberlé Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 Stan. L. Rev. 1241, 1244–45 (1991).

³² Id. at 1245.

³³ Leslie McCall, The Complexity of Intersectionality, 30 Signs 1771, 1772–74 (2005).

³⁴ Patricia Hill Collins, Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment (Routledge 1990).

³⁵ Reetu, Understanding Intersectionality with Special Reference to Scheduled Caste Girls at Secondary Schools in Haryana 6–10 (2021)

³⁶ Id. at 12–14.

³⁷ INDIA CONST. arts. 14, 15, 21 & 46.

³⁸ Dr. Bindu Variath, Intersectional Feminism in India: Current Judicial Trends in Constitutional Interpretation, 9 Int'l J. Advance Res. Ideas Innov. Educ. 1809, 1810 (2023).

that Indian feminist discourses have historically privileged upper-caste, urban, able-bodied voices, leading to the silencing of women at the intersections of multiple oppressions.³⁹

2.3 Key Theoretical Foundations

To effectively examine the role of courts in addressing the complex realities of gender discrimination, particularly at the intersection with caste, class, disability, and sexuality, it is necessary to ground the analysis in established theoretical frameworks.

2.3.1 Feminist Legal Theory

Feminist Legal Theory (FLT) challenges the neutrality and universality of law by asserting that the legal system often reflects and reinforces patriarchal power structures.⁴⁰ It critiques the law's claim to objectivity. It points out that legal norms are often based on the experiences and needs of dominant social groups, typically cisgender, heterosexual, and upper-class men, thereby excluding or marginalising women and other oppressed groups.⁴¹ Scholars such as Catharine MacKinnon have emphasised that formal legal equality, which treats men and women alike, fails to account for women's substantive disadvantages.⁴² In her critique, MacKinnon asserts that treating men and women identically under the law can preserve male dominance because it assumes a false symmetry of power.⁴³ Instead, FLT advocates for laws that are responsive to the gendered nature of experiences, including social and structural disadvantages that women and gender-diverse persons face.⁴⁴ In the Indian context, Flavia Agnes has extended FLT by critiquing how laws like the Hindu Code Bills or personal laws reinforce male control over family and property.⁴⁵ Agnes argues that despite constitutional promises of equality, legal outcomes for women remain deeply influenced by cultural and patriarchal interpretations of the law.⁴⁶

³⁹ Id. at 1811.

⁴⁰ Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 *Yale L.J.* 1281, 1285 (1991).

⁴¹ Id. at 1286–88.

⁴² Id. at 1291–93.

⁴³ Id.

⁴⁴ Nivedita Menon, *Seeing Like a Feminist* 11–15 (Zubaan Books 2012).

⁴⁵ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 57–60 (Oxford Univ. Press 1999).

⁴⁶ Id. at 61.

2.3.2 Intersectionality Theory

While FLT initially focused on gender as a primary axis of oppression, Intersectionality Theory expands the analytical scope to include other identity categories such as caste, race, class, disability, and sexuality. Pioneered by Kimberlé Crenshaw, intersectionality demonstrates how systems of oppression interlock and create unique experiences of discrimination for individuals situated at their crossroads.⁴⁷ Crenshaw's landmark works *Demarginalizing the Intersection of Race and Sex* and *Mapping the Margins* highlight how Black women were rendered invisible in race- and gender-based legal remedies.⁴⁸ In legal cases like *DeGraffenreid v. General Motors*⁴⁹, courts rejected Black women's claims of combined race and gender discrimination on the grounds that anti-discrimination law could only address one identity at a time.⁵⁰

In the Indian context, intersectionality becomes crucial to understanding how caste intensifies gender-based violence. Dalit and Adivasi women, for instance, face triple marginalisation from dominant caste men, dominant caste women, and even within their own communities.⁵¹ This layered oppression is echoed in India's legal discourse as well. Scholars argue that upper-caste dominance in feminist spaces often excludes marginalised women, and dominant-caste feminists tend to reproduce patriarchal and casteist structures in the name of feminism.⁵² The feminist movement in India has been critiqued for its Savarna hegemony, which obscures the voices of Dalit and Muslim feminists, queer women, and women with disabilities.⁵³

2.3.3 Substantive Equality

The principle of substantive equality builds upon the limitations of formal equality by advocating that the law must address actual social and structural inequalities rather than merely guaranteeing identical treatment.⁵⁴ Substantive equality acknowledges that

⁴⁷ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139.

⁴⁸ Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241 (1991).

⁴⁹ *DeGraffenreid v. Gen. Motors Assembly Div.*, 413 F. Supp. 142 (E.D. Mo. 1976).

⁵⁰ *Id.* at 1244.

⁵¹ Reetu, *Understanding Intersectionality with Special Reference to Scheduled Caste Girls at Secondary Schools in Haryana* 20–23 (2021)

⁵² *Id.* at 25–27

⁵³ Dr. Bindu Variath, *Intersectional Feminism in India: Current Judicial Trends in Constitutional Interpretation*, 9 Int'l J. Advance Res. Ideas Innov. Educ. 1809, 1810 (2023).

⁵⁴ Sandra Fredman, *Substantive Equality Revisited*, 10 Int'l J. Const. L. 712, 715–17 (2012).

different groups start from unequal positions and, therefore, may require differentiated treatment to ensure fair outcomes.⁵⁵ India's constitutional jurisprudence has begun to reflect this shift. In *Anuj Garg v. Hotel Association of India*, the Supreme Court struck down provisions of the Punjab Excise Act that excluded women from working in establishments serving alcohol. The Court emphasised that such protective legislation was rooted in gender stereotypes and contravened the constitutional mandate of substantive equality under Articles 14 and 15.⁵⁶ Similarly, in *Navtej Singh Johar v. Union of India*⁵⁷, the Court recognised that LGBTQ+ persons face compound forms of disadvantage, and substantive equality demands recognition of their dignity, autonomy, and identity. The ruling not only decriminalised same-sex relations but also acknowledged that the Constitution must be interpreted in a way that “ameliorates disadvantage and prevents the perpetuation of stigma.”⁵⁸ Judicial adoption of substantive equality requires courts to consider historical disadvantage, group-based oppression, and contextual realities rather than rely on abstract notions of neutrality.⁵⁹ Intersectionality, therefore, becomes an operational tool in realising substantive equality by demonstrating how multiple systems of oppression intersect to create unique forms of disadvantage.

2.4 Typologies and Dimensions of Marginalized Identities

Intersectionality, as theorised by Kimberlé Crenshaw⁶⁰, emphasises the necessity of understanding how various power systems converge to produce unique experiences of marginalisation. Rather than treating identities as discrete or additive, the intersectional approach analyses how gender, caste, class, sexual orientation, disability, and religion function in a matrix of domination that both structures and sustains social hierarchies.

⁶¹This section outlines the major typologies of marginalised identities relevant to the Indian and comparative constitutional context.

Gender Identity and Expression: Gender identity is a socially constructed and legally

⁵⁵ Id.

⁵⁶ *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1.

⁵⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 S

⁵⁸ Id. at 321–24.

⁵⁹ Monica Chawla, *Gender Justice: Women and Law in India* 78–79 (Deep & Deep Publications 2006).

⁶⁰ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139.

⁶¹ Kimberlé Crenshaw, *On Intersectionality: Essential Writings* 20–24 (The New Press 2019); Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* 221–28 (2d ed. Routledge 2000).

contested domain. Intersectionality allows us to critically examine how state mechanisms and cultural institutions enforce binary and exclusionary gender norms, often resulting in systemic harm to transgender, non-binary, and gender non-conforming individuals. In *Navtej Singh Johar v. Union of India*,⁶² The Supreme Court of India expressly invoked intersectionality to understand the layered discrimination faced by queer individuals, stating that “marginalisation is not experienced as an isolated phenomenon but as a convergence of several disadvantages.”⁶³ The Yogyakarta Principles further affirm the indivisibility of human rights and the duty of states to respect gender identity as a protected ground of equality.⁶⁴

Caste and Class: India’s constitutional and legal framework has long recognised caste as a structural axis of discrimination. However, the intersection of caste and gender, especially for Dalit women, illustrates how legal responses remain inadequate unless they consider overlapping vulnerabilities. In *Patan Jamal Vali v. State of Andhra Pradesh*⁶⁵, the Supreme Court underscored the importance of recognising the “intersectional discrimination” that results when caste and gender co-construct vulnerability. Flavia Agnes critiques how formal equality in law often conceals the lived reality of caste- and class-based hierarchies, thereby necessitating a substantive equality approach.⁶⁶ Class, while often overshadowed in rights discourse, remains a critical factor in mediating access to legal redress and social mobility. As Riffat Haq notes, gendered oppression in India is inseparable from socioeconomic stratification.⁶⁷

Sexual Orientation: Sexual orientation has been legally marginalised through both colonial and postcolonial penal provisions. The decriminalisation of Section 377 of the Indian Penal Code⁶⁸ in *Navtej Singh Johar*⁶⁹ was not merely a doctrinal correction but a constitutional affirmation of dignity, autonomy, and equality. The judgment’s reliance on intersectionality marked a shift toward recognising how sexual minorities face

⁶² *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, at 22.

⁶³ *Id.*

⁶⁴ International Commission of Jurists, *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2006).

⁶⁵ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1, at 24.

⁶⁶ Flavia Agnes, *Law and Gender Inequality: The Politics of Women’s Rights in India* 114–18 (Oxford Univ. Press 1999).

⁶⁷ Riffat Haq, *Intersectionality of Gender and Other Forms of Identity: Dilemmas and Challenges Facing Women in India*, 28 *Gender in Mgmt.* 171, 175–76 (2013).

⁶⁸ Indian Penal Code, 1860, § 377.

⁶⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

layered discrimination within families, workplaces, and public spaces. International human rights jurisprudence, particularly through CEDAW and the Yogyakarta Principles, requires states to adopt an intersectional understanding of discrimination to ensure the complete protection of LGBTQ+ individuals.⁷⁰

Disability: Disability often intersects with other identities to multiply forms of exclusion. A Dalit woman with a disability, for example, may face distinct barriers to accessing education, healthcare, and legal justice. Rana Haq and colleagues have documented how structural biases in employment, urban infrastructure, and legal frameworks deny equal participation to persons with disabilities, especially women and those from lower castes.⁷¹ In the Indian context, while the Rights of Persons with Disabilities Act of 2016⁷² seeks to protect rights, its implementation remains uneven, particularly where disability intersects with other marginalised statuses.

Religion and Ethnicity: Religious minorities in India, predominantly Muslim, Christian, and tribal women, frequently experience discrimination that combines gender subordination with ethno-religious marginalisation. While Indian constitutional jurisprudence typically addresses religion as a single axis, feminist scholars like Nivedita Menon and Monica Chawla argue for an intersectional view to assess how personal laws, community norms, and majoritarian bias affect minority women.⁷³ In comparative contexts, Martha Minow's work highlights how religion, like gender, is often "engendered" through legal structures that purport to be neutral yet reinforce systemic subordination.⁷⁴

2.5 Intersectionality in Legal Discourse

Incorporating intersectionality into legal discourse represents a significant evolution in how courts and legal scholars address discrimination. Traditional approaches to equality in law have often relied on a single-axis framework addressing, for instance, either gender, race or caste independently, thus failing to account for how multiple

⁷⁰ CEDAW, Dec. 18, 1979, arts. 1–2, 5, 1249 U.N.T.S. 13.

⁷¹ Rana Haq et al., Diversity in India: Addressing Caste, Disability, and Gender, 39 Equal., Diversity & Inclusion 585, 592–94 (2020).

⁷² Rights of Persons with Disabilities Act, No. 49 of 2016, India Code (2016).

⁷³ Nivedita Menon, Seeing Like a Feminist 102–09 (Zubaan 2012); Monica Chawla, Gender Justice: Women and Law in India 147–53 (Deep & Deep Publ'ns 2006).

⁷⁴ Martha Minow, Justice Engendered, 101 Harv. L. Rev. 10, 15–18 (1987).

forms of discrimination can intersect and reinforce one another. Kimberlé Crenshaw's foundational work articulated this critique in legal terms, asserting that Black women's experiences were often rendered invisible in both feminist and antiracist legal analyses due to the law's tendency to isolate categories of discrimination rather than view them as interlocking systems of oppression⁷⁵. The Indian judiciary has gradually begun recognising the importance of intersectionality, particularly in landmark constitutional cases that interpret Articles 14, 15, and 21 of the Constitution⁷⁶. For instance, in *Navtej Singh Johar v. Union of India*⁷⁷, the Supreme Court decriminalised consensual same-sex relations. It explicitly acknowledged the intersection of sexual orientation with gender, class, and caste, thus adopting a more nuanced understanding of individual rights and systemic discrimination. Similarly, in *Patan Jamal Vali v. State of Andhra Pradesh*⁷⁸, the Court underscored how caste and gender interweave to intensify vulnerabilities, particularly for Dalit women, marking a significant judicial acknowledgement of intersectional harms. In *Anuj Garg v. Hotel Association of India*⁷⁹ although not explicitly framed in intersectional terms, the Supreme Court emphasised the need to move beyond formal equality and address underlying stereotypes that shape gender roles, which is a concept central to substantive equality.

Intersectionality has also been found to resonate in international human rights frameworks. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) obliges state parties to eliminate discrimination in all its forms, with Articles 1 and 2 mandating prohibition and active efforts to eliminate systemic inequalities.⁸⁰ General Recommendation No. 28 of the CEDAW Committee emphasises that the discrimination women face is often compounded by other identities, such as race, ethnicity, class, caste, and disability. Additionally, the Yogyakarta Principles address the human rights of individuals with diverse sexual orientations and gender identities, explicitly recognising that violations often occur in overlapping

⁷⁵ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine*, 1989 U. Chi. Legal F. 139 (1989).

⁷⁶ India Const. arts. 14, 15, & 21.

⁷⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁷⁸ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1.

⁷⁹ *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1.

⁸⁰ *Convention on the Elimination of All Forms of Discrimination Against Women* arts. 1–2, Dec. 18, 1979, 1249 U.N.T.S. 13.

contexts of marginalisation.⁸¹

2.6 Challenges of Addressing Intersectional Discrimination

Despite growing recognition of intersectionality in legal scholarship and certain judicial pronouncements, the effective operationalisation of intersectional justice remains significantly constrained by structural, interpretive, and evidentiary challenges. One of the core barriers to addressing intersectional discrimination lies in the structural limitations of legal systems, which are often designed around a single-axis framework. As Kimberlé Crenshaw noted in her seminal work, antidiscrimination law frequently fails to address the unique experiences of those at the intersection of multiple marginalised identities, such as Black women or Dalit queer individuals because it presumes discrete and mutually exclusive categories of discrimination⁸². This structural rigidity is particularly pronounced in jurisdictions like India, where constitutional protections are progressive in principle but face institutional inertia in practice. The Indian legal system, while providing for equality under Articles 14, 15, 19, and 21⁸³ of the Constitution, often lacks mechanisms to effectively translate these guarantees into protections for individuals facing intersectional oppression.

Flavia Agnes critiques how Indian legal institutions tend to treat gender as a homogenous category, often erasing caste, class, and religious dimensions in women's experiences of discrimination.⁸⁴ Nivedita Menon similarly emphasises the need for a feminist legal methodology that accounts for the multiplicity of women's realities within a patriarchal and caste-bound society.⁸⁵ Judicial interpretation is another significant hurdle in advancing intersectional justice. Courts often hesitate to embrace intersectionality as a doctrinal tool, opting for a formalistic approach that isolates one axis of discrimination for adjudication. As Riffat Haq observes, Indian courts have historically struggled to accommodate claims that span multiple identity markers, often sidelining intersecting factors such as disability and caste in gender-based

⁸¹ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006), available at <https://yogyakartaprinciples.org/>.

⁸² Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, 1989 U. Chi. Legal F. 139 (1989).

⁸³ India Const. arts. 14, 15, 19 & 21.

⁸⁴ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 17–30 (Oxford Univ. Press 1999).

⁸⁵ Nivedita Menon, *Seeing Like a Feminist* 45–59 (Zubaan Books 2012).

claims.⁸⁶ Even in progressive judgments such as *Navtej Singh Johar v. Union of India*⁸⁷, which decriminalised homosexuality and acknowledged the compounded vulnerabilities of queer individuals, the engagement with intersectionality remained largely rhetorical rather than doctrinal. In *Patan Jamal Vali v. State of Andhra Pradesh*⁸⁸, however, the Supreme Court showed a rare engagement with intersectionality by explicitly acknowledging how caste and gender collectively heighten the vulnerability of Dalit women. Yet, such judicial awareness is the exception rather than the norm. The lack of consistent judicial doctrine for addressing intersectional claims also relates to the absence of a substantive equality framework. Catharine MacKinnon's critique of formal equality, where equal treatment often results in unequal outcomes, highlights the need for a shift toward substantive equality that considers historical and structural disadvantages.⁸⁹

A further challenge lies in the evidentiary and procedural dimensions of law. Intersectional harms often go unrecognised due to the lack of disaggregated data and reporting mechanisms. Rana Haq and colleagues note that Indian legal and policy frameworks rarely collect or utilise data that captures the layered identities of individuals, thereby rendering invisible the specific needs of multiply marginalised groups, such as disabled women or queer Dalit persons.⁹⁰ International instruments like CEDAW and the Yogyakarta Principles advocate for data collection and policy formulation that reflect intersectional realities. CEDAW General Recommendation No. 28, for instance, underscores the importance of understanding and addressing discrimination in its compounded forms⁹¹. However, these recommendations are often not domesticated into binding national legislation or policy, leading to a gap between international norms and domestic enforcement.

⁸⁶ Riffat Haq, Intersectionality of Gender and Other Forms of Identity: Dilemmas and Challenges Facing Women in India, 28 *Gender in Mgmt.* 171, 173–75 (2013).

⁸⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁸⁸ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1.

⁸⁹ Catharine A. MacKinnon, Reflections on Sex Equality Under Law, 100 *Yale L.J.* 1281, 1293–1301 (1991).

⁹⁰ Rana Haq et al., Diversity in India: Addressing Caste, Disability, and Gender, 39 *Equal., Diversity & Inclusion* 585, 590–94 (2020).

⁹¹ Convention on the Elimination of All Forms of Discrimination Against Women arts. 1–2, Dec. 18, 1979, 1249 U.N.T.S. 13.

2.7 Conclusion

Intersectionality provides a transformative framework for understanding and addressing the complexities of discrimination that arise at the crossroads of multiple marginalised identities. As Kimberlé Crenshaw powerfully articulated, traditional legal approaches have failed mainly individuals who do not fit neatly within single categories of discrimination, such as women or racial minorities, thereby rendering the compounded experiences of, for instance, Black women or Dalit queer persons invisible under the law's gaze⁹². Intersectionality challenges this reductive model by emphasising how structures of power patriarchy, casteism, ableism, and heteronormativity interact and produce distinct, layered forms of exclusion and oppression. Drawing from the works of Patricia Hill Collins, we gain insight into how these intersecting systems are embedded within institutions and ideologies that shape everyday life.⁹³ In both its structure and application, the legal system is one such site where intersecting oppressions are often maintained rather than dismantled. Feminist legal scholars in India, such as Flavia Agnes and Nivedita Menon, have argued for a jurisprudence that moves beyond formal equality to capture the contextual and structural nature of inequality that Indian women, especially those located at the margins of caste, class, religion, and sexuality face daily.⁹⁴

This chapter has demonstrated that legal doctrines rooted in single-axis thinking are inadequate for delivering justice in intersectional contexts. Moreover, the absence of disaggregated data, rigid judicial interpretations, and a formalistic approach to equality rights have obstructed the realisation of substantive equality, as advocated by scholars like Catharine MacKinnon⁵. International instruments such as CEDAW and the Yogyakarta Principles support a move toward this richer, more context-sensitive vision of equality. Yet, domestic legal systems frequently fall short in operationalising these norms.⁹⁵ Case law in India shows incremental progress. The Supreme Court's

⁹² Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine*, 1989 U. Chi. Legal F. 139, 140–45 (1989).

⁹³ Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* 221–45 (1990).

⁹⁴ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 33–54 (Oxford Univ. Press 1999); Nivedita Menon, *Seeing Like a Feminist* 45–59 (Zubaan Books 2012).

⁹⁵ Convention on the Elimination of All Forms of Discrimination Against Women arts. 1–2, Dec. 18, 1979, 1249 U.N.T.S. 13; Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006), available at <https://yogyakartaprinciples.org/>.

recognition of intersectionality in *Patan Jamal Vali v. State of Andhra Pradesh*⁹⁶ It marked a pivotal moment, especially in its explicit acknowledgement of how caste and gender compound marginalisation. Similarly, *Navtej Singh Johar v. Union of India*⁹⁷ This recognition remains doctrinally underdeveloped and reflects an evolving judicial consciousness about intersecting identities. As we transition to the next chapter, we move from theoretical and conceptual foundations to a detailed examination of landmark cases that have shaped the intersectional landscape of gender rights.

⁹⁶ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1.

⁹⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 .

CHAPTER 3: JUDICIARY AND INTERSECTIONALITY

3.1 Introduction

Judicial decisions have played a foundational role in interpreting and expanding the scope of gender equality rights, particularly for individuals positioned at the intersection of multiple marginalised identities. This chapter critically examines landmark cases from India, the United States, and the United Kingdom that have significantly influenced the development of intersectional jurisprudence. By tracing judicial reasoning in cases involving gender as it intersects with caste, class, sexual orientation, and disability, this chapter aims to assess how courts have acknowledged or failed to acknowledge compounded discrimination in legal practice. The need for this analysis stems from the long-standing critique that legal systems often operate within a single-axis framework, addressing discrimination based on only one identity category at a time.⁹⁸

Kimberlé Crenshaw's seminal critique of antidiscrimination law in the United States exposed the erasure of Black women's experiences by courts that considered race and gender separately, rendering the intersection of those identities legally invisible.⁹⁹ This insight is equally relevant to the Indian context, where women from Dalit, Adivasi, queer, and disabled communities face multiple and overlapping barriers to justice. Yet, Indian courts have only recently begun meaningfully incorporating intersectional reasoning into their judgments.¹⁰⁰ Feminist legal theorists such as Catharine MacKinnon and Martha Minow have argued that formal equality frameworks, which require equal treatment of all individuals without considering context or historical disadvantage, often reinforce systemic oppression¹⁰¹. In contrast, substantive equality approaches demand that courts examine the real-world impact of laws and policies, accounting for structural inequalities rooted in patriarchy, caste, and heteronormativity.

⁹⁸ Kimberlé Crenshaw, *On Intersectionality: Essential Writings* 1–6 (The New Press 2019); Riffat Haq, *Intersectionality of Gender and Other Forms of Identity: Dilemmas and Challenges Facing Women in India*, 28 *Gender in Mgmt.* 171, 172–74 (2013).

⁹⁹ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine*, 1989 *U. Chi. Legal F.* 139, 140–45 (1989).

¹⁰⁰ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1 (India); *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

¹⁰¹ Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 *Yale L.J.* 1281, 1283–84 (1991); Martha Minow, *Justice Engendered*, 101 *Harv. L. Rev.* 10, 12–14 (1987).

This shift from formal to substantive equality is critical for building intersectionally conscious jurisprudence.

3.2 Landmark Indian Cases

C.B. Muthamma v. Union of India (1979)¹⁰²

This case is one of the earliest examples in India where the Supreme Court dealt with gender discrimination in public employment. While the word "intersectionality" was not used, the case shows how different parts of a woman's identity, like being female, unmarried or married, and a professional, came together to affect her unfairly. She was the first woman to join the Indian Foreign Service (IFS). She was denied a promotion and had to follow rules that only applied to women.¹⁰³ She challenged these rules in court, arguing that they were unfair and based on old ideas about women. The Supreme Court agreed and said that these rules were discriminatory and went against the Constitution's guarantee of equality.¹⁰⁴ Even though the Court didn't use the term, this case shows how multiple aspects of a woman's life can come together to create discrimination which is what intersectionality means. Muthamma was treated unfairly not just because she was a woman, but also because she was a working woman who might get married. This shows how gender and marital status combined to affect her rights.¹⁰⁵ The IFS was a male-dominated field. As the only woman, Muthamma had to work in an environment shaped by male norms. This shows how gender and the professional environment worked together to disadvantage her. The case is important because it helps us see how laws and rules that seem neutral can still harm certain people more than others especially when their different identities overlap. This is the kind of thinking that intersectionality encourages: looking at how gender, power, and other factors work together to shape people's experiences of discrimination.

¹⁰² C.B. Muthamma v. Union of India, (1979) 4 S.C.C. 260 (India).

¹⁰³ Id.

¹⁰⁴ Id. at 1871–72

¹⁰⁵ Id.

*Mohd. Ahmed Khan v. Shah Bano Begum (1985)*¹⁰⁶

This landmark case provides a foundational entry point for understanding how the Indian judiciary has grappled with the overlapping identities of gender, religion, and economic status. Shah Bano, a 62-year-old Muslim woman, was unilaterally divorced by her husband through *talaq* and subsequently denied financial maintenance. She filed an application under Section 125 CrPC¹⁰⁷, a secular provision that mandates maintenance for individuals unable to sustain themselves. Her husband argued that under Muslim Personal Law, his obligation to support her extended only through the *iddat* period, approximately three months following the divorce.¹⁰⁸ The Supreme Court ruled in favour of Shah Bano, holding that Section 125 CrPC applies irrespective of religious affiliation and that a divorced Muslim woman is entitled to maintenance beyond the *iddat* period if she is unable to maintain herself¹⁰⁹. The Court emphasized the secular nature of Section 125 and framed maintenance as a question of social justice and constitutional equality.

Though the term "intersectionality" coined by Kimberlé Crenshaw¹¹⁰ was not used, the *Shah Bano* case illustrates the concept's salience in several respects. Shah Bano's position as a Muslim woman situated her at the intersection of patriarchal gender norms and religious personal laws. While secular law recognized her right to maintenance, religious law was invoked to deny her this protection. The case revealed the precarious status of Muslim women, whose access to rights could be curtailed under the guise of religious autonomy.¹¹¹ Shah Bano's economic dependency and age added further layers of marginalization. Her reliance on maintenance reflected the broader socio-economic realities faced by many divorced women, especially those without independent means of subsistence. Thus, the case brings into focus how gender-based disadvantages are compounded by economic precarity¹¹².

¹⁰⁶ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556 (India).

¹⁰⁷ Code of Criminal Procedure, 1973, § 125, No. 2, Acts of Parliament, 1974 (India).

¹⁰⁸ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556 (India). at 560–61

¹⁰⁹ Id. at 562–63.

¹¹⁰ 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

¹¹¹ Flavia Agnes, Interrogating the Uniform Civil Code, in Women and Law in India: An Omnibus 320–26 (Flavia Agnes ed., 2011)

¹¹² Ratna Kapur, Personal Laws and a Uniform Civil Code: Conflicts and Contradictions, in Gender and Law 132, 134–36 (Kalpana Kannabiran ed., 2014).

Anuj Garg v. Hotel Association of India (2008)¹¹³

The Supreme Court's decision in this case marked a turning point in Indian constitutional jurisprudence on gender equality. The judgment addressed the constitutionality of Section 30 of the Punjab Excise Act, 1914¹¹⁴, which prohibited the employment of "any man under the age of 25 years or any woman" in establishments where the public consumed liquor or intoxicating drugs. The Court ultimately struck down the provision. Though not explicitly invoking intersectionality, the judgment laid essential groundwork for a jurisprudence attentive to how gender norms shape access to rights and opportunities. Justice S.B. Sinha, writing for the Court, sharply criticised the outdated assumptions that informed the impugned law: "The impugned legislation suffers from incurable fixations of stereotype morality and conception of sexual role. Thus, The perspective is outmoded in content and stifling in means."¹¹⁵The Court recognised that while framed as protective, such laws often function as tools of exclusion. This move reflected the influence of feminist legal thought, particularly Catharine MacKinnon's critique that formal equality usually masks ongoing hierarchies.¹¹⁶The judgment also aligns with Crenshaw's insight that facially neutral policies can reinforce the marginalisation of women when the state fails to account for real-world contexts.

Referring to *Frontiero v. Richardson*¹¹⁷, the Court observed: "Such discrimination was rationalised by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage."¹¹⁸By invoking this precedent, the Court rejected the idea that women's supposed vulnerabilities justify their exclusion from the workplace. The Court cited *Dothard v. Rawlinson*¹¹⁹, in which the U.S. Supreme Court held: "To deprive women of job opportunities because of the threatened behaviour of convicted criminals is to turn our social priorities upside down."¹²⁰This comparative analysis rejected risk-based exclusions and victim-blaming logic, affirming that the

¹¹³ Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1 (India).

¹¹⁴ Punjab Excise Act, 1914, § 30 (India).

¹¹⁵ Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1 at 13.

¹¹⁶ Catharine A. MacKinnon, Reflections on Sex Equality Under Law, 100 Yale L.J. 1281, 1283–84 (1991).

¹¹⁷ *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973)

¹¹⁸ Anuj Garg, (2008) 3 SCC 1, at 14

¹¹⁹ *Dothard v. Rawlinson*, 433 U.S. 321 (1977).

¹²⁰ *Id.* at 321, 334 .

burden of safety must not be used to deny women access to public life. Instead, the focus must be on state reform and institutional accountability. The women most affected by this law were likely from lower socio-economic backgrounds waitresses, servers, or bar staff who depended on such jobs. Wealthier women working in elite hotels or as performers were exempt. So, the law hit working-class women harder, showing how gender and class combined to create inequality. While the Court did not use the term “intersectionality,” the judgment touches upon how gender stereotypes, paternalism, and workplace exclusion together shape women’s experiences. These overlapping factors are what intersectionality seeks to capture.

National Legal Services Authority v. Union of India (2014)¹²¹

The Supreme Court’s decision in *National Legal Services Authority v. Union of India*¹²² (“NALSA”) marked a monumental step in Indian constitutional law by legally recognising transgender persons as a distinct gender identity beyond the traditional male/female binary.¹²³ This watershed judgment not only affirmed the dignity and rights of transgender individuals but also advanced a transformative vision of the Constitution, rooted in autonomy, non-discrimination, and substantive equality. The case was initiated through a Public Interest Litigation by the National Legal Services Authority (NALSA), which contended that the non-recognition of transgender persons’ gender identity violated fundamental rights under Articles 14, 15, 16, 19, and 21 of the Constitution.¹²⁴ Interveners included individuals from the Hijra community and NGOs working for transgender rights.

The Court held that the denial of legal recognition of transgender identity was a violation of Article 14, which guarantees equality before the law. It interpreted the term “person” to include transgender individuals and broadened the term “sex” under Articles 15 and 16 to include gender identity: “Article 14 has used the expression ‘person’, and Article 15 has used the expression ‘citizen’ and ‘sex’; hence, in our view, the expression ‘person’ covers even transgender persons and the expression ‘sex’ is not just limited to the biological sex of male or female, but intended to include people who

¹²¹ Nat’l Legal Servs. Auth. v. Union of India, (2014) 5 SCC 438 (India)

¹²² Id.

¹²³ Id

¹²⁴ Id. at 1–2.

consider themselves to be neither male nor female.”¹²⁵This interpretation transformed the constitutional understanding of sex and personhood, expanding the umbrella of equality to protect gender-diverse individuals. The Court emphasised that gender identity discrimination constitutes sex-based discrimination under Articles 15 and 16: “Discrimination on the ground of ‘sex’ under Articles 15 and 16 includes discrimination on the ground of gender identity.”¹²⁶This ruling bridged the gap between the text of the Constitution and the lived realities of transgender persons, who have historically been excluded from education, employment, healthcare, and public life.¹²⁷

The Court also protected the freedom of speech and expression under Article 19(1)(a), holding that the right to express one’s gender identity through clothing, mannerisms, and behaviour is constitutionally guaranteed: “A transgender person’s right to expression of his personality through dress, words, action or behaviour is guaranteed under Article 19(1)(a).”¹²⁸This affirmation of expressive autonomy marked a significant shift in acknowledging gender diversity as a facet of individual identity. The Court placed gender identity at the heart of Article 21’s guarantee of life and personal liberty: “Recognition of one’s gender identity lies at the heart of the fundamental right to dignity. Gender, as a constituent of one’s core identity, must be protected.”¹²⁹Although the Court did not use “intersectionality,” its reasoning was implicitly intersectional. The judgment acknowledged that transgender individuals, especially Hijras and gender non-conforming persons, face multiple and overlapping forms of exclusion based on caste, class, and socio-economic status: “TGs are deprived of social and cultural participation and hence restricted access to education, health care and public places which deprives them of the Constitutional guarantee of equality before the law and equal protection of laws.”¹³⁰This recognition of double marginalisation was a foundational moment for intersectional thinking in Indian constitutional jurisprudence.

¹²⁵ Id. at 54, 58.

¹²⁶ Id. at 62.

¹²⁷ India Const. arts. 14, 15, 16, 19 & 21.

¹²⁸ Nat’l Legal Servs. Auth. v. Union of India, (2014) 5 SCC 438 at 66.

¹²⁹ Id. at 75.

¹³⁰ Id. at 70.

Jeeja Ghosh & Anr v. SpiceJet Ltd. (2016)¹³¹

The Supreme Court's judgment is a powerful testament to the judiciary's capacity to recognise and redress the systemic indignities faced by persons with disabilities.¹³² More than a public interest litigation, this case is a poignant reminder that the denial of dignity and inclusion stems not from individual impairments but from institutional neglect, societal stigma, and the compounding effects of intersecting identities, especially gender and disability. The litigation arose when Ms Jeeja Ghosh, a woman with cerebral palsy and an acclaimed disability rights advocate, was forcibly deboarded from a SpiceJet flight on 19 February 2012 despite having a valid ticket and having already boarded the aircraft. She was en route to an international conference on disability rights in Goa. The airline's staff removed her summarily and without consultation, causing humiliation, trauma, and loss of professional opportunity. The Court captured the emotional and legal gravity of the incident: "She was pulled out of the plane like a criminal. She continues to have nightmares... which amount to doing violence to her human dignity and infringe... her fundamental rights under Articles 14 and 21 of the Constitution."¹³³ While the case focused on disability rights, the Court implicitly understood intersectionality. It acknowledged that individuals with disabilities, particularly women, face marginalisation not just due to their physical conditions but also because of deep-rooted gender stereotypes.

Ms Ghosh's identity as a woman with a disability became the basis for her exclusion despite her significant professional and academic achievements. The Court humanised her experience by observing: "This Curriculum Vitae of petitioner no. 1 amply demonstrates how a person who has cerebral palsy can overcome the disability and achieve such distinctions in her life... yet she had to face this kind of discrimination and trauma."¹³⁴ Justice A.K. Sikri considered dignity a non-negotiable constitutional value in delivering the unanimous judgment. The Court ruled that such treatment violated not only the right to equality under Article 14 but also the right to life and personal liberty under Article 21: "Such behaviour... is as outrageous as it is illegal... it infringes, to the hilt, their fundamental rights under Articles 14 and 21 of the

¹³¹ Jeeja Ghosh & Anr v. Union of India & Ors, (2016) 7 SCC 761 (India).

¹³² Id.

¹³³ Id. at 27.

¹³⁴ Id. at 30.

Constitution.”¹³⁵ Notably, the Court held that Article 14 imposes a positive duty on the State to prevent discrimination from public entities and private service providers such as airlines. The Court referred to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and India’s international obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD). Article 5 of the UNCRPD requires that: “State Parties shall prohibit all discrimination based on disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”¹³⁶ Recognising the physical, emotional, and professional harm suffered, the Court awarded ₹10 lakhs as compensation to Ms Ghosh: “We award a sum of ₹10 lakhs as compensation to petitioner No. 1 for the mental and physical torture, emotional suffering, and loss of professional opportunity.”¹³⁷ This award was symbolic and restorative, affirming her constitutional personhood and dignity. This case represents a watershed in Indian disability rights jurisprudence. It not only reaffirmed the rights of persons with disabilities but also implicitly recognised how gender amplifies disability-based exclusion. Women with disabilities frequently face unique vulnerabilities: their autonomy is denied, their voices are ignored, and their bodies are policed. Most importantly, it illuminated how courts can advance intersectional constitutionalism by recognising that discrimination is often layered, systemic, and invisible unless the law listens carefully to the lived experiences of the marginalised.

Shayara Bano v. Union of India (2017)¹³⁸

The judgment marked a watershed moment in Indian constitutional law, redefining the boundaries between personal law, religious freedom, and gender justice. At the heart of the case was the constitutionality of *talaq-e-biddat*, a form of instant triple talaq that allowed a Muslim husband to unilaterally and irrevocably divorce his wife by pronouncing "talaq" three times in one sitting. The petitioner challenged the practice as discriminatory and violative of Articles 14, 15, and 21 of the Constitution, invoking the right to equality, non-discrimination, and dignity. The Court noted that even those

¹³⁵ Id. at 38.

¹³⁶ Convention on the Rights of Persons with Disabilities art. 5, Dec. 13, 2006, 2515 U.N.T.S. 3.; Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, No. 1 of 1996, India Code (1996).

¹³⁷ *Jeeja Ghosh & Anr v. Union of India & Ors*, (2016) 7 SCC 761 . at 51.

¹³⁸ *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

Islamic schools that permitted *talaq-e-biddat* described it as sinful and discouraged: “Even those schools that recognised *talaq-e-biddat* described it as a sinful form of divorce.”¹³⁹ It further acknowledged that the Quran itself does not prescribe this form of divorce and that the practice was inconsistent with its emphasis on justice and fairness: “The understanding of the ‘verses’ of the Quran... is imperative in this case, because the petitioner... contends that *talaq-e-biddat* is not in conformity with the unambiguous edicts of the Quran.”¹⁴⁰

In a 3:2 majority, the Supreme Court held that *talaq-e-biddat* was unconstitutional. Justices Rohinton Nariman and U.U. Lalit ruled that the practice violated Article 14: “*Talaq-e-biddat* is manifestly arbitrary, and therefore violative of Article 14 of the Constitution.”¹⁴¹ They reasoned that religious practices which are manifestly unfair cannot be shielded from constitutional scrutiny: “What is sinful under religion cannot be valid under the law.”¹⁴² Justice Kurian Joseph, while concurring with the invalidation, based his reasoning on theological grounds, stating that: “*Talaq-e-biddat* is not part of the Quran, and hence, not part of Islamic law.”¹⁴³ The majority thus invalidated the practice on both constitutional and religious grounds, holding that it was arbitrary, patriarchal, and lacked both scriptural and legal legitimacy. Chief Justice J.S. Khehar and Justice S. Abdul Nazeer dissented. They held that personal law practices are protected under Article 25 and should not be invalidated by the judiciary: “*Talaq-e-biddat*, being a part of personal law, protected under Article 25, should not be interfered with by courts... but legislative intervention is welcome.”¹⁴⁴ They proposed a six-month injunction, recommending that Parliament enact a law to regulate or abolish the practice. While respecting religious autonomy, the dissent acknowledged the need for reform but favoured legislative over judicial remedies.

This case brought into sharp relief the intersection of gender and religious identity. It highlighted how patriarchal religious practices disproportionately impact Muslim women, reinforcing structural inequality. The majority recognised the discriminatory nature of the practice: “A practice that allows a man to discard his wife arbitrarily,

¹³⁹ Id. at 18.

¹⁴⁰ Id. at 27.

¹⁴¹ Id. at 55

¹⁴² Id. at 57

¹⁴³ Id. at 199

¹⁴⁴ Id. at 366

unilaterally, and irrevocably, cannot but be termed as violative of fundamental constitutional values.”¹⁴⁵ Although the judgment did not use the term “intersectionality,” it acknowledged the double marginalisation faced by Muslim women both as women and as members of a minority religious group. The case stands as a milestone in the development of intersectional constitutionalism, highlighting how gender and religious identity interact to produce systemic subordination.

Shakti Vahini v. Union of India (2018)¹⁴⁶

The decision in *Shakti Vahini v. Union of India*¹⁴⁷ It is a landmark in Indian constitutional jurisprudence, decisively confronting the deeply rooted issue of “honour” crimes, particularly those triggered by inter-caste and inter-faith relationships. Initiated as a Public Interest Litigation (PIL) by the NGO Shakti Vahini, the case sought preventive and remedial measures to combat violence perpetrated in the name of family or community honour. Such violence disproportionately affects women, Dalits, and others who assert their right to autonomy in marriage and personal relationships. Delivered by Chief Justice Dipak Misra with Justices A.M. Khanwilkar and D.Y. Chandrachud concurring, the judgment affirms individual dignity, liberty, and constitutional morality over socially constructed norms of caste and honour. The Court began with a resounding endorsement of personal freedom, quoting Simone Weil: “Liberty, taking the word in its concrete sense, consists in the ability to choose.”¹⁴⁸ It ruled that the right to choose a life partner is a core component of constitutional liberty, falling squarely within Articles 19 and 21¹⁴⁹ of the Constitution.

Although the Court did not explicitly invoke “intersectionality,” its reasoning reflects an intersectional approach. The judgment acknowledged that gender and caste operate jointly to restrict the choices of individuals, particularly women who seek to marry outside their caste or religion: “The existence of a woman in such an atmosphere depends entirely on the male view of the reputation of the family, the community and the milieu. Sometimes, it is centred on an inherited local ethos which is rationally not discernible.”¹⁵⁰ In condemning community-led executions of patriarchal norms, the

¹⁴⁵ Id. at 55

¹⁴⁶ *Shakti Vahini v. Union of India*, (2018) 7 SCC 192 (India).

¹⁴⁷ Id.

¹⁴⁸ Id. at 1.

¹⁴⁹ India Const. arts. 19 & 21.

¹⁵⁰ *Shakti Vahini v. Union of India*, (2018) 7 SCC 192 . at 47.

Court observed: “The action of a woman or a man in choosing a life partner according to her or his own choice beyond the community norms is regarded as dishonour which, in the ultimate eventuate, innocently invites death at the cruel hands of the community prescription.”¹⁵¹ This analysis reflects the double marginalisation faced by women who challenge caste norms both as women and as transgressors of social hierarchy.

Navtej Singh Johar v. Union of India (2018)¹⁵²

The Supreme Court’s decision in *Navtej Singh Johar v. Union of India*¹⁵³ stands as one of the most significant milestones in Indian constitutional history. Delivered by a five-judge Constitution Bench, the ruling decriminalised consensual same-sex relations between adults, thereby affirming the dignity, identity, and equality of LGBTQ+ individuals. In doing so, the Court struck down part of Section 377 of the Indian Penal Code (IPC), 1860,¹⁵⁴ which had long criminalised “carnal intercourse against the order of nature. “The petitioners Navtej Johar (a dancer), Sunil Mehra (a journalist), Ritu Dalmia (a chef), Aman Nath (a historian), and Ayesha Kapur (a businesswoman) challenged the constitutionality of Section 377 because it violated Articles 14, 15, 19(1)(a), and 21 of the Constitution. Chief Justice Dipak Misra opened the judgment with a powerful affirmation of selfhood: “I am what I am, so take me as I am.”¹⁵⁵ He emphasised that denial of self-expression is tantamount to the denial of life. The Bench found Section 377 to be arbitrary and violative of Article 14, which guarantees equality before the law: “The provision does not make any distinction between consensual and non-consensual acts. It makes carnal intercourse per se punishable, which is manifestly arbitrary and, hence, unconstitutional.”¹⁵⁶ The judgment also expanded the scope of Article 15, which prohibits discrimination on specific grounds.

While “intersectionality” was not explicitly used, the judgment, particularly Justice Chandrachud’s opinion, acknowledged layered marginalisation. He noted that criminalisation affected not only sexual freedom but also access to healthcare, freedom of expression, and safety in public spaces.¹⁵⁷ By citing empirical data on police abuse,

¹⁵¹ Id. at 50.

¹⁵² *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

¹⁵³ Id.

¹⁵⁴ Indian Penal Code, 1860, § 377.

¹⁵⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 at 1

¹⁵⁶ Id. at 90

¹⁵⁷ Id. at 234–240

extortion, and social stigma, the Court recognised how sexual orientation intersects with other axes of discrimination, including class, caste, and gender, compounding the vulnerability of LGBTQ+ individuals. The *Navtej Johar* decision is a foundational moment in Indian LGBTQ+ rights jurisprudence. It not only decriminalised homosexuality but also provided a constitutional framework for further recognition of LGBTQ+ rights, including non-discrimination in employment, healthcare, marriage, and family. The Court advanced India's journey toward inclusive constitutionalism by rooting the judgment in dignity, privacy, autonomy, and equality. It also set a precedent for other marginalised groups seeking constitutional remedies against historical injustice.

Joseph Shine v. Union of India (2019)¹⁵⁸

This case is a key example of how Indian courts have started to recognize deeper layers of inequality in law, especially those affecting women. Section 497 of the Indian Penal Code made adultery a criminal offence. It punished a man for having a relationship with a married woman without her husband's permission, but it did not punish the woman or recognize her as an independent decision-maker.¹⁵⁹ The Supreme Court struck down this provision in 2018, calling it unconstitutional and discriminatory.¹⁶⁰ Although the Court did not use the term "intersectionality," the law's impact clearly shows how women's multiple identities made them more vulnerable. The law only applied to married women, treating them as if they had no control over their own choices. Their sexual freedom was seen as something their husbands controlled. This created a special kind of discrimination that affected women *because they were both female and married*.¹⁶¹ In practice, adultery laws were used more often against poor and working-class people, especially domestic workers or women from lower castes.

Wealthier people often settled such issues privately, but for poorer people, the law became a way to control or punish women. This shows how class and caste make the effects of bad laws even worse for some women.¹⁶² The law treated women as if they had no legal say. A married woman could not file a complaint under Section 497, and

¹⁵⁸ Joseph Shine v. Union of India, (2019) 3 S.C.C. 39

¹⁵⁹ Id. at 61–62.

¹⁶⁰ Id. at 96

¹⁶¹ Id. at 91–92

¹⁶² Flavia Agnes, Gender Justice in Criminal Law: Revisiting the Adultery Judgment, 55(2) Econ. & Pol. Wkly. 37, 39 (2020).

her consent did not matter. This made her legally invisible, reinforcing harmful ideas about women's role in marriage and society.¹⁶³ Justice D.Y. Chandrachud noted that equality means more than treating everyone the same it means understanding how real-life inequalities work, especially when multiple forms of discrimination overlap.¹⁶⁴ This is an example of how courts can move toward a substantive equality approach that aligns with intersectional justice where the law recognizes the different ways people are affected depending on their gender, class, caste, or sexuality.

Lt. Col. Nitisha v. Union of India (2021)¹⁶⁵

The Supreme Court's judgment in *Lt. Col. Nitisha v. Union of India*¹⁶⁶ Marked a transformative moment in Indian anti-discrimination jurisprudence. Authored by Justice D.Y. Chandrachud, the decision confronted the systemic, structural, and intersectional discrimination faced by women Short Service Commissioned Officers (WSSCOs) in the Indian Army. Building upon the earlier ruling in *Secretary, Ministry of Defence v. Babita Puniya*,¹⁶⁷ The Court advanced the conversation from formal equality to substantive constitutional justice. At issue was denying Permanent Commissions (PCs) to several WSSCOs, ostensibly based on objective evaluation criteria. However, the Court found that seemingly neutral selection processes masked deep institutional biases and systemic exclusion, especially for women.¹⁶⁸ A key contribution of the judgment is its elaboration of indirect discrimination, especially within institutional settings: "Discrimination is often not about intention or animus. It can result from the simple operation of neutral rules which disproportionately burden certain groups."¹⁶⁹ The Court identified how facially neutral evaluation criteria such as requiring "command experience" disadvantaged women who were historically excluded from command positions: "Although applied equally to male and female officers, [the criteria] operated in a framework that had historically denied women opportunities for command experience and fair evaluation."¹⁷⁰ This marked a shift from

¹⁶³ Joseph Shine, (2019) 3 S.C.C. at 74

¹⁶⁴ Id. at 96; Kimberlé Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 Stan. L. Rev. 1241, 1245 (1991).

¹⁶⁵ *Lt. Col. Nitisha v. Union of India*, (2021) 15 SCC 125 (India).

¹⁶⁶ Id

¹⁶⁷ *Secretary, Ministry of Defence v. Babita Puniya*, (2020) 7 SCC 469 (India).

¹⁶⁸ *Nitisha*, (2021) 15 SCC 125, at 81.

¹⁶⁹ Id. at 87.

¹⁷⁰ Id. at 88.

intent-based to impact-based constitutional reasoning.

The judgment exposed how institutional cultures often reinforce patriarchal norms, even while purporting to operate objectively: “Institutional structures are shaped by social stereotypes that assume that women are incapable of performing in command roles... These stereotypes become embedded in formal processes that are considered ‘objective’.”¹⁷¹ The Court criticised the Indian Army’s evaluation process for penalising caregiving gaps in women’s careers, Ignoring systemic denials of command opportunities, Undervaluing non-combat achievements and failing to apply gender-sensitive norms. While “intersectionality” is not invoked repeatedly, the principles underpinning it are woven throughout the opinion. The Court recognised that women’s experiences are shaped not just by gender but by caste, class, ability, and religion: “For the labouring class in India, which is predominantly constituted by members facing multiple axes of marginalisation, litigating their right to work with equality and dignity may be a distant dream...”¹⁷²

This subtle but vital acknowledgement of overlapping systems of oppression reflects the Court’s growing alignment with the intersectional lens later explicitly adopted in *Patan Jamal Vali*.¹⁷³ Notably, the Court asserted: “The system must be redesigned to reflect sensitivity to the lived realities of marginalised groups and to dismantle structures of exclusion.”¹⁷⁴ *Lt. Col. Nitisha* is a defining step in India’s journey from formal to intersectional constitutionalism. It builds on earlier equality cases like *Anuj Garg*, *NALSA*, and *Navtej Singh Johar* and paves the way for explicitly incorporating intersectionality, as seen in *Patan Jamal Vali*. By recognising structural bias, gendered institutional cultures, and the cumulative effects of exclusion, the Court set a precedent for future anti-discrimination laws in India. It reminds us that intersectionality is not theoretical. It is constitutional. And in the struggle for dignity, inclusion, and equality, this lens is indispensable.

¹⁷¹ Id. at 89.

¹⁷² Id. at 100.

¹⁷³ *Patan Jamal Vali v. State of Andhra Pradesh*, 2021 SCC OnLine SC 343.

¹⁷⁴ *Nitisha*, (2021) 15 SCC 125 at 115

Patan Jamal Vali v. State of Andhra Pradesh (2021)¹⁷⁵

In *Patan Jamal Vali v. State of Andhra Pradesh*¹⁷⁶, the Supreme Court of India delivered one of the most profound judgments on the nature of discrimination and marginalisation in Indian jurisprudence.¹⁷⁷ Authored by Justice D.Y. Chandrachud, the opinion marked the first express and extensive acknowledgement of intersectionality in Indian constitutional law. The case involved the sexual assault of a blind Dalit woman and invited the Court to recognise how gender, caste, and disability interact to compound social vulnerability. Structural oppressionThe case arose from the rape of a visually impaired woman belonging to a Scheduled Caste. The accused, Patan Jamal Vali, had been convicted under Section 376(1) of the Indian Penal Code (IPC) and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act).¹⁷⁸ The Andhra Pradesh High Court upheld the conviction, which the Supreme Court further affirmed. Justice Chandrachud articulated intersectionality early in the judgment, acknowledging that: “This is a case which presents the Court with the occasion to understand how multiple marginalisations can intersect to lead to an especially vulnerable position for some individuals and groups.”¹⁷⁹

Citing Kimberlé Crenshaw’s foundational work,¹⁸⁰ The Court defined intersectional discrimination as arising not from individual identities alone but from their interaction, which produces unique forms of harm: “A person who has multiple marginalised identities may face special or unique harms that cannot be understood by considering each of those identities independently.”¹⁸¹ This was a landmark moment in Indian jurisprudence, one where the judiciary not only referenced intersectionality but placed it at the heart of constitutional interpretation. Justice Chandrachud recognised that the prosecutrix’s status as a woman, a Dalit, and a person with disability compounded her vulnerability: “In this case, the prosecutrix is a woman who belongs to a Scheduled Caste and is visually challenged. These identities place her at a unique disadvantage

¹⁷⁵ Patan Jamal Vali v. State of Andhra Pradesh, 2021 SCC OnLine SC 343 (India).

¹⁷⁶ Id.

¹⁷⁷ Id. at 1

¹⁷⁸ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, § 3(2)(v), India Code (1989); Indian Penal Code, 1860, § 376(1).

¹⁷⁹ Patan Jamal Vali v. State of Andhra Pradesh, 2021 SCC OnLine SC 343 . at 26.

¹⁸⁰ Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex, 1989 U. Chi. Legal F. 139.

¹⁸¹ Patan Jamal Vali, 2021 SCC OnLine SC 343, at 28.

and vulnerability when taken together.”¹⁸²The judgment acknowledged that discrimination against such individuals is not merely additive. It is exponential, rooted in the interlocking structures of patriarchy, casteism, and ableism. One of the legal issues was the applicability of Section 3(2)(v) of the SC/ST Act, which mandates enhanced punishment if an offence is committed “on the ground of” caste. The Court rejected a narrow interpretation requiring explicit evidence of caste-based motivation: “When the perpetrator is aware of the victim’s caste identity and the offence takes place in a social context rife with caste-based discrimination, the presumption can be drawn that the act was ‘on the ground’ of caste.”¹⁸³This expansive reading of the statute embedded intersectionality into statutory interpretation, setting a vital precedent for future cases involving structurally oppressed communities.

Justice Chandrachud linked intersectionality directly to Articles 14, 15, and 21, affirming that the State bears a positive obligation to dismantle structural inequalities: “A failure to understand intersectionality in the adjudication of rights results in the law remaining blind to the most vulnerable and structurally disempowered groups.”¹⁸⁴This interpretation advanced a transformative equality model, requiring the law to recognise lived experiences and dismantle historical hierarchies actively. Justice Chandrachud quoted directly from Crenshaw’s *Demarginalizing the Intersection of Race and Sex*: “Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another... her injury could result from sex discrimination or race discrimination.”¹⁸⁵He applied this metaphor to the Indian context, explaining how caste, gender, and disability intersect to create compounded harm. The judgment also cited Crenshaw’s critique of the “single-axis framework”, which renders multiple marginalised groups invisible in law and policy.¹⁸⁶The Court advocated moving beyond identity-based categories to a systems-based conception of oppression: “The intersectionality enquiry should focus on co-constituted structures of disadvantage associated with two or more identity categories at the same time.”¹⁸⁷This approach urges courts to avoid flattening identity-based claims and to engage with the institutional structures that sustain marginalisation. *Patan Jamal Vali* is a foundational

¹⁸² Id. at 29.

¹⁸³ Id. at 39.

¹⁸⁴ Id. at 46.

¹⁸⁵ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139.

¹⁸⁶ Patan Jamal Vali, 2021 SCC OnLine SC 343, at 43

¹⁸⁷ Id. at 45.

judgment in Indian equality jurisprudence. It marks the judicial enactment of intersectionality as an academic idea and a constitutional tool for addressing structural violence. The judgment recognises multi-layered oppression and rejects formal equality, favouring substantive justice.

M. Sameeha Barvin v. Joint Secretary (2021)¹⁸⁸

The Madras High Court's ruling in *M. Sameeha Barvin v. Joint Secretary*¹⁸⁹ It is a watershed moment in Indian constitutional jurisprudence. Delivered by Justice R. Mahadevan, the judgment offers one of the clearest judicial recognitions of intersectionality, a conceptual framework that explains how multiple axes of identity, such as gender and disability, combine to create unique forms of discrimination. The case concerned a deaf woman athlete initially denied the opportunity to represent India at the World Deaf Athletics Championship, purportedly on safety and logistical grounds. Justice Mahadevan rooted the judgment in Kimberlé Crenshaw's intersectionality theory, quoting her seminal analysis: "The term 'intersectionality' was crafted by Kimberle Crenshaw... She argued that black women did not face marginalisation... because of their race or sex but because of the intersection of both race and sex, which makes their experience unique."¹⁹⁰ The Court expanded this theory to the Indian context: "In the Indian context, it is often seen that factors like caste and gender are intrinsically linked. Similarly, disability and gender are linked in a way that makes females with disabilities more vulnerable to such cumulative or compounded disadvantage and resultant discrimination."¹⁹¹

This articulation moves beyond the conventional, single-axis approach to anti-discrimination law, affirming that women with disabilities do not experience "double discrimination," but a unique, indivisible form of exclusion. The judgment identified the petitioner's exclusion as a form of systemic and indirect discrimination: "This is a clear-cut case of gender discrimination attracting the rigour of Article 15(1) of the Constitution... the petitioner has meted out the double discrimination, one that is based on her gender and the other on her disability."¹⁹² The Court warned against being misled

¹⁸⁸ *M. Sameeha Barvin v. Joint Secretary*, WP No. 16953 of 2021, Madras HC (India).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 7 (citing Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139).

¹⁹¹ *Id.* at 9.

¹⁹² *Id.* at 10.

by facially neutral policies: “Facially neutral policies may not always be fair or equitable... such policies are blind to the lived realities and practical difficulties faced by those who live at the intersection of multiple vulnerable identities.”¹⁹³

Drawing from comparative jurisprudence, notably *Griggs v. Duke Power Co.*¹⁹⁴ And *Action Travail des Femmes v. Canadian National Railway Co.*¹⁹⁵ The Court emphasised that indirect discrimination is now widely recognised in global equality law. The Court placed India’s constitutional duties within the broader framework of international human rights obligations, particularly under the UN Convention on the Rights of Persons with Disabilities (CRPD): “Article 6 recognises that women and girls with disabilities are subject to multiple discrimination and that State Parties shall take appropriate measures to ensure their full development, advancement and empowerment.”¹⁹⁶ By invoking Article 51(c)¹⁹⁷ of the Constitution, the judgment affirmed that intersectionality is a constitutional imperative and a binding norm under international law.

Though the petitioner ultimately received interim relief allowing her to participate in the event, the Court issued broad, forward-looking directives that Sports bodies must not deny participation based on gender or disability without strong, justifiable reasons, Reasonable accommodation, and proper consultation must be standard practice, Government and sports federations must implement gender sensitisation and disability inclusion training and All future decisions must apply an intersectional lens.¹⁹⁸ This case is a model judgment in intersectional and inclusive constitutionalism. It is remarkable for embedding Kimberlé Crenshaw’s theory into Indian legal reasoning and recognising the distinct harm faced by women with disabilities. By treating intersectionality as constitutionally relevant, the Court emphasised that true equality requires moving beyond formal neutrality to dismantle intersecting forms of disadvantage actively.

¹⁹³ Id. at 11.

¹⁹⁴ *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

¹⁹⁵ *Action Travail des Femmes v. Canadian Nat’l Ry. Co.*, [1987] 8 C.H.R.R. D/4210 (Can. Trib.).

¹⁹⁶ U.N. Convention on the Rights of Persons with Disabilities art. 6, Dec. 13, 2006, 2515 U.N.T.S. 3.

¹⁹⁷ India Const. art. 51(c).

¹⁹⁸ Sameeha Barvin, WP No. 16953 of 2021 at 17

3.2.1 Cases That Failed to Recognize Multiple Axes of Discrimination

State of Madhya Pradesh v. Babulal (1959)¹⁹⁹

The 1959 judgment of this case offers a stark example of how the Indian judiciary has historically failed to engage with the intersectional dimensions of violence against women. The case revolved around an incident of sexual assault perpetrated against a woman, Mst. Jasso, by the accused, Babulal. According to the facts as recorded by the court: “The accused jumped over the fence and tried to seduce her for intercourse. The prosecutrix Mst. Jasso repelled his advances, which made him furious. He caught hold of her and assaulted her with a stick. He fell her down on the ground forcibly, snatched her *lugda* and thereby made her naked. Her cries attracted her uncle, who came to the spot. On seeing him, the accused fled away.”²⁰⁰ The incident was initially prosecuted under Section 354 of the Indian Penal Code²⁰¹, dealing with assault or criminal force intended to outrage the modesty of a woman. The Magistrate convicted Babulal, but the Additional Sessions Judge overturned the decision, stating that the conduct disclosed a more serious offence, namely, an attempt to commit rape, thus making the original trial jurisdictionally defective. However, the High Court reinstated the original conviction, holding that the accused's conduct did not rise to the level of an “attempt” to rape: “For an offence of an attempt to commit rape, the prosecution must establish that it has gone beyond the stage of preparation. The difference between mere preparation and actual attempt... consists chiefly in the greater degree of determination.”²⁰² The court found this “greater degree of determination” lacking.

It cited *Rex v. James Lloyd*²⁰³, where it was held that for a conviction of attempted rape, the jury must be satisfied that the accused intended “to gratify his passions... notwithstanding any resistance on her part.”²⁰⁴ Because Babulal fled upon the arrival of the victim’s uncle, the court inferred that the accused had not demonstrated sufficient determination to complete the act. What is striking in this judgment is the court’s deliberate narrowing of focus to doctrinal and jurisdictional questions, with no engagement with the broader social context. While gender was implicitly

¹⁹⁹ *State of Madhya Pradesh v. Babulal*, AIR 1960 MP 155

²⁰⁰ *Id* at 2

²⁰¹ Indian Penal Code, 1860, § 354.

²⁰² *State of Madhya Pradesh v. Babulal*, AIR 1960 MP 155 at 5

²⁰³ *Rex v. James Lloyd*, (1836) 7 C. & P. 317, 173 Eng. Rep. 141

²⁰⁴ *Id* at 5.

acknowledged through the application of Section 354 IPC, other potential axes of structural vulnerability, most notably caste, were entirely overlooked. The prosecutrix, “Mst. Jasso,” was likely from a Scheduled Caste or a socioeconomically marginalised group, judging by her name and setting. However, the court made no effort to inquire into her social status, nor did it consider how such identity markers may have shaped the nature of the violence or the impunity with which it was carried out. As Kimberlé Crenshaw has argued, “the failure of feminism to interrogate race means that the resistance strategies of feminism potentially replicate the subordination of people of colour,” and the same holds when legal reasoning on gender-based violence fails to interrogate caste in the Indian context.²⁰⁵ Furthermore, the court’s reliance on British common law precedents like *Rex v. James Lloyd* and colonial-era Indian cases such as *Empress v. Shankar*²⁰⁶ Exemplifies a jurisprudential formalism that sidelines the socio-legal realities of postcolonial India.

These cases frame sexual assault in terms of intent and bodily proximity, ignoring the power asymmetries that operate before and during such assaults. Notably, even where the court described the act as involving physical assault and public nudity, an act of immense humiliation, it did not consider whether such violence was also a mode of caste subjugation. The use of stripping as a tool of domination is widely documented in caste-based atrocities in India. Yet the judgment remains entirely silent on this dimension. This silence carries real consequences. By failing to recognise the interlocking nature of caste and gender, the court not only denied the victim a fuller recognition of the harm she suffered but also reinforced the invisibility of Dalit women’s experiences within mainstream legal discourse. It represents a lost opportunity for the judiciary to develop an intersectional jurisprudence that acknowledges how identities operate relationally within systems of power.

²⁰⁵ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139, 149.

²⁰⁶ *Empress v. Shankar*, ILR 5 Bom 403 (1881), cited in Babulal, AIR 1960 MP 155, at 5.

Tukaram and Anr. v. State of Maharashtra ²⁰⁷(1979)

In this case, a 14–16-year-old Adivasi girl, Mathura, was sexually assaulted inside the Desai Ganj Police Station by two on-duty police constables, Ganpat and Tukaram, after she was brought to the station as a witness in a complaint filed by her brother. Despite compelling circumstantial evidence of coercion, custodial environment, and Mathura’s vulnerable social position, the Supreme Court acquitted both accused, ruling that the prosecution failed to prove that Mathura did not consent to the intercourse. The judgment, authored by Justice A.D. Koshal, overturned the High Court’s conviction and held: “There is no reason to disbelieve her assertion that after Baburao had recorded her statement, she and Gama had started leaving the police station... it would be preposterous to suggest that although she was in the company of her brother... she would be so over-awed... that she would not attempt at all to resist.”²⁰⁸ The Court stated: “Her failure to appeal to her companions... and her conduct in meekly following Ganpat appellant... makes us feel that the consent in question was not a consent which could be brushed aside as ‘passive submission’.”²⁰⁹ This framing completely misunderstood how power, fear, and coercion function in custodial environments, especially for Dalits, Adivasi, and poor women.

Though the facts of the case made clear that Mathura was a minor, an orphan, living in poverty, and a member of a Scheduled Tribe, the judgment did not refer to how these social locations intensified her vulnerability. This omission epitomises what Kimberlé Crenshaw terms the “erasure of the multiply-burdened subject.”²¹⁰ Section 375 IPC²¹¹ (pre-2013) required that rape be proven as either “against her will” or “without her consent.” The Court narrowly interpreted this: “The prosecution failed to prove that the consent was obtained by fear of death or hurt... The High Court’s inference of passive submission was not legally sustainable.”²¹² This analysis ignored that custodial rape inherently involves a power differential that negates the possibility of free consent. It also failed to consider Mathura’s age in assessing her capacity to consent, despite

²⁰⁷ Tukaram and Anr. v. State of Maharashtra, (1979) 2 SCC 143

²⁰⁸ Id. at 15.

²⁰⁹ Id. at 16.

²¹⁰ Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex, 1989 U. Chi. Legal F. 139, 140.

²¹¹ Indian Penal Code, 1860, § 375.

²¹² Tukaram, (1979) 2 SCC 143, at 21

medical evidence estimating her age between 14 and 16 years.²¹³ Had such a lens been applied in *Tukaram*, the Court would have seen Mathura not just as a complainant but as a multiply-marginalized subject whose identity rendered her particularly vulnerable to state violence. This case is a landmark failure of intersectional reasoning. It demonstrates the danger of reducing consent to physical resistance, The invisibility of caste and tribal identities in judicial discourse, and How a formalist, single-axis approach to gender perpetuates injustice. It is a classic example of how Indian courts, in their reluctance to confront power, caste, and gender together, often protect institutions rather than victims.

Vishaka & Ors. v. State of Rajasthan & Ors., (1997)²¹⁴

Although the Vishaka Guidelines stemmed from the gang rape of Bhanwari Devi, a Dalit woman, the Supreme Court's landmark ruling in *Vishaka v. State of Rajasthan* (1997)²¹⁵ notably did not address the caste dimension of the violence. Bhanwari Devi's Dalit identity was central to why she was targeted, yet the Court framed the issue as a general gender-rights violation without engaging the caste-gender intersection. The resulting jurisprudence framed workplace sexual harassment in gender-neutral terms, failing to protect Dalit women in informal workspaces like rural development and health. The Court acknowledged that: "Each such incident violates the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'."²¹⁶ And that: "The fundamental right to carry on any occupation, trade or profession depends on the availability of a 'safe' working environment."²¹⁷ While this language is powerful, the Court reduced the complexity of Bhanwari Devi's marginalisation to a singular axis gender. It failed to analyse how her Dalit identity and rural social status amplified her vulnerability.

This omission is a missed opportunity for intersectional jurisprudence. Thus, the judgment did not address Why Dalit women are disproportionately targeted in rural India, How institutional failures (police inaction, social stigma) are magnified for women from marginalised communities, and how legal redress remains structurally

²¹³ Id. at 7.

²¹⁴ *Vishaka & Ors. v. State of Rajasthan & Ors.*, (1997) 6 SCC 241

²¹⁵ Id.

²¹⁶ Id at 10.

²¹⁷ Id. at 12.

inaccessible to the most vulnerable. As Kimberlé Crenshaw argues, when courts focus on only one axis of oppression, they “erase those who are multiply burdened.”²¹⁸ In Vishaka, this erasure occurred by not framing Bhanwari Devi’s rape as an intersectional harm. This omission had profound implications that Institutional Measures like the Vishaka Guidelines did not directly address caste-based harassment, rendering them partially ineffective for women like Bhanwari Devi. Access to Justice remained curtailed for Dalit women, who continued to face additional stigma when reporting workplace harassment. Judicial Silence on Caste created a precedent where intersectional dimensions were ignored in later cases unless expressly pleaded. By failing to name caste and class, Vishaka created a model of “gender equality” that remained majoritarian and elite-friendly, aligning more with urban middle-class conceptions of harassment and excluding the voices of working-class, Dalit, and rural women.

3.3 UNITED STATES

DeGraffenreid v. General Motors (1976)²¹⁹

The 1976 decision in this case is now widely recognised as an emblematic example of the limitations of single-axis anti-discrimination frameworks in early U.S. jurisprudence. In this case, five Black women sued General Motors, alleging that the company’s seniority-based layoff policy was discriminatory based on both race and sex.²²⁰ They argued that while General Motors employed Black men and white women, it systematically excluded Black women from meaningful employment opportunities and protections. However, the United States District Court for the Eastern District of Missouri dismissed their claim, holding that allowing the plaintiffs to pursue a “hybrid” race-and-sex claim would create a new and unprecedented class of plaintiffs.²²¹ The court reasoned that Black women could not combine race and sex into a single cause of action because they were not subject to discrimination in a way that was distinct from Black men or white women individually.²²² This judicial reasoning reflected a rigid view of Title VII of the Civil Rights Act of 1964, where courts tended to treat race and

²¹⁸ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine*, 1989 U. CHI. LEGAL F. 139, 140.

²¹⁹ *DeGraffenreid v. Gen. Motors Assembly Div.*, 413 F. Supp. 142 (E.D. Mo. 1976).

²²⁰ *Id.* at 143–44.

²²¹ *Id.* at 145

²²² *Id.* at 143.

sex as mutually exclusive categories.²²³ The *DeGraffenreid* ruling exemplified how courts often failed to account for the compounded and intersecting nature of discrimination, thereby excluding those whose experiences fell outside the paradigms of "pure" race or "pure" sex discrimination.

In her seminal 1989 article *Demarginalizing the Intersection of Race and Sex*, Kimberlé Crenshaw used *DeGraffenreid* as a central example to critique the inadequacy of single-axis legal reasoning.²²⁴ She argued that the court's refusal to acknowledge Black women as a distinct legal category erased their experiences from the scope of anti-discrimination law. Furthermore, Crenshaw described how courts' insistence on protecting only those who fit neatly within existing categories, Black men under race or white women under sex, rendered Black women legally invisible: "The failure to acknowledge the specificity of Black women's experiences reinforces the notion that race discrimination is what happens to Black men and that sex discrimination is what happens to white women."²²⁵ This critique formed the foundation of intersectionality theory, which calls on law and policy to recognise and respond to the overlapping systems of oppression that affect individuals at the crossroads of multiple marginalised identities. The failure of the *DeGraffenreid* court to acknowledge intersectional discrimination had significant implications. It highlighted how legal redress mechanisms often reproduce structural inequality when they ignore the full context of a person's identity.

Moore v. Hughes Helicopter, Inc. (1983)²²⁶

In this case, the U.S. Court of Appeals for the Ninth Circuit denied class certification to a Black female plaintiff who sought to represent all women employees in a Title VII²²⁷ employment discrimination case. The plaintiff, a Black woman, alleged that Hughes Helicopter systematically denied her promotions and subjected her to a racially and sexually discriminatory work environment. However, the court held that because she was a Black woman, she could not "adequately represent the interests of all women employees," most of whom were white.²²⁸ The Ninth Circuit stated: "It is clear that

²²³ Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (2020).

²²⁴ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139.

²²⁵ *Id.* at 151.

²²⁶ *Moore v. Hughes Helicopters, Inc.*, 708 F.2d 475 (9th Cir. 1983).

²²⁷ Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (2018).

²²⁸ *Moore v. Hughes Helicopters, Inc.*, 708 F.2d 475 (9th Cir. 1983).at 480.

Moore was alleging that she was discriminated against as a black female... the district court might reasonably have concluded that Moore could not adequately represent the class because her interests were not necessarily typical of the class.”²²⁹ This logic exposed the court’s failure to grasp that race and gender are not separate, compartmentalised experiences, especially for Black women. Instead of recognising that a Black woman could suffer compound discrimination, the court penalised her for not fitting within a single-axis category of either "race-only" or "gender-only" discrimination.²³⁰ Crenshaw critiqued this case as an example of the judiciary’s failure to acknowledge intragroup differences, leading to the legal invisibility of those who do not conform to the prototypical experiences of either race or gender discrimination: “Because the intersectional experience is greater than the sum of racism and sexism... this approach leaves Black women without remedy in both gender and race discrimination frameworks.”²³¹

Lam v. University of Hawai‘i (1994)²³²

In this case, the Ninth Circuit Court of Appeals reversed a summary judgment in favour of the University. It allowed a Title VII claim of race and gender discrimination to proceed. The plaintiff, Diane Lam, a Vietnamese-American woman, alleged that she was denied a faculty position at the University of Hawai‘i’s College of Education due to a combination of racial and gender bias.²³³ This case stands out for its recognition of stereotype-based intersectional discrimination, where a plaintiff is disadvantaged not because of race or sex in isolation but due to the interaction between the two. It is one of the early federal appellate decisions to treat intersectionality as legally cognisable, moving beyond the earlier restrictive reasoning of cases like *DeGraffenreid v. General Motors*.²³⁴ Lam applied for a tenure-track position at the University. Although she was among the highly qualified finalists, with a doctoral degree and extensive experience, she was passed over to a less-qualified white male candidate.²³⁵ She subsequently

²²⁹ *Id.*

²³⁰ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139, 149–50.

²³¹ *Id.* at 140.

²³² *Lam v. Univ. of Haw.*, 40 F.3d 1551 (9th Cir. 1994).

²³³ *Id.* at 1554.

²³⁴ *DeGraffenreid v. Gen. Motors Assembly Div.*, 413 F. Supp. 142 (E.D. Mo. 1976)

²³⁵ *Lam*, 40 F.3d at 1555–56.

brought an action under Title VII²³⁶, alleging discrimination based on her race (Asian) and gender (female). The district court granted summary judgment to the University, concluding that she failed to produce sufficient evidence of discriminatory intent. However, the Ninth Circuit reversed, noting that the lower court failed to recognise the plausibility of stereotype-based discrimination, particularly when race and gender interact.²³⁷

Judge Reinhardt, writing for the majority, emphasised that discrimination can stem from specific stereotypes that attach to individuals because of the intersection of two or more identity categories, such as being both Asian and female. He wrote: “The attempt to distinguish the claims on the basis that Lam was discriminated against because she was Asian and not because she was a woman ignores the fact that the particular stereotypes that led to the discrimination could be those applicable only to Asian women, and not to Asian men or white women.”²³⁸ This was a significant judicial recognition of the argument advanced by Kimberlé Crenshaw, who, in 1989, had criticised the courts for failing to grasp how discrimination manifests at the intersection of multiple marginalised identities.²³⁹ The Court effectively affirmed that Asian women may be subject to distinct prejudices not experienced by either Asian men or white women and that anti-discrimination law must accommodate such complexity. The Court found that Lam had submitted substantial circumstantial evidence, including an all-white, predominantly male hiring committee, Inconsistent justifications for selecting the hired candidate, Testimony that committee members made comments reflecting racial and gender stereotypes, such as doubting whether an Asian woman could assert authority or manage colleagues.²⁴⁰ This case marks a doctrinal advancement in U.S. anti-discrimination law. Unlike earlier cases that rejected compound claims as overly novel or burdensome, *Lam* embraced the theoretical insights of intersectionality by treating combined race-gender discrimination as legally distinct and justiciable. It implicitly supported Crenshaw’s argument that courts must abandon “single-axis frameworks” that render intersectional experiences lawfully

²³⁶ Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (2018).

²³⁷ *Lam*, 40 F.3d . at 1561.

²³⁸ *Id.* at 1562.

²³⁹ Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex, 1989 U. Chi. Legal F. 139, 149.

²⁴⁰ *Lam*, 40 F.3d at 1560–61.

invisible.²⁴¹

Bostock v. Clayton County (2020)²⁴²

In this case, the Supreme Court of the United States' decision represents a watershed in anti-discrimination law, particularly for LGBTQ+ individuals. The 6–3 ruling, authored by Justice Neil Gorsuch, held that Title VII of the Civil Rights Act of 1964 protects employees against discrimination based on sexual orientation and gender identity.²⁴³ The decision is doctrinally significant for its textualist method and alignment with intersectional principles, even though the Court did not expressly use “intersectionality.” Title VII of the Civil Rights Act prohibits employment discrimination “because of ... sex.”²⁴⁴ The central issue before the Court was whether this prohibition encompassed sexual orientation and gender identity. Interpreting the statutory text, the majority reasoned that it is impossible to discriminate against a person for being gay or transgender without also discriminating against them “because of sex.”²⁴⁵

As Justice Gorsuch explained: “If the employer fires a male employee for being attracted to men, but does not fire a female employee for being attracted to men, the employer is deciding because of sex.”²⁴⁶ This “but-for” causation framework established that if an employee’s sex was a necessary condition for the employer’s adverse action, the employer had violated Title VII.²⁴⁷ Importantly, this logic applied even if the employer did not act out of hostility toward the employee’s sex or gender identity in isolation. The judgment consolidated three cases: Gerald Bostock, a gay man fired after joining a softball league; Donald Zarda, a skydiving instructor terminated for being gay; and Aimee Stephens, a transgender woman dismissed from her job at a funeral home after she disclosed her intent to transition.²⁴⁸ While the Court did not cite Kimberlé Crenshaw or use the term “intersectionality,” its analytical framework resonates with Crenshaw’s critique of single-axis frameworks in anti-discrimination

²⁴¹ Id. at 1562–63.

²⁴² *Bostock v. Clayton County*, 590 U.S. , 140 S. Ct. 1731 (2020).

²⁴³ Id. at 1737.

²⁴⁴ Civil Rights Act of 1964 § 703(a), 42 U.S.C. § 2000e-2(a)(1) (2020).

²⁴⁵ *Bostock*, 140 S. Ct. at 1737–41.

²⁴⁶ Id. at 1741.

²⁴⁷ Id. at 1739–40.

²⁴⁸ Id. at 1738.

law.²⁴⁹ Crenshaw argued that traditional approaches tend to treat categories such as race, sex, and class as mutually exclusive, thus failing to address how interlocking systems of subordination affect individuals who exist at their intersections, e.g., queer people of colour or transgender persons with disabilities.²⁵⁰ In *Bostock*, the Court emphasised that it is the combination of characteristics such as being male and attracted to men or assigned male and identifying as female that triggers discrimination.²⁵¹ This recognition parallels Crenshaw's view that discrimination is often produced by the interaction of identities, not just by their isolated existence.²⁵² It sets a precedent for recognising how multiple identity factors interact to produce discrimination and opens the door for future cases to engage explicitly with intersectional harms. It aligns American workplace discrimination jurisprudence with the textual fidelity to civil rights statutes and the normative imperatives of inclusive justice.

3.4 UNITED KINGDOM

Ghaidan v. Godin-Mendoza (2004)²⁵³

In this case, the House of Lords (now the UK Supreme Court) issued a landmark decision on equality for same-sex couples, interpreting housing legislation in line with the European Convention on Human Rights (ECHR). The case is a cornerstone of British LGBTQ+ rights jurisprudence. It is frequently cited for its transformative use of statutory interpretation under the Human Rights Act 1998 and its move toward substantive equality.²⁵⁴ While the judgment predates the popularisation of “intersectionality” in UK courts, its logic is consistent with intersectional reasoning, especially in recognising how law can institutionalise exclusion through ostensibly neutral language. Mr Godin-Mendoza had lived with his same-sex partner in a London flat rented under a protected tenancy. After his partner's death, the landlord sought possession of the property, arguing that Schedule 1 to the Rent Act 1977 permitted succession only to spouses or those “living with the original tenant as his or her wife or husband” language that was historically interpreted to exclude same-sex couples.²⁵⁵

²⁴⁹ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139.

²⁵⁰ *Id.* at 149–50.

²⁵¹ *Bostock*, 140 S. Ct. at 1741–42.

²⁵² Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139.

²⁵³ *Ghaidan v. Godin-Mendoza*, [2004] UKHL 30, [2004] 2 A.C. 557.

²⁵⁴ Human Rights Act 1998, c. 42, § 3 (UK).

²⁵⁵ Rent Act 1977, c. 42, sched. 1, para. 2.

The House of Lords unanimously ruled in favour of Godin-Mendoza, holding that Schedule 1 to the Rent Act 1977 must be interpreted in a way that included same-sex partners.²⁵⁶ Relying on Section 3 of the Human Rights Act 1998, which mandates courts to read and give effect to legislation compatible with Convention rights “so far as it is possible to do so,” the Lords applied a purposive and rights-compatible interpretation.²⁵⁷ The case is not framed in terms of indirect discrimination, but its effect is equivalent. The provision of the Rent Act was facially neutral. It did not mention sexual orientation, but its practical effect was to deny same-sex partners rights that heterosexual couples enjoyed. Although *Ghaidan* did not involve an intersectional claim per se, it provides a model for how courts can adopt intersectionally sensitive reasoning. Although it does not speak in the language of intersectionality, its reasoning resonates with intersectional principles by recognising that identity-based harms are often structural, not explicit. In doing so, the decision reaffirmed the judiciary's role in applying the law and ensuring that the law reflects society's evolving understanding of equality, dignity, and justice.

Essop v. Home Office (2017)²⁵⁸

In this case, the UK Supreme Court clarified the concept of indirect discrimination under the Equality Act 2010, especially when the reason for disadvantage is unclear or intersects across identity categories.²⁵⁹ The case focused on a mandatory Core Skills Assessment (CSA) used by the Home Office for promotions, which statistically demonstrated disproportionately low pass rates among Black and minority ethnic (BME) candidates and older workers.²⁶⁰ The claimants, however, were unable to pinpoint why the disparity occurred. It opened the door to a more systemic and group-based analysis of discrimination, and it implicitly acknowledged the way structural inequalities often rooted in race, age, and overlapping disadvantages produce unequal outcomes. The Equality Act 2010 defines indirect discrimination under Section 19 as occurring when a neutral provision, criterion, or practice (PCP) puts a protected group at a particular disadvantage unless the PCP can be shown to be a proportionate means of achieving a legitimate aim.²⁶¹ The Home Office required all promotion applicants to

²⁵⁶ Id. at [18]–[20].

²⁵⁷ Human Rights Act 1998, § 3(1)

²⁵⁸ *Essop v. Home Office* (UK Border Agency) [2017] UKSC 27, [2017] 1 W.L.R. 1343.

²⁵⁹ Id.

²⁶⁰ Id. at [1]–[5].

²⁶¹ Equality Act 2010, c. 15, § 19(1) (UK).

pass the CSA. However, neither the claimants nor the employer could explain the causal mechanism behind this disparity. The key legal issue was whether indirect discrimination claims require the claimant to explain why the PCP causes a disparate impact or whether statistical disparity alone suffices.²⁶²

Delivering the judgment, Lady Hale (Deputy President) held that the claimant didn't need to show why the group was disadvantaged, only that they were.²⁶³ "It is not a requirement of indirect discrimination that the claimant should establish why the PCP puts the group at a disadvantage."²⁶⁴ This marks a crucial divergence from intent-based or causation-based discrimination models, instead embracing a more structural and outcome-oriented approach. Lady Hale emphasised that courts must focus on group-level statistical disparity, and the law must recognise the disadvantage's multifactorial and systemic nature. Although the Court did not explicitly mention "intersectionality," the decision is particularly relevant from an intersectional perspective because it recognised that disadvantage may not always be traceable to a single, isolable cause.²⁶⁵ When systemic inequalities are accepted as tangible and measurable, even if not reducible to one cause, intersectional harms are more likely to be addressed, especially in cases involving racialised minorities, gendered hierarchies, and class-based exclusion. The judgment in this case is a pivotal contribution to developing intersectional equality jurisprudence in the UK. It provides an essential juridical framework for advancing the rights of those whose discrimination cannot be captured by race, sex, age, or disability alone but by their entwinement.

3.5: Thematic Analysis Across Cases

Across jurisdictions, courts have increasingly engaged with recognising multiple and intersecting identities in their analysis of discrimination claims. The Indian Supreme Court's decision in *Patan Jamal Vali v. State of Andhra Pradesh*²⁶⁶ is paradigmatic. Justice D.Y. Chandrachud explicitly invoked Kimberlé Crenshaw's concept of intersectionality, recognising that the compounded disadvantage faced by a Dalit, visually impaired woman required an integrated, not fragmented, legal response.²⁶⁷ A

²⁶² Essop, [2017] UKSC 27 at [13].

²⁶³ Id. at [25].

²⁶⁴ Id.

²⁶⁵ Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex, 1989 U. Chi. Legal F. 139.

²⁶⁶ Patan Jamal Vali v. State of Andhra Pradesh, (2021) 9 SCC 1.

²⁶⁷ Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex, 1989 U. Chi. Legal F. 139.

person who has multiple marginalised identities may face special or unique harms that cannot be understood by considering each of those identities independently."²⁶⁸ Similarly, in *M. Sameeha Barvin v. Joint Secretary*²⁶⁹, the Madras High Court invoked Crenshaw's theory. It adapted it to the Indian context, recognising the unique barriers faced by women with disabilities. The court emphasised that the petitioner suffered from double discrimination and a qualitatively distinct form of structural exclusion.

In the United States, *Lam v. University of Hawai'i*,²⁷⁰ it is notable for recognising the plausibility of stereotype-based discrimination affecting Asian women as a group, distinct from Asian men or white women. This acknowledgement corrected the earlier legal erasures seen in *DeGraffenreid v. General Motors*.²⁷¹, where the court rejected claims by Black women on the basis that race and gender could not be combined as a single cause of action. Several cases demonstrate notable judicial innovations that furthered intersectional equality. *Navtej Singh Johar v. Union of India*²⁷² and *NALSA v. Union of India*²⁷³. In India are emblematic of transformative constitutionalism. The former decriminalised consensual same-sex relations, advancing the dignity and equality of LGBTQ+ individuals, while the latter recognised the right of transgender persons to self-identify their gender, framing this right within a structure of autonomy, dignity, and non-discrimination. The U.S. Supreme Court's ruling in *Bostock v. Clayton County*²⁷⁴ also used a textualist but intersectionally sensitive reading of Title VII, holding that discrimination against LGBTQ+ employees necessarily entails discrimination based on sex. Nevertheless, limitations persist. In *Payne v. Travenol Laboratories*, the Fifth Circuit refused to allow Black female plaintiffs to represent Black men, thereby failing to recognise the shared dimensions of racial discrimination.²⁷⁵ Similarly, in India, *Tukaram v. State of Maharashtra*²⁷⁶ (Mathura rape case) and *Vishaka v. State of Rajasthan*²⁷⁷ Ignored the caste dimensions of gender

²⁶⁸ Patan Jamal Vali v. State of Andhra Pradesh, (2021) 9 SCC 1.

²⁶⁹ M. Sameeha Barvin v. Joint Secretary, WP No. 16953 of 2021 (Madras HC).

²⁷⁰ Lam v. Univ. of Haw., 40 F.3d 1551, 1562 (9th Cir. 1994).

²⁷¹ DeGraffenreid v. Gen. Motors, 413 F. Supp. 142 (E.D. Mo. 1976).

²⁷² Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

²⁷³ NALSA v. Union of India, (2014) 5 SCC 438.

²⁷⁴ Bostock v. Clayton Cnty., 590 U.S. ____ (2020)

²⁷⁵ Payne v. Travenol Labs., Inc., 673 F.2d 798 (5th Cir. 1982).

²⁷⁶ Tukaram and Anr. v. State of Maharashtra, (1979) 2 SCC 143

²⁷⁷ Vishaka & Ors. v. State of Rajasthan & Ors., (1997) 6 SCC 241

violence, thereby demonstrating the judiciary's failure to move beyond single-axis frameworks.

3.6 CONCLUSION

Intersectionality demands a legal imagination that moves beyond single-axis thinking and embraces the complex interrelationship of identity, power, and discrimination. Courts are beginning to recognise that individuals experience disadvantage not only as women or persons of a particular caste, race, or ability but at the intersection of these identities, often compounding their exclusion from justice. In India, landmark rulings such as *Patan Jamal Vali v. State of Andhra Pradesh*²⁷⁸ and *M. Sameeha Barvin v. Joint Secretary*²⁷⁹ Reflect an emerging willingness to name and respond to intersectional harms, particularly through the lens of caste, gender, and disability. These judgments reflect the influence of Kimberlé Crenshaw's original thesis that the law's failure to recognise compounded identities leads to marginalising those at the intersection of race and gender.²⁸⁰ While such judicial pronouncements remain rare, they mark a crucial doctrinal shift from a strictly compartmentalised view of discrimination to one that attends to structural and compounded vulnerability. Parallel developments can be seen in *Lt. Col. Nitisha v. Union of India*,²⁸¹ Where the Supreme Court embraced a substantive equality framework to address gendered institutional exclusion within the military, and in *Navtej Singh Johar v. Union of India*²⁸², which reaffirmed the constitutional protection of sexual minorities while engaging with questions of autonomy and dignity.

These cases illustrate the judiciary's evolving capacity to engage with intersecting norms of gender, sexuality, and status, even when not using the terminology of intersectionality explicitly. While the UK Supreme Court in *Essop v. Home Office*²⁸³ accepted the premise of statistical group disadvantage without requiring causation, U.S. courts have historically been less receptive to intersectional claims, particularly in

²⁷⁸ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 S.C.C. 1

²⁷⁹ *M. Sameeha Barvin v. Joint Sec'y*, W.P. No. 16953 of 2021, slip op. (Madras H.C. Aug. 5, 2021) (India).

²⁸⁰ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139, 140–42.

²⁸¹ *Lt. Col. Nitisha v. Union of India*, (2021) 15 S.C.C. 125

²⁸² *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1

²⁸³ *Essop v. Home Office (UK Border Agency)*, [2017] UKSC 27, [2017] 1 W.L.R. 1343 (U.K.).

*DeGraffenreid v. General Motors*²⁸⁴ and *Payne v. Travenol Laboratories*²⁸⁵, where Black women plaintiffs were denied standing to represent their unique identity-based harms. Still, recent cases like *Bostock v. Clayton County*²⁸⁶ demonstrate how textual statutory interpretation can evolve to accommodate overlapping identities, affirming that discrimination against LGBTQ+ persons necessarily implicates sex-based discrimination. The overall trajectory of intersectional reasoning in judicial practice thus reveals both promise and restraint. Courts have begun to recognise the inadequacies of formal equality models and the need to acknowledge lived experiences shaped by multiple, interlocking systems of oppression. Yet, they often fall short of fully embedding intersectional analysis into legal doctrine or applying it systematically across discrimination claims.

²⁸⁴ *DeGraffenreid v. Gen. Motors Assemb. Div.*, 413 F. Supp. 142, 145 (E.D. Mo. 1976)

²⁸⁵ *Payne v. Travenol Labs., Inc.*, 673 F.2d 798, 810–12 (5th Cir. 1982).

²⁸⁶ *Bostock v. Clayton Cnty.*, 590 U.S. ___, 140 S. Ct. 1731, 1741 (2020).

CHAPTER 4: COMPARATIVE PERSPECTIVE

4.1 Introduction

The recognition of intersectional discrimination within judicial reasoning is uneven across jurisdictions, even among constitutional democracies committed to equality. Chapter 3 explored how Indian courts have gradually begun to engage with intersectional identities, especially in recent cases such as *Patan Jamal Vali*²⁸⁷ and *Nitisha*²⁸⁸ this chapter adopts a comparative lens to assess the extent to which other legal systems, notably those of the United States and the United Kingdom, acknowledge and adjudicate the compounded harm experienced by individuals located at the intersection of multiple marginalized identities. The choice of jurisdictions reflects both historical influence and contemporary relevance. The United States is the birthplace of intersectionality theory, as developed by legal scholar Kimberlé Crenshaw, who argued that the law systematically fails to protect individuals facing discrimination on multiple fronts, such as Black women, because it insists on treating identity categories like race and gender, in isolation.²⁸⁹ Despite this conceptual origin, U.S. courts have struggled to incorporate intersectional reasoning into doctrine, often rejecting claims that do not fit within a singular protected category under Title VII of the Civil Rights Act or the Equal Protection Clause of the Fourteenth Amendment.²⁹⁰

In contrast, the United Kingdom has codified anti-discrimination law through the Equality Act 2010, which theoretically recognizes a broad array of protected characteristics including sex, race, disability, and sexual orientation. However, its failure to operationalize Section 14, which would have allowed combined discrimination claims, has resulted in a fragmented and often inadequate legal response to intersectional harm.²⁹¹ Judicial interpretations have largely adhered to a compartmentalized model of identity, limiting the legal system's responsiveness to the lived realities of individuals experiencing multiple and simultaneous forms of

²⁸⁷ *Patan Jamal Vali v. State of Andhra Pradesh*, 2021 SCC OnLine SC 343.

²⁸⁸ *Nitisha*, (2021) 15 SCC 125 at 115

²⁸⁹ 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, 140–41.

²⁹⁰ *DeGraffenreid v. General Motors*, 413 F. Supp. 142, 145 (E.D. Mo. 1976); *Bostock v. Clayton Cnty.*, 590 U.S. ___, 140 S. Ct. 1731, 1743 (2020).

²⁹¹ Equality Act 2010, c. 15, § 14 (U.K.) (not yet in force).

discrimination.²⁹² Meanwhile, India offers an evolving model of transformative constitutionalism, where the judiciary, particularly the Supreme Court, has begun to embed intersectionality into constitutional reasoning, even if inconsistently.²⁹³ This trend is notable in decisions such as *Patan Jamal Vali v. State of Andhra Pradesh*²⁹⁴, which explicitly invoked Crenshaw's theory and emphasized the need to recognize systemic disadvantages arising from the interaction of caste, gender, and disability. Similarly, in *Lt. Col. Nitisha v. Union of India*²⁹⁵, the Court diagnosed structural bias within military institutions and advocated for a substantive equality approach that moves beyond formal neutrality. Thus, this chapter will evaluate how each jurisdiction conceptualizes equality, addresses multiple forms of identity-based harm, and delivers (or denies) justice to the most marginalized. The chapter will not reiterate the case analyses already discussed in Chapter 3. Rather, it aims to compare and contrast the frameworks of adjudication across these three jurisdictions, focusing on their underlying logics, interpretive practices, and normative commitments.

4.2 Intersectionality in India, the United States, and the United Kingdom

INDIA

India's constitutional and legal architecture offers a uniquely fertile ground for embedding intersectional reasoning, largely due to its commitment to transformative constitutionalism. This model, as advanced by scholars like Upendra Baxi, envisions constitutional interpretation not as a static legal exercise, but as a dynamic, justice-oriented project aimed at dismantling historic and structural inequalities across caste, class, gender, religion, and disability axes.²⁹⁶

Constitutional Equality Provisions

India's constitutional vision of equality rests on Articles 14, 15, 16, and 21, each contributing differently to the recognition of intersectional harms. Article 14 guarantees

²⁹² Aileen McColgan, *Class Wars? Religion and (In)equality in the Workplace*, 38 *INDUS. L.J.* 1, 5–7 (2009); Shreya Atrey, *Intersectional Discrimination*, at 132–38 (Oxford Univ. Press 2019).

²⁹³ Upendra Baxi, *The (Im)possibility of Constitutional Justice: Seismographic Notes on Indian Constitutionalism*, in *Politics and Ethics of the Indian Constitution* 31 (Rajeev Bhargava ed., 2008).

²⁹⁴ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1, at 33.

²⁹⁵ *Lt. Col. Nitisha v. Union of India*, (2021) 15 SCC 125, at 80–95.

²⁹⁶ Upendra Baxi, *Preliminary Notes on Transformative Constitutionalism*, 8 *B.U. L. Rev.* 1, 5–6 (2008).

equality before the law and *equal protection of the laws*, laying the foundation for anti-arbitrariness and substantive justice.²⁹⁷ Article 15(1) prohibits discrimination based on religion, race, caste, sex, or place of birth; clauses (3) and (4) empower the state to take affirmative action for women and historically marginalized communities.²⁹⁸ Article 16 extends these principles to public employment, further enabling vertical redistribution through reservation policies that have often been key to recognizing caste and gender simultaneously.²⁹⁹ Article 21, interpreted expansively, safeguards *the right to life with dignity*, forming the cornerstone for judicially crafted protections such as bodily autonomy, sexual identity, and workplace dignity.³⁰⁰ Crucially, Article 51(c) directs the State to respect international law and treaty obligations, which courts have invoked to integrate global human rights standards especially those addressing gender-based violence and discrimination into domestic jurisprudence.³⁰¹ This interpretive strategy was deployed most famously in *Vishaka v. State of Rajasthan*³⁰², where the Supreme Court used CEDAW to frame interim guidelines against workplace sexual harassment.

Judicial Interpretation

In *Anuj Garg v. Hotel Association of India*³⁰³, the Court explicitly endorsed substantive equality, rejecting protectionist laws that reinforced gender stereotypes and urging an interpretive approach sensitive to *lived experience* and systemic disadvantage. This jurisprudential shift laid the groundwork for more robust intersectional reasoning in later cases. Recent decisions reflect a turn toward *structural analysis*. In *Patan Jamal Vali v. State of Andhra Pradesh*³⁰⁴, the Supreme Court acknowledged the compounded vulnerability of a blind Dalit woman, referencing Kimberlé Crenshaw's theory of intersectionality and calling for judicial sensitivity to "layered" discrimination.³⁰⁵ Similarly, in *Lt. Col. Nitisha v. Union of India*³⁰⁶, the Court condemned the Armed Forces' performance criteria as structurally biased against women, stating that equality

²⁹⁷ INDIA CONST. art. 14; *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

²⁹⁸ INDIA CONST. art. 15(1), (3), (4); Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 140–48 (Oxford Univ. Press 1999).

²⁹⁹ INDIA CONST. art. 16(1)–(4B); *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217.

³⁰⁰ INDIA CONST. art. 21; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

³⁰¹ INDIA CONST. art. 51(c); *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

³⁰² *Vishaka & Ors. v. State of Rajasthan & Ors.*, (1997) 6 SCC 241.

³⁰³ *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1 (India).

³⁰⁴ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1.

³⁰⁵ *Id.* at 33.

³⁰⁶ *Lt. Col. Nitisha v. Union of India*, (2021) 15 SCC 125.

must “look beyond the veneer of neutrality.”³⁰⁷ These judgments mark a departure from the earlier *formal equality* approach, where claimants were expected to show direct, isolated discrimination based on one axis (e.g., only sex or only caste). They also resonate with intersectional feminist critiques that traditional Indian jurisprudence often centred on the experiences of upper-caste women while excluding Dalit, Adivasi, queer, and disabled women's perspectives.³⁰⁸

Limitations

Despite this progress, Indian law still lacks a codified doctrine of intersectional discrimination akin to Section 14 of the UK's Equality Act 2010³⁰⁹. Legislative frameworks like the SC/ST (Prevention of Atrocities) Act³¹⁰, the Protection of Women from Domestic Violence Act³¹¹, and the Rights of Persons with Disabilities Act³¹² operate in silos, addressing identity categories discretely rather than jointly.³¹³ Moreover, the judicial application remains inconsistent and heavily dependent on progressive benches. As Usha Sharma notes, even well-intentioned gender-sensitive laws often fail to address structural inequalities when they ignore caste or class-specific vulnerabilities.³¹⁴

UNITED STATES

The United States legal system, despite its extensive civil rights architecture, has historically exhibited deep doctrinal resistance to recognizing intersectional discrimination. Although the constitutional and statutory frameworks, principally the Equal Protection Clause of the Fourteenth Amendment³¹⁵ and Title VII of the Civil Rights Act of 1964³¹⁶, appear expansive in their guarantees, judicial interpretation has largely adhered to a formal equality model. This has resulted in a jurisprudential landscape where courts routinely demand that plaintiffs isolate their experiences of

³⁰⁷Id. at 96.

³⁰⁸ Dr. Bindu Variath, Intersectional Feminism in India: Current Judicial Trends in Constitutional Interpretation, IJARIE, Vol. 9, Issue 2, 2023

³⁰⁹ Equality Act 2010, c. 15, § 14 (UK).

³¹⁰ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, INDIA CODE (1990).

³¹¹ Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005).

³¹² Rights of Persons with Disabilities Act, No. 49 of 2016, INDIA CODE (2016).

³¹³ Usha Sharma, Intersectionality in Indian Laws: A Feminist Critique, IJNRD, Vol. 9, Issue 2, 2024.

³¹⁴ Id.

³¹⁵ U.S. CONST. amend. XIV, § 1.

³¹⁶ Civil Rights Act of 1964 tit. VII, 42 U.S.C. §§ 2000e to 2000e-17 (2018).

harm into discrete identity categories, rendering compounded discrimination legally invisible.

Constitutional and Statutory Frameworks

The Equal Protection Clause provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."³¹⁷ While this clause underpins landmark civil rights victories, its implementation has required plaintiffs to demonstrate that they were treated differently from similarly situated individuals a logic that obscures the structural nature of intersectional harm.³¹⁸ Moreover, the Supreme Court has never recognized "intersectionality" as a distinct class of claim under equal protection jurisprudence. Title VII of the Civil Rights Act of 1964, prohibits employment discrimination on the basis of race, colour, religion, sex, or national origin,³¹⁹ similarly reflects this single-axis paradigm. Courts interpreting Title VII have generally required plaintiffs to frame their claims around a singular protected category. Further complicating intersectional litigation, the Americans with Disabilities Act (ADA)³²⁰ offers protection against discrimination on the basis of disability but operates in isolation from Title VII. Consequently, a disabled Black woman would need to file independent claims under Title VII (race and sex) and the ADA (disability), without any formal recognition of the compounded harm she experiences due to the interaction of these identities.

Judicial Reasoning

In the infamous case of *DeGraffenreid v. General Motors*³²¹, the district court rejected claims brought by five Black women, holding that neither their race nor their sex alone was sufficient to show discrimination and rejecting the idea of a "combined" subclass.³²² The court concluded that allowing Black women to assert a combined claim would create a "new super-remedy."³²³ This approach was the basis of Kimberlé Crenshaw's seminal critique, in which she argued that the law treats race and gender as

³¹⁷ U.S. CONST. amend. XIV, § 1.

³¹⁸ Catharine A. MacKinnon, Reflections on Sex Equality Under Law, 100 YALE L.J. 1281, 1285 (1991).

³¹⁹ Civil Rights Act of 1964 § 703, 42 U.S.C. § 2000e-2(a)(1) (2018).

³²⁰ Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12213 (2018).

³²¹ *DeGraffenreid v. Gen. Motors Assem. Div.*, 413 F. Supp. 142, 145 (E.D. Mo. 1976).

³²² *Id.*

³²³ *Id.*

“mutually exclusive categories,” systematically ignoring those situated at their intersection.³²⁴ While subsequent cases have expanded individual protections, they have largely preserved the formalist logic. In *Bostock v. Clayton County*³²⁵, the U.S. Supreme Court held that discrimination against employees for being homosexual or transgender constitutes discrimination “because of sex” under Title VII.³²⁶ Though heralded as a landmark, the Court’s reasoning was grounded in textual formalism, stating that an employer who fires a person for being gay or transgender necessarily discriminates based on sex.³²⁷ It did not address how overlapping identities, such as being a queer person of colour, can lead to intensified forms of exclusion. Similarly, in *Obergefell v. Hodges*³²⁸, the Court recognized the right to same-sex marriage under the Due Process and Equal Protection Clauses³²⁹, invoking the concept of dignity. However, the Court again refrained from engaging with the intersectional burdens faced by LGBTQ+ individuals of colour or those with disabilities. An important outlier remains the Ninth Circuit’s decision in *Lam v. University of Hawaii*³³⁰, where the court acknowledged that discrimination against an Asian woman could not be reduced to discrete claims of discrimination against Asians or against women. Citing Crenshaw directly, the court adopted an explicitly intersectional reasoning. Still, such cases remain rare, and the broader doctrinal landscape resists multidimensional analysis.³³¹

Limitations

The formalism entrenched in U.S. equality jurisprudence creates several barriers for intersectional claims. First, courts demand that claims be disaggregated into legally recognized axes, such as race or sex, making it procedurally and substantively harder for plaintiffs to demonstrate compound harm.³³² Second, the strict scrutiny standard under the Equal Protection Clause³³³ applies only to recognized suspect classifications

³²⁴ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 43 U. CHI. LEGAL F. 139, 143–50 (1989).

³²⁵ *Bostock v. Clayton Cnty.*, 590 U.S. ___, 140 S. Ct. 1731, 1741 (2020).

³²⁶ Civil Rights Act of 1964 tit. VII, 42 U.S.C. §§ 2000e to 2000e-17 (2018).

³²⁷ *Bostock v. Clayton Cnty.*, 590 U.S. ___, 140 S. Ct. 1731, 1741 (2020). at 1743–44.

³²⁸ *Obergefell v. Hodges*, 576 U.S. 644, 675–77 (2015).

³²⁹ U.S. CONST. amend. XIV, § 1.

³³⁰ *Lam v. Univ. of Haw.*, 40 F.3d 1551, 1562–63 (9th Cir. 1994).

³³¹ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139.

³³² Devon W. Carbado & Kimberlé W. Crenshaw, *An Intersectional Critique of Tiers of Scrutiny*, 129 YALE L.J. 1, 10–13 (2019).

³³³ U.S. CONST. amend. XIV, § 1.

(e.g., race), while intermediate scrutiny governs sex-based claims. There is no doctrinal recognition of heightened scrutiny for intersectional identities.³³⁴ This leads to a paradox: explicitly intersectional policies (e.g., affirmative action for Black women) may face more rigorous judicial scrutiny than formally “neutral” ones that benefit more privileged subgroups.³³⁵ Moreover, statutory enforcement is fragmented across axes. Title VII³³⁶ addresses race and sex discrimination; the ADA³³⁷ governs disability discrimination; the Age Discrimination in Employment Act³³⁸ handles age. These statutes have different standards for causation, defences, and remedies, forcing litigants into procedural silos that fail to reflect the unified nature of their lived experiences.³³⁹

Crenshaw, in her foundational scholarship, warned that this model of legal analysis renders intersectional harms invisible by failing to consider the “multidimensionality” of Black women's lives.³⁴⁰ Catharine MacKinnon similarly critiqued the law for its failure to capture the systematic subordination of women, which varies across lines of race, class, and sexuality.³⁴¹ Martha Minow and Leslie McCall have each emphasized that legal categories structure social perception and that simplistic identity categories are inadequate to address complex, overlapping experiences of exclusion.³⁴²

UNITED KINGDOM

The United Kingdom’s equality regime is distinctive in its statutory consolidation of anti-discrimination protections. The Equality Act 2010³⁴³ brought together over 100 separate pieces of legislation into a single legal framework governing discrimination, harassment, and victimization across a range of protected characteristics, including race, sex, disability, sexual orientation, and religion.³⁴⁴ The Act was intended to simplify the law and strengthen protection, but its doctrinal structure reveals key

³³⁴ Devon W. Carbado & Kimberlé W. Crenshaw, *An Intersectional Critique of Tiers of Scrutiny*, 129 *YALE L.J.* 1, 10–13 (2019).

³³⁵ *Id.* at 20–25.

³³⁶ Civil Rights Act of 1964 tit. VII, 42 U.S.C. §§ 2000e to 2000e-17 (2018).

³³⁷ Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12213 (2018).

³³⁸ Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621–634 (2018).

³³⁹ Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* 47 (Harvard Univ. Press 1991).

³⁴⁰ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 43 *U. CHI. LEGAL F.* 139, 143–50 (1989).

³⁴¹ Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 *YALE L.J.* 1281, 1285 (1991).

³⁴² Leslie McCall, *The Complexity of Intersectionality*, 30 *SIGNS* 1771, 1776–77 (2005).

³⁴³ Equality Act 2010, c. 15 (UK).

³⁴⁴ *Id.*

limitations, particularly in relation to intersectionality.

Statutory Framework

While the Equality Act adopts a substantive equality framework in theory, especially through duties such as the Public Sector Equality Duty (PSED) under Section 149,³⁴⁵ it remains tethered to a formal understanding of identity. Section 149 requires public authorities to have “due regard” to the need to eliminate discrimination and advance equality of opportunity.³⁴⁶ This duty is proactive and potentially transformative, yet it functions more as a procedural obligation than a substantive mechanism for judicial redress.³⁴⁷ Courts often assess whether the duty was considered, rather than whether it produced equitable outcomes. Section 14³⁴⁸, which was designed to permit claims of combined discrimination (e.g., where someone suffers harm due to being both Black and female), remains unenforced. This means that UK claimants must still choose between individual characteristics (e.g., race *or* sex) when making legal claims. The failure to implement Section 14 reflects a deep reluctance to acknowledge intersectional identities within the structure of the law.³⁴⁹ As Shreya Atrey notes, the Equality Act ultimately treats protected characteristics as “mutually exclusive”, thus marginalizing those whose experiences cannot be neatly categorized.

³⁵⁰Section 19³⁵¹ addresses indirect discrimination, offering some scope to challenge ostensibly neutral policies that disproportionately disadvantage certain groups. However, this section, too, is grounded in a single-axis model. Unless a claimant can show disparate impact on a specific characteristic, compounded or intersecting disadvantages cannot be fully addressed. ³⁵²The Human Rights Act 1998³⁵³, which incorporates the European Convention on Human Rights (ECHR)³⁵⁴ into domestic law, has also played a limited role in intersectional jurisprudence. Articles 8 (private and family life) and 14 (non-discrimination) have occasionally been invoked to challenge

³⁴⁵ Id. § 149.

³⁴⁶ Id. § 149(1)(a)–(c).

³⁴⁷ Aileen McColgan, *Discrimination, Equality and the Law* 104–06 (Hart 2014).

³⁴⁸ Equality Act 2010, c. 15, § 14 (U.K.).

³⁴⁹ Sandra Fredman, *Discrimination Law* 195–97 (2d ed., Oxford Univ. Press 2011).

³⁵⁰ Shreya Atrey, *Intersectional Discrimination* 132–36 (Oxford Univ. Press 2019).

³⁵¹ Equality Act 2010, c. 15, § 19 (UK).

³⁵² *Essop v. Home Office (UK Border Agency)*, [2017] UKSC 27

³⁵³ Human Rights Act 1998, c. 42 (UK).

³⁵⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

discriminatory practices, but UK courts have rarely developed a robust intersectional analysis through this channel.³⁵⁵

Judicial Interpretation

Case law illustrates the doctrinal conservatism of UK courts in handling intersectional claims. In *Forstater v. CGD Europe*³⁵⁶, the Employment Tribunal ruled that the claimant's "gender critical" beliefs were protected under the Equality Act. The decision was controversial for elevating abstract belief rights over the lived realities of trans people, revealing how courts often prioritize abstract liberal principles over structural harms experienced by marginalized groups. While not directly an intersectional case, *Forstater* illustrates the difficulty of balancing competing claims in the absence of doctrinal recognition of compounded harm. In *Essop v. Home Office*³⁵⁷, the Supreme Court clarified that in indirect discrimination claims, claimants need not explain the reason for the disparate impact only that such impact exists.³⁵⁸ This marked a step forward by loosening causation requirements but remained confined to a single-axis framework (in that case, ethnic minority status). The Court did not extend the logic to support claims involving multiple intersecting identities. The European Court of Human Rights' decision in *Eweida v. United Kingdom*³⁵⁹ similarly failed to offer an intersectional analysis. Eweida, a British Airways employee, claimed that the company's dress code indirectly discriminated against her right to manifest her religion (Christianity) by prohibiting visible religious symbols. The Court found a violation of Article 9 (freedom of religion)³⁶⁰, but its reasoning addressed religious freedom in isolation and did not consider gendered aspects of the claim, despite the obvious interplay between gender, dress, and religious expression.³⁶¹

³⁵⁵ Human Rights Act 1998, c. 42, sched. 1, arts. 8 & 14.

³⁵⁶ *Forstater v. CGD Europe*, [2021] UKET 2200909/2019 (Eng.).

³⁵⁷ *Essop v. Home Office* (UK Border Agency), [2017] UKSC 27

³⁵⁸ *Id.* at 30

³⁵⁹ *Eweida v. United Kingdom*, App No. 48420/10, Eur. Ct. H.R. (2013).

³⁶⁰ Convention for the Protection of Human Rights and Fundamental Freedoms art. 9, Nov. 4, 1950, 213 U.N.T.S. 221 (protecting the right to freedom of thought, conscience, and religion, including the freedom to manifest one's religion or beliefs).

³⁶¹ *Eweida v. United Kingdom*, App No. 48420/10, Eur. Ct. H.R. (2013).

Limitations

As Sandra Fredman argues, true substantive equality demands not just formal neutrality but also institutional mechanisms that address systemic exclusion and the diversity of disadvantage.³⁶² The current statutory design, especially the failure to bring Section 14³⁶³ into force, denies claimants legal standing to articulate their multidimensional identities within a single coherent legal action. Additionally, UK courts have displayed a tendency to emphasize procedural compliance especially with the Public Sector Equality Duty over transformative outcomes.³⁶⁴ Judicial review often focuses on whether public bodies have considered equality impacts, rather than whether their decisions have substantively redressed disadvantage. This limits the transformative potential of equality duties and undermines their role in advancing intersectional justice. Finally, the legal emphasis on “evidence of group disadvantage” in indirect discrimination claims poses difficulties for those at the intersection of multiple minority statuses. Empirical evidence may not exist for very specific subgroups (e.g., Muslim lesbian women), thereby obscuring their experiences of harm within traditional discrimination analysis.³⁶⁵ In sum, while the United Kingdom has constructed a comprehensive equality law framework, its continued adherence to a compartmentalized understanding of identity, its proceduralism, and its institutional reluctance to operationalize intersectionality render it ill-equipped to fully respond to compounded discrimination. Without the doctrinal willingness to embrace multi-axis harm and the legislative activation of mechanisms like Section 14, UK equality law remains only partially responsive to the lived experiences of those most marginalized.

4.3 Comparative Analysis

Intersectionality, originally conceptualized by Kimberlé Crenshaw, recognizes that individuals may face discrimination on multiple, interlocking grounds such as race, gender, caste, class, or disability that cannot be adequately addressed through single-axis legal frameworks.³⁶⁶ While many jurisdictions now acknowledge the importance of this insight in principle, the extent to which their constitutional and statutory systems

³⁶² Sandra Fredman, *Discrimination Law* 195–97 (2d ed., Oxford Univ. Press 2011) .

³⁶³ Equality Act 2010, c. 15, § 14

³⁶⁴ Aileen McColgan, *Discrimination, Equality and the Law* 104–06 (Hart 2014).

³⁶⁵ Shreya Atrey, *Intersectional Discrimination* 132–36 (Oxford Univ. Press 2019).

³⁶⁶ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139, 149–50.

incorporate intersectionality into enforceable legal doctrine varies considerably. This section compares the engagement with intersectionality in India, the United States, and the United Kingdom, analyzing how structural design, judicial reasoning, and statutory frameworks shape its legal relevance.

The Indian Constitution does not explicitly refer to intersectionality, yet its commitment to transformative constitutionalism and substantive equality has created an interpretive space for intersectional reasoning. Article 15³⁶⁷ prohibits discrimination on grounds of religion, race, caste, sex, or place of birth, while Article 14³⁶⁸ guarantees equality before the law. In *Patan Jamal Vali v. State of Andhra Pradesh*³⁶⁹, the Supreme Court acknowledged intersectionality explicitly, emphasizing how caste, gender, and disability intersect to exacerbate structural vulnerability. The Court stated: “A person who has multiple marginalised identities may face special or unique harms that cannot be understood by considering each of those identities independently.”³⁷⁰ This acknowledgement builds on earlier efforts to push Indian equality law beyond formalism. In *Lt. Col. Nitisha v. Union of India*³⁷¹, the Court identified systemic and indirect discrimination against women officers in the Army. The judgment recognized how institutional frameworks embedded patriarchal assumptions about leadership, caregiving, and gender roles amounting to substantive discrimination. However, Indian statutory law remains fragmented.

While targeted statutes like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act³⁷² and the Rights of Persons with Disabilities Act³⁷³ recognize group-specific discrimination, they do not facilitate legal remedies for intersecting identities. The absence of a codified intersectionality framework means progress is heavily dependent on judicial will and remains doctrinally unanchored. Ironically, the United States, where intersectionality was first theorized, has shown significant resistance to its legal implementation. In *DeGraffenreid v. General Motors*,³⁷⁴ a U.S. district court

³⁶⁷ INDIA CONST. art. 15.

³⁶⁸ INDIA CONST. art. 14.

³⁶⁹ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1.

³⁷⁰ *Id.* at 32.

³⁷¹ *Lt. Col. Nitisha v. Union of India*, (2021) 15 SCC 125.

³⁷² Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, INDIA CODE (1990).

³⁷³ Rights of Persons with Disabilities Act, No. 49 of 2016, INDIA CODE (2016).

³⁷⁴ *DeGraffenreid v. Gen. Motors*, 413 F. Supp. 142, 145 (E.D. Mo. 1976).

refused to recognize Black women as a distinct class, reasoning that combining race and gender claims would create a “new super-remedy.”³⁷⁵ This early rejection continues to influence judicial reluctance toward intersectional claims, particularly under Title VII of the Civil Rights Act of 1964³⁷⁶, which envisions identity categories as discrete and mutually exclusive. Even landmark rulings like *Bostock v. Clayton County*³⁷⁷, which held that discrimination against gay and transgender employees falls under Title VII’s ban on sex discrimination, adopted a formalist logic that avoided intersectional reasoning. Courts often require plaintiffs to isolate and prove claims based on individual protected characteristics, effectively ignoring how identities intersect in lived experience. While federal agencies like the Equal Employment Opportunity Commission have acknowledged intersectional harassment in guidance documents, these have limited influence on judicial interpretation. Regulatory progress under Section 1557 of the Affordable Care Act, which now includes recognition of “intersecting identities” in healthcare care discrimination, is promising but narrowly scoped. Thus, although the U.S. has generated powerful intellectual frameworks for intersectionality, it remains doctrinally committed to a rigid, single-axis model.

The United Kingdom’s Equality Act 2010 offers an expansive list of protected characteristics including sex, race, disability, and sexual orientation and theoretically allows broad anti-discrimination claims. However, its potential to recognize intersectional claims has been undermined by the government’s failure to operationalize Section 14, which was designed to address “combined discrimination.”³⁷⁸ Without this provision, UK courts remain bound by single-axis reasoning, compelling claimants to bring parallel claims under separate grounds. In *Essop v. Home Office*³⁷⁹, the Supreme Court clarified that indirect discrimination does not require proof of causation for each characteristic, allowing for broader interpretation. Still, judgments such as *Bahl v. Law Society*³⁸⁰ demonstrate the judiciary’s reluctance to engage with the structural nature of overlapping identities. Similarly, in *Forstater v. CGD Europe*³⁸¹, the Employment Tribunal affirmed the

³⁷⁵ Id.

³⁷⁶ Civil Rights Act of 1964 tit. VII, 42 U.S.C. §§ 2000e to 2000e-17 (2018).

³⁷⁷ *Bostock v. Clayton Cnty.*, 590 U.S. ____ (2020).

³⁷⁸ Equality Act 2010, c. 15, § 14 (U.K.).

³⁷⁹ *Essop v. Home Office*, [2017] UKSC 27.

³⁸⁰ *Bahl v. The Law Society*, [2004] EWCA Civ 1070.

³⁸¹ *Forstater v. CGD Europe*, [2022] Emp. Trib. 2200909/2019.

protection of “gender-critical” beliefs under the Equality Act while cautioning that these beliefs must not translate into discrimination against transgender persons raising complex questions about the limits of competing rights without adopting an intersectional lens.

Despite the statutory framework’s ambition, doctrinal development remains formalist. As Shreya Atrey argues, UK equality law focuses excessively on comparator analysis and fails to engage with how structural disadvantage manifests through overlapping identities.³⁸² This inhibits courts from recognizing that the discrimination faced by, for example, a disabled Black Muslim woman cannot be disaggregated into isolated grounds. Three key insights emerge from this comparative analysis is India, through its constitutional jurisprudence, has shown greater openness to intersectional reasoning compared to the more rigid statutory and judicial frameworks in the U.S. and U.K. Yet, without statutory amendments or administrative commitment, this progress remains vulnerable to doctrinal reversals. U.S. and U.K. systems remain wedded to formal equality, demanding identity-based isolation. In contrast, the Indian Supreme Court increasingly embraces substantive equality, integrating autonomy, dignity, and recognition of systemic disadvantage. The U.K. presents a well-designed legislative scheme hindered by executive inaction and judicial conservatism. The U.S. has robust civil rights statutes but lacks judicial willingness to interpret them intersectionally. India lacks a legislative framework but compensates, to an extent, with progressive constitutional interpretation.

4.4 Conclusion

This chapter has examined how courts across India, the United States, and the United Kingdom have engaged with the theory and practice of intersectionality in the context of equality jurisprudence. While each legal system claims to uphold non-discrimination and equal protection as constitutional or statutory guarantees, their doctrinal approaches remain largely constrained by single-axis logic.³⁸³ In India, constitutional provisions such as Articles 14, 15, and 21 have been interpreted expansively by the Supreme Court to include substantive equality and human dignity.³⁸⁴ Judgments such as *Patan Jamal*

³⁸² Shreya Atrey, Intersectional Discrimination 55–60 (Oxford Univ. Press 2019).

³⁸³ Devon W. Carbado & Kimberlé W. Crenshaw, An Intersectional Critique of Tiers of Scrutiny, 129 YALE L.J. 1, 6–9 (2019).

³⁸⁴ INDIA CONST. arts. 14–16, 21.

Vali v. State of Andhra Pradesh and *Shakti Vahini v. Union of India* mark an emerging judicial willingness to deploy intersectional reasoning, especially through the normative lens of constitutional morality.³⁸⁵ However, the absence of a formal legal doctrine or statutory basis for intersectional discrimination continues to constrain access to justice for multiply-marginalized groups.³⁸⁶ In the United States, intersectionality was theorized by legal scholars such as Kimberlé Crenshaw precisely because Black women and other multiply disadvantaged claimants were excluded from dominant legal narratives.³⁸⁷ Despite some advances like the EEOC’s recognition of “sex-plus” discrimination and the *Bostock v. Clayton County*³⁸⁸ decision expanding Title VII protections the judiciary remains largely unreceptive to multi-ground claims, and formal doctrines like tiers of scrutiny and comparator tests fail to reflect lived realities.³⁸⁹ Recent regulatory developments under the Affordable Care Act signal progress, but these remain sectoral and executive-driven, not systemic.

In the United Kingdom, equality law is highly developed in structure, especially under the Equality Act 2010, which outlines nine protected characteristics and imposes a Public Sector Equality Duty under Section 149.³⁹⁰ Yet the failure to implement Section 14 on combined discrimination reveals a gap between the law’s intent and its operational capacity.³⁹¹ The judiciary continues to emphasize formal comparators and narrowly interprets the scope of indirect discrimination, even in the face of growing evidence of multi-layered disadvantage.³⁹² Comparatively, all three jurisdictions have struggled to reconcile their commitment to equality with the complexity of intersectional harm. The law’s preference for clarity, predictability, and categorization often comes at the cost of legal invisibility for those whose oppression is cumulative and relational.³⁹³ To move toward a unified framework of substantive, intersectional

³⁸⁵ Patan Jamal Vali v. State of Andhra Pradesh, (2021) 9 S.C.C. 1, at 33; Shakti Vahini v. Union of India, (2018) 7 S.C.C. 192, at 46.

³⁸⁶ Usha Sharma, Intersectionality in Indian Laws: A Feminist Critique, IJNRD (2024); Bindu Variath, Intersectional Feminism in India: Current Judicial Trends, IJARIE, Vol. 9, Issue 2, 476–78 (2023).

³⁸⁷ Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex, 43 U. CHI. LEGAL F. 139, 143–49 (1989).

³⁸⁸ Bostock v. Clayton Cnty., 140 S. Ct. 1731 (2020); Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

³⁸⁹ Bostock v. Clayton Cnty., 140 S. Ct. 1731 (2020); Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

³⁹⁰ Equality Act 2010, c. 15, §§ 4, 19, 149 (U.K.).

³⁹¹ Id. § 14 (not in force); Bahl v. Law Soc’y, [2004] EWCA Civ 1070.

³⁹² Essop v. Home Office, [2017] UKSC 27.

³⁹³ Sandra Fredman, Substantive Equality Revisited, 14 INT’L J. CONST. L. 712, 715–18 (2016).

equality, several converging principles emerge. Substantive Equality must replace formal equality as the prevailing judicial standard. As Sandra Fredman proposes, this requires addressing not just outcomes, but also the structures, institutions, and stereotypes that sustain inequality.³⁹⁴ Intersectionality must be recognized not only as a descriptive framework but as a legal standard. Courts must be trained to assess how multiple grounds of discrimination operate in tandem and affect access to rights.³⁹⁵ International Norms, such as CEDAW General Recommendation No. 28 and the Yogyakarta Principles +10, should be more robustly integrated into domestic reasoning, offering guidance where domestic law remains underdeveloped.³⁹⁶ Legislative and Policy Reform should close the doctrinal and procedural gaps by enacting laws that allow for multi-ground discrimination claims, enhancing data collection, and enforcing accountability through public duties.

Ultimately, courts can be both catalysts and constraints in realizing intersectional justice. Their role depends on whether they are willing to move beyond individualistic, formalist logic and embrace the relational, lived realities of marginalized groups.³⁹⁷ As Shreya Atrey argues, equality law must “reconstruct not just what discrimination is, but what equality means.”³⁹⁸ A jurisprudence rooted in relational equality and transformative constitutionalism will be essential to ensure that no one is made invisible by the very laws that claim to protect them.

³⁹⁴ Sandra Fredman, Substantive Equality Revisited, 14 INT’L J. CONST. L. 712, 715–18 (2016).

³⁹⁵ EEOC, Enforcement Guidance on Race and Color Discrimination, No. 915.002 (2006); CEDAW, Gen. Recommendation No. 33, at 4–6, U.N. Doc. CEDAW/C/GC/33 (Aug. 3, 2015).

³⁹⁶ Comm. on the Elimination of Discrimination Against Women, Gen. Recommendation No. 28, at 18, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010); Int’l Comm’n of Jurists, Yogyakarta Principles Plus 10, Principle 30 (2017), <https://yogyakartaprinciples.org>.

³⁹⁷ Martha Minow, Making All the Difference: Inclusion, Exclusion, and American Law 44–46 (Harvard Univ. Press 1990).

³⁹⁸ Shreya Atrey, Intersectional Discrimination 137–38 (Oxford Univ. Press 2019).

CHAPTER 5: SUGGESTIONS AND CONCLUSION

In an era where the promise of equality is constitutionally enshrined yet structurally elusive, this dissertation explores how courts interpret and enforce gender equality rights for individuals at the intersection of multiple marginalised identities. Drawing upon constitutional provisions, feminist legal theory, and the doctrine of substantive equality, the research presents a detailed analysis of judicial engagement with intersectionality in India and beyond.

The opening chapter sets the foundation by framing the context within India's constitutional guarantees under Articles 14, 15, and 21³⁹⁹, alongside international human rights instruments such as CEDAW⁴⁰⁰ and the Yogyakarta Principles⁴⁰¹. It critiques the judiciary's tendency to adopt a single-axis approach, where identities like gender, caste, class, or disability are considered in isolation.⁴⁰² This formal equality model, as the dissertation argues, is insufficient for addressing the compounded nature of discrimination faced by individuals whose identities intersect. Through the writings of Kimberlé Crenshaw, Martha Fineman, and Flavia Agnes, the chapter introduces intersectionality as both a theoretical lens and a legal imperative.⁴⁰³ The chapter concludes by setting out the research questions, hypothesis, methodology, and scope of the study, emphasising the importance of a qualitative and comparative approach.

Chapter Two elaborates on the theoretical underpinnings of intersectionality and unpacks its relevance in understanding complex forms of social exclusion. Originating from Crenshaw's foundational work, intersectionality is presented not merely as an academic tool but as a method of interrogating how legal and institutional systems distribute vulnerability.⁴⁰⁴ The chapter draws heavily from feminist legal theory (FLT) and substantive equality, stressing that formal equal treatment often perpetuates hidden

³⁹⁹ India Const. art. 14, 15, 16

⁴⁰⁰ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13

⁴⁰¹ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007).

⁴⁰² Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. CHI. LEGAL F. 139.

⁴⁰³ Martha Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L.J. 251 (2011); Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999).

⁴⁰⁴ Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241 (1991).

hierarchies.⁴⁰⁵ The discussion is situated in the Indian context, where caste and gender interact to produce unique harms, especially for Dalit, queer, disabled, and religious minority women.⁴⁰⁶ It further explores typologies of marginalised identities and the challenges legal systems face in addressing intersectional harms due to the absence of disaggregated data and rigid judicial categories.

Chapter Three turns to an in-depth analysis of landmark Indian judgments, alongside select cases from the United States and the United Kingdom. Indian jurisprudence is examined through key decisions such as *C.B. Muthamma v. Union of India*, *Mohd. Ahmed Khan v. Shah Bano Begum*, *Anuj Garg v. Hotel Association of India*, *NALSA v. Union of India*, and *Patan Jamal Vali v. State of Andhra Pradesh*.⁴⁰⁷ These cases highlight varying degrees of judicial awareness of intersectional harms. For example, while *NALSA*⁴⁰⁸ recognised transgender identity as a constitutional category, it only implicitly addressed class or caste-based vulnerabilities.⁴⁰⁹ In contrast, *Patan Jamal Vali* explicitly invoked Crenshaw's theory, marking a rare judicial moment of direct engagement with intersectionality.⁴¹⁰ The chapter also notes significant progress in disability jurisprudence through *Jeeja Ghosh v. SpiceJet Ltd*⁴¹¹, where the Court acknowledged how gender and disability jointly contribute to exclusion. However, the overall trend shows that Indian courts remain hesitant to fully incorporate intersectionality as a doctrinal tool.

In Chapter Four, the dissertation compares how courts in India, the US, and the UK engage with intersectionality. The US legal framework, while pioneering the concept through civil rights litigation, often constrained plaintiffs to single-axis claims due to the rigid structure of Title VII.⁴¹² UK courts, operating under the Equality Act 2010, show some promise in recognising compound discrimination, yet still favour

⁴⁰⁵ Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281 (1991).

⁴⁰⁶ Riffat Haq, *Intersectionality of Gender and Other Forms of Identity: Dilemmas and Challenges Facing Women in India*, 28 GENDER IN MGMT. 171 (2013).

⁴⁰⁷ *C.B. Muthamma v. Union of India*, (1979) 2 SCC 706; *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556; *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1; *NALSA v. Union of India*, (2014) 5 SCC 438; *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 SCC 1.

⁴⁰⁸ *NALSA v. Union of India*, (2014) 5 SCC 438

⁴⁰⁹ *Id.* at 52.

⁴¹⁰ *Patan Jamal Vali*, (2021) 9 SCC at 23.

⁴¹¹ *Jeeja Ghosh v. SpiceJet Ltd.*, (2016) 7 SCC 613.

⁴¹² *DeGraffenreid v. Gen. Motors Assem. Div.*, 413 F. Supp. 142 (E.D. Mo. 1976); *Bostock v. Clayton County*, 590 U.S. ____ (2020).

formalistic interpretations.⁴¹³ Indian courts, though constitutionally empowered to adopt a substantive equality approach, have often lagged in doctrinal innovation, relying instead on piecemeal applications.⁴¹⁴ Through this comparative analysis, the chapter illustrates the global struggle courts face in translating intersectionality from theory to jurisprudence.

The hypothesis proposed in this dissertation that *courts are inconsistent in recognising and addressing the compounded discrimination faced by individuals with multiple marginalised identities, resulting in uneven progress toward gender equality* is proven positively. The research undertaken across Indian, U.S., and U.K. jurisdictions clearly demonstrates that although there are instances of judicial recognition of intersectional harms, such instances are scattered and lack doctrinal consistency. Landmark cases such as *Patan Jamal Vali v. State of Andhra Pradesh*⁴¹⁵ and *Jeeja Ghosh v. SpiceJet Ltd.*⁴¹⁶ represent rare moments where courts have meaningfully engaged with intersectionality. However, the broader judicial trend still reflects a preference for single-axis analysis, often failing to account for the complex realities of caste, class, gender identity, disability, and sexual orientation as intersecting factors⁴¹⁷. As a result, substantive equality remains under-realised⁴¹⁸. Based on the evidence and analysis presented it is affirmed that the hypothesis is not only valid but also crucial in understanding the limitations of current judicial approaches to gender justice at the intersection of marginalised identities.

5.1 FINDINGS

Judicial decisions have been pivotal in expanding the scope of gender rights beyond statutory text, particularly by interpreting constitutional provisions such as Articles 14, 15, 19, and 21⁴¹⁹ in a progressive manner. In *NALSA v. Union of India*⁴²⁰, the Supreme

⁴¹³ *Essop v. Home Office*, [2017] UKSC 27; *Forstater v. CGD Europe*, [2022] Emp. Trib. 2200909/2019 (UK).

⁴¹⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁴¹⁵ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 S.C.C. 1 (India)

⁴¹⁶ *Jeeja Ghosh v. SpiceJet Ltd.*, (2016) 7 S.C.C. 613 (India).

⁴¹⁷ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139; Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241 (1991).

⁴¹⁸ Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 Yale L.J. 1281 (1991); Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (1999); Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 S.C.C. 438, at 52 (India).

⁴¹⁹ India Const. art. 14, 15, 19 and 21

⁴²⁰ Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 S.C.C. 438

Court recognised gender identity as intrinsic to personal liberty and dignity, affirming the right of transgender individuals to self-identify. Similarly, in *Navtej Singh Johar v. Union of India*⁴²¹, the Court decriminalised same-sex relationships under Section 377 IPC, emphasising dignity, autonomy, and equality. These decisions illustrate the judiciary's capacity to create new rights frameworks through constitutional interpretation, although they often fail to fully engage with intersectional vulnerabilities like caste and class.

Judicial interpretations have expanded gender rights when courts have applied substantive equality. In *Anuj Garg v. Hotel Association of India*⁴²², the Court invalidated a law excluding women from working in bars, critiquing paternalistic stereotypes and invoking the principle of equality under Articles 14 and 15.⁴²³ However, the expansion of rights remains inconsistent and case-dependent. Judicial interpretations can expand rights, but they are often limited by formalism or a failure to engage with intersectional harm.

Courts rarely address multiple marginalisations holistically. In *Patan Jamal Vali v. State of Andhra Pradesh*⁴²⁴, the Court explicitly invoked Kimberlé Crenshaw's theory of intersectionality⁴²⁵, acknowledging how caste and disability compounded the vulnerability of a Dalit blind woman. This case represents an exception, as most decisions do not adequately address how social markers like caste, class, or disability affect access to rights. Even in *Jeeja Ghosh v. SpiceJet Ltd*⁴²⁶, which involved a woman with cerebral palsy, the intersection of gender and disability was not named as intersectionality but was implicitly addressed in terms of dignity and autonomy. While some progressive judgments engage intersectionality, most legal reasoning remains single-axis and lacks structural critique.

The comparative study reveals that all three jurisdictions, India, the U.S., and the U.K., struggle with the doctrinal implementation of intersectionality. U.S. Courts, despite pioneering intersectionality through Crenshaw's scholarship, often force plaintiffs into either race or gender categories due to Title VII limitations, e.g., *DeGraffenreid v. Gen.*

⁴²¹ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1

⁴²² *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 S.C.C. 1

⁴²³ India Const. art. 14 and 15

⁴²⁴ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 S.C.C. 1

⁴²⁵ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139

⁴²⁶ *Jeeja Ghosh v. SpiceJet Ltd.*, (2016) 7 S.C.C. 613 (India).

*Motors*⁴²⁷ case. U.K. Courts have acknowledged combined discrimination under the Equality Act, but actual litigation success on intersectional grounds remains low e.g., *Essop v. Home*⁴²⁸ case. Indian Courts show promise in using constitutional language to support intersectional reasoning but lack consistent doctrinal frameworks and rely on case-specific rhetoric. There is a global jurisprudential gap in addressing intersectionality, though India's constitutional provisions offer greater potential for future development if strategically interpreted.

5.2 SUGGESTIONS FOR REFORM

1. Statutory recognition of multi-ground discrimination

The Indian Constitution lays a strong normative foundation for intersectional justice. Articles 14 and 15(1) guarantee equality and prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth.⁴²⁹ Articles 15(3) and 15(4) enable affirmative measures for women, children, and socially and educationally backward classes, while Articles 16 and 17 address equality in public employment and the abolition of untouchability.⁴³⁰ However, Indian legislation does not yet provide a mechanism to adjudicate or remedy intersectional harms. For instance, the SC/ST (Prevention of Atrocities) Act, 1989 recognizes caste-based violence but does not account for intersectional vulnerabilities such as those faced by Dalit women with disabilities.⁴³¹ Similarly, the Rights of Persons with Disabilities Act of 2016, while progressive in recognizing multiple vulnerabilities, does not establish a framework to litigate compound claims.⁴³² There is a pressing need for statutory recognition of multi-ground discrimination. Indian law should allow a claimant to assert, for example, that she has been discriminated against as a Dalit woman with a disability not as three separate identities, but as a singularly marginalized subject.⁴³³ Legislative reform could either take the form of a new comprehensive equality statute or amendments to existing laws (such as the SC/ST Act, RPWD Act, or future gender codes) to include intersectional

⁴²⁷ *DeGraffenreid v. Gen. Motors Assem. Div.*, 413 F. Supp. 142 (E.D. Mo. 1976).

⁴²⁸ *Essop v. Home Office*, [2017] UKSC 27

⁴²⁹ INDIA CONST. art. 14.

⁴³⁰ Id. arts. 15(1), 15(3), 15(4), 16, 17.

⁴³¹ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, Acts of Parliament, 1989 (India).

⁴³² The Rights of Persons with Disabilities Act, No. 49 of 2016, Acts of Parliament, 2016 (India).

⁴³³ Usha Sharma, Intersectionality in Indian Laws: A Feminist Critique, IJNRD (2024).

protections.⁴³⁴

2. Mandate intersection-sensitive legal aid clinics, with personnel trained in caste, gender, and disability justice

Intersectional justice is impossible without accessible legal support structures. Many marginalized persons, such as Dalit women survivors of sexual violence, LGBTQ+ individuals in rural India, or disabled persons in conflict zones, face legal systems that are formally neutral but practically exclusionary.⁴³⁵ India's National Legal Services Authority (NALSA) has established thematic schemes for SC/STs, women, trans persons, and the disabled, but most operate on single-axis models.⁴³⁶ These schemes rarely accommodate individuals who straddle multiple marginalized identities. Usha Sharma critiques this design as one that "segments vulnerability," thereby invisibilizing intersectional disempowerment.⁴³⁷ Bindu Variath similarly argues that without multi-layered legal aid approaches, existing systems cannot serve Dalit, queer, or disabled women.⁴³⁸ Require legal aid schemes to conduct outreach specifically for multiply-marginalized groups, Monitor and audit access gaps using disaggregated data; and encourage community-based legal empowerment models led by marginalized groups themselves. The Law Commission of India has already recognized the need for stronger legal services for women and backward classes, which can serve as a foundation for intersectional expansions.⁴³⁹ Comparative practices, such as the Open Society Foundations' justice access guidelines and UN Women's empowerment modules, provide practical frameworks for tailoring legal aid to layered vulnerabilities.⁴⁴⁰

3. Sub-Reservation Within Women's Quota

Gail Omvedt rightly cautioned against the mainstream feminist movement's caste-blind approach, pointing out that blanket reservations for women may displace lower-caste men with upper-caste women, thereby re-entrenching caste power under the guise of

⁴³⁴ Flavia Agnes, *Law and Gender Inequality* 117–18 (Oxford Univ. Press 1999).

⁴³⁵ Nivedita Menon, *Seeing Like a Feminist* 42–44 (Zubaan 2012).

⁴³⁶ Nat'l Legal Servs. Auth. (India), *Schemes and Guidelines for Legal Aid to Marginalized Groups*, <https://nalsa.gov.in>.

⁴³⁷ Usha Sharma, *Intersectionality in Indian Laws: A Feminist Critique*, *IJNRD* (2024).

⁴³⁸ Bindu Variath, *Intersectional Feminism in India: Current Judicial Trends*, *IJARIE*, Vol. 9, Issue 2 (2023).

⁴³⁹ Law Comm'n of India, Report No. 266, *The Human DNA Profiling Bill, 2017*, at 47–49 (2017).

⁴⁴⁰ Open Soc'y Found., *Legal Empowerment: A Pathway to Justice for All* (2019); U.N. Women, *Legal Empowerment for Marginalized Women* (2020).

gender empowerment.⁴⁴¹ Amend Article 243D and relevant state Panchayati Raj Acts to implement sub-quotas for SC/ST/OBC women within the 33% women's reservation at the Panchayat level. This addresses the structural invisibility of Dalit and Bahujan women and responds to the misrepresentation of quotas within quotas as divisive when, in fact, they reflect a demand for recognition of internal differences among women.⁴⁴²

4. Educational Reform

Judicial institutions and law schools must proactively integrate intersectionality into curricula and judicial training. As Sandra Fredman argues, substantive equality demands recognition of “multi-dimensional disadvantage,” not just the prevention of discrete discrimination.⁴⁴³ Traditional legal education tends to marginalize or ignore the systemic interplay of caste, gender, class, and disability, which perpetuates blindness to real-world injustices.⁴⁴⁴ Update curricula in law schools, civil service training, and police academies to include intersectionality, caste critique, and anti-oppression pedagogies developed by scholars like Gopal Guru, Sharmila Rege, and Gail Omvedt.⁴⁴⁵

5. Creation of a National Commission for Intersectional Justice

India currently has multiple single-axis commissions like the National Commission for Women (NCW), National Commission for Scheduled Castes (NCSC), Scheduled Tribes (NCST), Minorities (NCM), and Persons with Disabilities (NCPD). However, nobody exists to address intersectional harms that occur at the overlap of these identities, e.g., caste-based sexual violence, exclusion of Muslim women in welfare delivery, or invisibilization of disabled SC/ST persons in policy frameworks. Establish a National Commission for Intersectional Justice (NCIJ) through a dedicated Parliamentary Act, modelled along the lines of the National Human Rights Commission, with powers to investigate complaints of intersectional discrimination and structural exclusion, Recommend policy changes and legal amendments to ensure the

⁴⁴¹ Gail Omvedt, *Violence Against Women: New Movements and New Theories in India*, 25(17) Soc. Scientist 35 (1997).

⁴⁴² Anupama Rao, *The Caste Question: Dalits and the Politics of Modern India* 228–29 (2009).

⁴⁴³ Sandra Fredman, *Substantive Equality Revisited*, 14 INT'L J. CONST. L. 712, 718 (2016).

⁴⁴⁴ Shreya Atrey, *Intersectional Discrimination* 135–37 (Oxford Univ. Press 2019).

⁴⁴⁵ Gopal Guru, *Dalit Women Talk Differently*, 33(44) Econ. & Pol. Wkly. 2548 (1995); Sharmila Rege, *Dalit Women as Subjects of Knowledge*, 33(44) Econ. & Pol. Wkly. 39 (1998).

inclusion of multiply marginalized groups, Audit national schemes for intersectional impact and publish annual Intersectionality Reports on key sectors (education, health, housing, labour, law enforcement). This Commission would not replace existing identity-based commissions but rather act as a coordinating and gap-filling mechanism, dealing with Compound discrimination, Systemic failures in recognition and remedy and monitoring sub-quotas and inclusivity audits.

6. Incorporation of Intersectionality in Judicial Reasoning

Indian courts often apply single-axis reasoning, addressing only caste gender or religion, but not their intersections. This results in incomplete redress for individuals suffering layered oppression. Recognize intersectional claims as distinct and justiciable, not as a fusion of separate identities. Incorporate international and regional human rights jurisprudence into domestic reasoning, including CEDAW, the Yogyakarta Principles, and comparative court practices. Issue guidelines for lower courts to apply intersectional and context-driven standards in routine adjudication. Judicial officers should undergo mandatory intersectional sensitivity training, focusing on how overlapping identities shape access to justice. Moreover, UN Women and IDLO have urged that such training be embedded in national judicial academies, particularly in postcolonial and plural societies like India.⁴⁴⁶

7. Intersectionality in Judicial Appointments

Despite being tasked with protecting constitutional rights, the higher judiciary remains structurally unrepresentative, dominated by upper-caste, male judges. Amend the Memorandum of Procedure (MoP) for judicial appointments to include diversity and ensure adequate representation of SC/ST/OBC, women, religious minorities, persons with disabilities, and queer persons in High Courts and the Supreme Court.

8. Policing reforms

Police routinely ignore or brutalize Dalit, Adivasi, Muslim, queer, and disabled complainants especially those at intersecting margins (e.g., Dalit lesbians or Muslim transgender persons). Therefore, Mandate intersectional bias and sensitization training at police academies, Require the presence of SC/ST women officers or counsellors

⁴⁴⁶ U.N. Women & IDLO, Justice for Women Amidst COVID-19 13–14 (2021).

during investigations involving caste-gender violence, and Penalize non-registration of FIRs in atrocity and sexual violence cases under Section 166A of IPC. Policing reform is key to ending impunity for casteist and gendered violence.

9. Recognition of Intersectional Labor Vulnerabilities

Labour law reforms ignore that Dalit women, Adivasi migrants, trans sex workers, and Muslim artisans face unique precarity. Ensure EPF, ESI, maternity, and gender-neutral leave protections extend to gig and unorganized workers.

10. Mandate Intersectional Representation in Governing Boards of Public Institutions.

Amend statutes to mandate minimum representation of Dalits, Adivasis, OBCs, religious minorities, women, trans persons, persons with disabilities, and linguistic/regionally marginalized groups.⁴⁴⁷ Representation must be intersectional, not merely tokenistic (e.g., a Dalit woman or a queer Muslim, not just a generic “woman” or “SC” member).

The analysis in this chapter has shown that while courts in India, the United States, and the United Kingdom have taken important steps toward recognizing the complexity of discrimination, they often fall short of doing justice to those whose experiences are shaped by the intersection of multiple identities. The law, as it stands, still tends to treat caste, gender, disability, and sexual orientation as separate silos, ignoring how these factors compound and intensify vulnerability.⁴⁴⁸ The DOJ Civil Rights Division’s Report on the City of Ferguson (2015) laid bare how systemic racism was institutionalized within police and judicial operations through routine targeting of African Americans, a failure of accountability mechanisms, and a culture of denial.⁴⁴⁹ India’s promise of transformative constitutionalism rooted in dignity, substantive equality, and constitutional morality offers a strong foundation for intersectional reform. Landmark cases like *Patan Jamal Vali*⁴⁵⁰ and *Nitisha*⁴⁵¹ have started to move

⁴⁴⁷ Shreya Atreya, *Intersectional Discrimination* (Oxford Univ. Press 2019); Tarunabh Khaitan, Beyond Reasonableness: A Rigorous Standard of Review for India’s Equality Guarantee, 50(2) Indian L.J. 177 (2017).

⁴⁴⁸ Kimberlé Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 STAN. L. REV. 1241, 1249–51 (1991).

⁴⁴⁹ U.S. Dep’t of Justice, Civil Rights Div., Investigation of the Ferguson Police Department (Mar. 2015).

⁴⁵⁰ *Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 9 S.C.C. 1

⁴⁵¹ *Nitisha v. Union of India*, (2021) 15 S.C.C. 125

the needle by acknowledging structural disadvantage and calling for a shift away from formalism. But for most individuals at the margins, justice remains elusive unless the law can see them in the fullness of their identities.

As scholars like Kimberlé Crenshaw, Sandra Fredman, and Shreya Atrey remind us, equality must be rooted in lived realities.⁴⁵² Without intersectionality, law risks erasing those who fall between its narrow categories. To create a justice system that truly works for all, we must embed intersectionality into our laws, our institutions, and our thinking not as a progressive afterthought, but as a basic premise of justice.

⁴⁵² Sandra Fredman, *Comparative Human Rights Law* 60–63 (Oxford Univ. Press 2018); Shreya Atrey, *Intersectional Discrimination* 135–38 (Oxford Univ. Press 2019); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1249–51 (1991).

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APPENDICES




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