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# **THE GENESIS OF SOCIAL MOVEMENT: ACHIEVING SOCIAL JUSTICE AND ANALYZING INTERSECTIONALITY**

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## **ABSTRACT**

Crenshaw says that intersectionality is not merely the view that people who belong to two minority groups experience more of the same multiple forms of oppression that afflict people of one race, class, gender, so on.

Intersectionality, while still maintaining its data-empirical validity, translates to how persons deserving of the greatest societal discriminations are, in effect, much more discriminated against than expected when different forms of discrimination are added up. This paper tentatively tries to explore the concept of intersectionality and its compartmentalization with race and social justice.

First, the paper redefines intersectionality apart from its sister -isms. Second, it summarizes the main points of debates between the achievement of social justice, the “race nuance” and intersectionality. Third, it explains how redefining intersectionality is needed and also discusses opportunities and threats in the diffusion of the idea in academic debates and in the domain of collective action keeping in view Article 21 and Article 39A of the Constitution of India. Fourth, it discusses the multi-vectored oppression—mostly keeping in view Indian women. Finally, it draws a line on how marginalization is directly proportional to intersectionality and how can we move on from “oppression Olympics” as a society with a

collective mindset.

**Keywords:** intersectionality, social justice, constitution, feminism, neo-liberalism

### WHAT IS INTERSECTIONALITY?

The idea of multifactorial and compounded discrimination and inequality is frequently attributed to Black feminist activists in the US in the 1980s and early 1990s. The word "intersectionality" is coined by Kimberle Crenshaw, who noticed that the experiences of black women could not be very well captured by the anti-discrimination law in the US<sup>1</sup>. Scholars and activists contended that the experiences of persons at the intersection of a marginalised racial identity, say, black and gender, that would be women; were more likely to be forgotten not only states and law, but also social movements. From many different disciplines, social researchers have since realised the importance of intersectionality for understanding inequality by competing axes of disability, race, and other axes around the outside world.<sup>2</sup>

"Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Colour," a 1991 essay by Kimberle Crenshaw, contained the term "intersectionality".<sup>3</sup> While stating that identity politics provides effective recognition and remedy for broad-scale system[s] of domination, she asserted: "Identity politics frequently conflates or ignores intragroup differences."<sup>4</sup> Using domestic violence and rape cases, she focused on the experiences of black women with regard to their subject of consideration. Black women are said to have special and intensified kinds of discrimination. Neither in their race nor gender where they faced with any marginalisation, discrimination, or violence, but both race and gender jointly created the condition of such rejection. As she puts it, this does not mean that such experiences were merely the sum of race-based and gender-based discrimination but were special.

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<sup>1</sup> Kimberle Crenshaw 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) Stanford Law Review 43(6), 1241-99.

<sup>2</sup> Kathy Davis, 'Intersectionality as Critical Methodology' in Nina Lykke (eds) Writing Academic Texts Differently: Intersectional Feminist Methodologies and the Playful Art of Writing (Routledge 2014); Timo Makkonen 'Multiple, Compound, and Intersectional Discrimination: Bringing the Experiences of the Most Marginalised to the Fore' (2002) Institute for Human Rights, Abo Akademi University; G.C Pal, 'Disability, Intersectionality, and Deprivation: An Excluded Agenda' (2011) Psychology and Developing Societies 23(2), 159-176; Faye A. Ramers, Sally D. Stabb 'Class at the Intersection of Race and Gender: A 15 year Content Analysis' (2015) The Counselling Psychologist 46 (3), 794-821; Rita Kaur Dhamoon, 'Considerations on Mainstreaming Intersectionality' (2011) Political Research Quarterly 64(1), University of Utah, 230-243; Angela Frederick and Dara Shifrer (2018) Sociology of Race and Ethnicity, 1-15.

<sup>3</sup> Ibid.

<sup>4</sup> Crenshaw (n. 2), 1242.

According to this, Crenshaw argued that analyzing the lived experiences of black women using an intersectional lens would highlight how race and gender interact, but that an intersectional perspective is beneficial for "recognizing multiple grounds of identity when considering how the social world is constructed."<sup>5</sup> It provides a more thorough and rich understanding of the workings of power in society.

Sandra Fredman brings forth the idea by saying that terms like "multiple discrimination", 'cumulative discrimination', 'compound discrimination' and 'intersectional discrimination' are used interchangeably although they possess subtle differences in meaning."<sup>6</sup> She has given three forms in which multiple-ground discrimination might take place. In her words, sequential multiple discrimination occurs when a person discriminated against one ground from time to time and at another time on another ground. The seeker of 'synergistic' discrimination-his phenomenon found quite pronounced in Crenshaw's work-is compounded, partially by the facts that combined to trigger the discrimination and partially because the discrimination itself is not just "qualitatively different" from that experienced by others who also have some of the multiple identity characteristics.<sup>7</sup> This is what intersectional discrimination means. As per Fredman, "Intersectionality, should therefore, capture and address wrongs that happen to those who form the confluence of all these relationships."<sup>8</sup>

According to Fredman, such a concept as structural intersectionality is more useful than robustly pointing out: "(i) the necessity of redressing disadvantages through (ii) addressing stigma, (iii) stereotyping, prejudice and violence, (iv) facilitating voice and participation and (v) allowing diversity and change within structures of disadvantage."<sup>9</sup>

## INTERSECTIONALITY IN INDIA

Ever since the dawn of societal, economic, and political constructs in India, various identities have woven together to create a tapestry of marginality. However, only recently has academia begun exploring this concept through intersectionality - the idea that multiple different categories can co-exist within an individual or group leading to potential areas for biases or

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<sup>5</sup> Crenshaw (n. 2)

<sup>6</sup> 1245. Sandra Fredman 'Intersectional Discrimination in the EU' (2016) European Union, Directorate-General for Justice and Consumers, 7

<sup>7</sup> Fredman (n. 7), 7.

<sup>8</sup> Fredman (n. 7), 8

<sup>9</sup> Fredman (n. 7), 31.



drawback.

India's social structure composed of caste system and gender hierarchy and social class status creates distinct patterns where the margins continuously intertwine between one another. During both the early 20th century non-Brahman movements in Tamil Nadu and the 1960s Dalit literary autobiographies in Maharashtra the historical record shows extreme cases of honor killings along with brutal atrocities. Multiple real-life occurrences document the complex manner through which social rankings create difficult everyday life experiences for people left outside established social structures.

During the 19th century social reformer Jyotirao Phule detected a surge of envy in society towards the emerging freedom concept for women. Such profound understanding demonstrates how people fearfully respond to power structure changes within gender dynamics thus showing how social reform interacts with resistance to change.

Research challenges the traditional explanation of external factors behind the Aryan invasion along with its three evil consequences of child marriage, widowhood enforcement and sati practices. Phule understood that men maintained unequal power over women in society yet he saw gender differences and caste divisions as two separate ways that determine one's position in the economic system. His revolutionary movement which united women lower-caste untouchables (Deshpande 2002) created an effective front against the dual powers of caste patriarchy which dominate female body control and decision-making.

The pivotal role in his life came from Savitribai Phule through their shared marriage which solidified anti-caste feminism to her name. Savitribai displayed radical nonconformist beliefs while serving as both an educational leader and a determined social activist who devoted her existence to help raise oppressed communities.

The leader of the Self-Respect Movement E.V. Ramasamy, widely known as Periyar, led various progressive movements that worked across multiple levels where caste and patriarchy interacted. This social movement opposed Gandhi's philosophies to create a cultural transformation against established structures sustaining caste, Brahmanism, religion and male authority systems. Sharing a parallel viewpoint with Phule Periyar recognized lower castes and women formed the deepest category of social exclusion throughout Indian history. Ramasamy believed that actual freedom for marginalized communities would emerge only

when people tore down caste-based society to build a completely new social foundation. According to Periyar the Brahmanical system produced dual marginalization instead of intersectional marginalization which affected both those of lower castes and women separately. The Self-Respect Movement insisted that people abandon both their caste prejudices and religious strictures before society could rebuild through a new social design built on equality.

Dr. B.R. Ambedkar follows the same intellectual path when sharing his deep insights. His insights about caste and gender incorporate essential elements. He follows the footsteps of Phule and Periyar by recognizing how Dalits and women experience exclusion in the Brahmanical social structure. The scholarly essay "Who Were the Shudras" shows how Hindu religious practices mentioned in the Upanayana<sup>10</sup> excluded people into social groups which in turn blocked their right to ownership which negatively impacted their living conditions. Ambedkar establishes that caste systems combine with gender hierarchies through a fundamental interdependence. In his evaluation of endogamy Ambedkar shows how these social identities create specific relationships through marital union.

The analysis tool called Intersectionality remains a peripheral concept for studying the multi-tiered social patterns of India. The women's movement supposedly supports marginalized women through its approach yet simplifies their history by using basic criteria including socioeconomic background and urban or rural areas. The primary feminist discourse of India maintains awareness of its urban middle-class upper-caste perspective but continues activating for poor rural women through its movements (John 2005). Within the terminology of the "backward classes" category India unites both caste and religious factors under the umbrella of economic marginalization which places poverty at the center of disadvantage. This method completely fails to depict the detailed and complex elements which form the basis of these marginal groups. Where are the specificities? The analysis fails to reveal detailed information about actual daily life experiences.

Dalit literature brings essential power to contemporary discourse as a modern intervention. Indian Dalit women including Urmila Pawar from Marathi and Bama from Tamil and Kalyani

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<sup>10</sup> A Hindu ritual of initiation restricted to males of the top three castes that marks the male child's entrance into the life of a student (brahmacharin) and his acceptance as a full member of his religious community. The ceremony is performed between the ages of 5 and 24, the wide variance reflecting the different educational requirements of the three upper classes. For more details see Encyclopaedia Britannica (N.d., <https://www.britannica.com/topic/upanayana>).

Thakur and Chandalini from Bengali construct an essential space of counter-publicity to express their first-hand experiences where caste confronts class and gender. Rege (2006:4) establishes that feminist discourse mainly centers on autobiographies from upper-caste women who experience conflicts between traditional values and modern temptations. According to Rege (2006) these Dalit "testimonios" (Rege 2006) show reader firsthand accounts about their experiences with suffering and discrimination which destroy representations of Dalits as a unified caste. These experiences shatter established understanding patterns because they generate necessary confrontations about the many aspects of adversity.

The unmatched aspects including fair compensation and equal access combined with quality learning need additional research and application throughout India and worldwide. Present-day globalization created enormous wealth which benefits just a small minority of people while it maintained or increased societal income gaps. The colonial education system established the first discriminatory practice by equating educational standards with ethnic background and racial identity and gender identities. Recent innovations, policies and processes of globalization are manifestly playing up such inequalities and discrimination towards caste, race, gender and sexual minorities. Women's autonomy, clubbed with performance of programmes and policies, can be attributed to international development.

While many of the gender-based discrimination issues are being addressed internationally and through various disciplines, reasons other than gender also play roles, for instance, caste, sexual orientation, ancestry, socioeconomic class, religion, and geographic location. Indian minorities continue to face myriad unfair practices by a few oligarchies that are politically, socially, and financially powerful in spite of being one of the largest democracies and longest run Affirmative Action policies in effect. One of the first instances of Affirmative Action in India dates back to 1905 when it was introduced by Viceroy Curzon to bar the recruitment of Hindus from Bengal.

These policies known as reservations or quotas were further amended to favor the individuals from the down trodden and discriminated castes in 1950 by the Constitution of India.

## **INTERSECTIONALITY AND ARTICLE 15**

Judicial history in India recorded a transformative change with *Navtej Singh Johar v. Union of*

*India*. The *Navtej Singh Johar v. Union of India*<sup>11</sup> judgment dramatically affected the relationship between constitutional rights and intersectionality. The court developed a new reading of Article 15<sup>12</sup> which became its inaugural treatment of intersectionality in anti-discrimination law. The court recognized that human beings carry multiple identities which Article 15 should address through its relationship with each identity layer. Justice Chandrachud declared that interpreting Article 15 formally would make the constitutional discrimination protection unenforceable<sup>13</sup>. Why? He argued that such an interpretation would give states a way to bypass Article 15's core aim through "sex plus" classifications since these would not qualify as sex-based discrimination under the article.

The basic text of Article 15(1) in the Indian Constitution says "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them." Simple enough, right? Legally speaking this single word "only" now creates an intricate maze through Article 15(1) while distorting its original purpose. The word "only" in Article 15(1) has enabled courts to create an important discrimination exception termed intersectional discrimination. The law prohibits sex-based discrimination alone but becomes unclear regarding discrimination based on multiple factors that include sex. Unfortunately, legal decisions show no ability to perceive scenarios beyond the stated protection.

*Mahadeb v Dr BB Sen*<sup>14</sup> constitutes an important judicial ruling from the Calcutta High Court. To satisfy Article 15(1) the court established a reasoning that discrimination needed to occur "because of sex alone." Courts accept discrimination under such circumstances. A bizarre conclusion indeed. The level of constitutional safeguard a person receives decreases as their social position becomes more marginalized.

The peculiar interpretation exists as part of multiple instances. According to *Dattatraya Motiram v State of Bombay*<sup>15</sup> which the Bombay High Court decided that discriminatory actions remain valid if they do not depend exclusively on gender. Such discrimination towards a specific gender remains acceptable as long as other factors exist according to their argument. A combination of any other factor with sex-based discrimination can render it constitutionally acceptable according to this interpretation.

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<sup>11</sup> AIR 2018 SC 4321.

<sup>12</sup> The Constitution of India, 1950, Art. 15

<sup>13</sup> *Navtej Singh Johar vs Union of India*, AIR 2018 SC 4321

<sup>14</sup> AIR 1951 CALCUTTA 563

<sup>15</sup> AIR 1953 BOM 311

In its ruling during *Air India v Nergesh Meerza*<sup>16</sup> the Supreme Court solidified the confusing doctrinal position. These articles of the Constitution forbid discrimination that exists "only and only" on the grounds of sex according to the Supreme Court interpretation. The practice of sex discrimination remains acceptable so long as additional elements exist. Apparently, fair game. Multiple discrimination of marginalized individuals creates an unprotected space that numerous people experience because of their numerous protected statuses. The very notion of "only" has become a tool to deny justice to those who need it most, a legal riddle wrapped in an enigma.

The court established a new precedent in 2018 which abandoned the "other considerations"<sup>17</sup> judicial doctrine which had continued since *Nergesh Meerza*<sup>18</sup>. Such interpretation failing to understand the interconnected nature of sex discrimination received complete rejection by the court. The court explained that sex discrimination operates throughout society as an integrated system which binds together various aspects of personal identification particularly under socio-economic circumstances. The legal doctrine adopted this pivotal moment because it represented a serious step towards genuine equality while discarding its rigid formalistic framework. The intersectional elements in *Navtej Johar case*<sup>19</sup> extend beyond a basic combination of Article 15(1) grounds. The discrimination occurs through targeted sex-based discrimination that affects members of one gender because of how sex combines with hidden elements. The Court recognized fundamental discrimination patterns that transcend standard discrimination viewpoints. Through this judgment the legal system made a historic advancement that expands society toward greater justice and equal treatment.

Justice Chandrachud used an army job restriction over six feet as an example to explain disproportionate impact<sup>20</sup>. He maintained that such a restrictive rule would face sex discrimination challenges despite using height limitations as the foundation because women bear the greatest burden. The presented case proves that what appears to be an objective policy might unintentionally harm specific population groups.

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<sup>16</sup> AIR 1981 SC 1829

<sup>17</sup> Id

<sup>18</sup> *Air India v Nergesh Meerza*, AIR 1981 SC 1829.

<sup>19</sup> Id

<sup>20</sup> *Navtej Singh Johar vs Union of India*, AIR 2018 SC 4321.



The discrimination he explained is distinct from intersectional discrimination because intersectional analysis combines multiple factors such as race disability and sex and age. Although the court understood intersectionality as a concept it did not establish complete recognition of intersectional discrimination in this specific situation.

The case of *Shayara Bano v. The Union of India*<sup>21</sup> demonstrates different forms of discrimination against marginal communities when compared to other examples. Muslim women filed a petition to end triple talaq since this Islamic marital practice permitted men to give immediate divorces to their wives<sup>22</sup>. Muslim men received the permission to divorce their wives through talaq although the practice of triple talaq became unlawful. The combination of female and religious identity created a disadvantage for Muslim women since their divorce process proved more difficult than it was for Muslim men. Thus, the case of Shayara Bano followed interlocking forms of discrimination because she made an intersectional discrimination claim whereas Nergesh Mirza did not.

The Supreme Court, in *Justice K.S. Puttaswamy v Union of India*<sup>23</sup>, which both recognized privacy as a fundamental right while making a monumental shift in legal history by condemning the 2013 decision made in *Suresh Kumar Koushal v Naz Foundation*<sup>24</sup>. Section 377 of the Indian Penal Code received validation from the 2013 *Suresh Kumar Koushal v Naz Foundation* ruling even though it opposed the 2009 Delhi High Court decision to decriminalize consensual homosexual relationships. The members of the *Puttaswamy* bench displayed vivid disapproval while speaking about *Koushal*. Plurality author Justice Chandrachud delivered a harsh assessment in his decision by calling it one of two “discordant notes” that appeared in India's constitutional history since it was similar to the infamous *ADM Jabalpur case*<sup>25</sup> from the Emergency era.

*Putaswamy* positioned itself to destroy *Koushal* by leaving a lasting negative impression on the judiciary. That day of demise has now come to pass. The *Navtej Johar v Union of India* landmark decision implemented by the Constitution Bench completed *Koushal's* demise and brought back the *Naz Foundation judgment* while clearly stating that the LGBTQ+ community

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<sup>21</sup> AIR 2017 SC 4609

<sup>22</sup> Ratna Kapur, Triple Talaq Verdict: Wherein Lies the Much Hailed Victory?, 28 August 2017, available at <https://cms.thewire.in/law/triple-talaq-verdict-wherein-lies-the-much-hailed-victory> , (Last visited, 11 February, 2025)

<sup>23</sup> AIR 2018 SC (SUPP) 1841

<sup>24</sup> AIR 2014 SUPREME COURT 563

<sup>25</sup> Additional District Magistrate, ... vs S. S. Shukla Etc. 1976 AIR 1207

possesses all fundamental rights found in Articles 14, 15, 19, 21 and the other rights protected under the fundamental rights chapter.

*Navtej Johar* delivered four unified judgments alongside one another. The Supreme Court justices shared one common outcome yet approached it through separate reasons that sometimes-required subtle interpretation of the law to validate Section 377's unconstitutionality under Articles 14 and 15(1) and 19(1)(a) and 21.

The current wording of the Article creates uncertain meanings which might impair its ability to protect disadvantaged populations. It is important and pertinent to foretell possible misinterpretations which would protect the article from emerging discrimination patterns.

An essential alteration entails the inclusion of "directly or indirectly" because it will help the Article meet its protection goals. The text makes explicit reference to indirect discrimination which some groups avoid at the expense of vulnerable groups' rights. The "sex-plus" argument used in *Air India vs Nergesh Meerza* exemplifies the point. The inclusion of this amendment transfers interpretation responsibility from judges to directly include complex discriminatory patterns in law. A complete ban on straight discrimination should be accompanied by actions to eliminate structural barriers which enable discriminatory practices to persist.

It is crucial to switch "only" for "one or more" in order to move forward. The modification acknowledges that discrimination occurs in complex combinations. People do not typically receive discrimination treatment from using just a single identity. Many identities including race, gender, caste, religion and others work together and intensify discriminatory experiences. The phrase "on one or more grounds of" accepts how discrimination layers itself while rejecting basic one-dimensional interpretations of discrimination. This modification of Article 15(1)<sup>26</sup> implements a detailed equality perspective which understands actual social experiences. Through this alteration the law eliminates any confusion regarding the meaning of "only" which clarifies the legislative purpose for all viewers.

When it comes to lawmaking clarity must be at the forefront. According to *Shreya Singhal vs Union of India*<sup>27</sup> the Court expressed: "Governments may come and Governments may go but

<sup>26</sup> The Constitution of India, 1950, Art. 15(1)

<sup>27</sup> AIR 2015 SC 1523

law goes on forever... law must be judged on its own merits."<sup>28</sup> Judicial interpretation-based laws remain exposed to political changes together with subjective interpretation because their core meanings depend on interpretation. Clarity stands as the foundation for all our recommendations.

*Shreya Singhal* demonstrates the critical need to use law language which clearly defines its meaning. The ambiguous nature of Article 15(1) weakens its goal to give power to citizens combined with the establishment of an equal social system. A legally unclear law functions as an ineffective tool that allows people to bend its meaning.

A good framework relies on having "analogous grounds" as a component of its framework. Currently Article 15(1) has specific protected characteristics in its list. This is by nature restrictive. Change is ongoing in our society so new types of discrimination emerge. By specifying "Analogous grounds" the article is excellently equipped for future change. The provision states that the listed factors are merely examples and do not form an exhaustive list. Future foresights regarding novel forms of emerging discrimination offer invaluable backing for prolonged efficacy in time. The characterization of "analogous grounds" encompasses attributes which are irreversibly static or very difficult to change or reactionary only via personal concessions which surpass acceptance. Such a definition allows judicial organs to assess new forms of discrimination so Article 15 is firm against contemporary societal developments.

## CONCLUSION

An analytical framework like intersectionality would unlock other logics of interlocking social oppressions and enter the power dynamics to create the political practice which will drive further social justice. Pedagogy case studies in the future have to include more information regarding intersectionality or should make course instructors include more depth to this analytical framework's background context. Indeed, these cases have the potential to be transformative pedagogical resources, but actors require the baseline language and information pertinent to this paradigm for their analytical participation to reveal structural and systemic power dynamics. It is actually important that labor adopted by intersectionality as a social justice practice instrument in pedagogical educational leadership cases must be expanded. This

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<sup>28</sup> *Shreya Singhal vs Union of India*, AIR 2015 SC 1523

becomes crucial for educator/administrators, as intersectionality would assist in revealing social inequality within the education system. This empowers educational leaders with a focus on social justice to be critical of social divisions. Being aware of the interrelatedness of social inequities is critical for education, as otherwise education keeps producing and reproducing structures infused with social tragedies.

A fundamental grasp of the interlinks between law and politics with society is the fundamental foundation for constructing an absolutely inclusive legal system. Both legal systems and human identities are difficult to categorize through solitary definitions since they engage with multiple strands. Achieving full dignity for all requires comprehending how discrimination appears through a variety of experiences that characterize each individual's life. Indian jurisprudence under Article 15 demonstrates the limited comprehension by which Indians have viewed their respective identities in past historical eras.

The legal system comes to understand its internal limitations through cultivating self-awareness. Our changing legal system needs an absolute scrutiny of national social and political situations in its continuous process of development. A system constructed for peaceful comprehension of human identities becomes possible only through this basic improvement. The Indian Constitution is a living document that takes inspiration from global sources so it embodies the fundamental value of accepting all of humanity. Our Constitution makers had the very specific vision of India that has always been at the heart of their revolutionary scheme.

The article and its analysis demonstrate how individuals intuitively feel discriminatory practices through established group-based categories which map onto the constitutional structure. The concept of intersectionality brings confusion over these distinct conceptual categories. The witnessed gut response creates bias towards systematic experiences of discrimination. I think this factor sums up the primary problem. The deeper sophisticated view of discrimination ought to be translated from cognitive comprehension into legal frameworks that reform written legislation. The comprehension of discrimination must become a part of our whole legal system.

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