



## Intersectional Discrimination and the Crisis of Formal Equality in Indian Constitutional Jurisprudence: A Substantive Equality Perspective

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### Abstract

The concept of intersectional discrimination exposes the inherent limitations of formal equality frameworks that address discrimination through isolated and compartmentalized identity categories. Individuals situated at the intersection of multiple social identities such as gender, caste, class, disability and race experience forms of exclusion that are cumulative, structural and qualitatively distinct from single axis discrimination. This paper conceptualizes intersectional discrimination as a manifestation of systemic inequality rooted in historical disadvantage and entrenched power hierarchies, which formal equality doctrines fail to capture. Drawing upon Kimberlé Crenshaw's theory of intersectionality, feminist legal theory, critical race theory and the anti-subordination principle, the paper critiques the dominant legal emphasis on neutrality and sameness in equality jurisprudence. It argues that such an approach obscure lived realities of compounded disadvantage and results in the erasure of intersectional harms within legal adjudication. In the Indian constitutional context, this failure is particularly evident in the application of Articles 14, 15 and 21, where judicial reasoning often isolates grounds of discrimination, thereby denying effective protection to individuals facing intersecting forms of oppression. Through a doctrinal and constitutional analysis, the paper demonstrates how existing legal frameworks inadequately address intersectional discrimination and perpetuate structural exclusion. It advances the argument that a substantive and transformative conception of equality grounded in anti-subordination and contextual adjudication is essential for meaningful constitutional protection. The paper ultimately contends that recognizing intersectionality is not merely a theoretical refinement but a constitutional necessity for achieving inclusive justice in law and public policy.

**Keywords:** Intersectional Discrimination, Substantive Equality, Formal Equality, Anti-Subordination Principle, Indian Constitutional Law, Equality Jurisprudence, Articles 14, 15 and 21, Structural Discrimination.

### 1. Introduction

Equality has long been regarded as a cornerstone of constitutional governance and human rights law. In its earliest legal formulations, equality was primarily understood through the principle of formal equality, which mandates that like cases be treated alike. This approach dominated past legal and constitutional frameworks and was premised on the belief that

neutrality and uniform application of the law were sufficient to prevent discrimination. While formal equality played an important historical role in challenging explicit and overt forms of exclusion, it largely ignored the social and structural contexts within which individuals experience disadvantage. As a result, early equality jurisprudence failed to



address the realities of deeply entrenched hierarchies based on gender, race, caste, class, disability, and other social identities. Historically, discrimination was viewed as operating along single, isolated axes, with legal protections designed to address one ground of disadvantage at a time. This narrow understanding shaped both legislation and judicial reasoning, rendering invisible the experiences of individuals who belonged to multiple marginalized groups. In the past, legal systems often required claimants to fit their experiences into rigid categories, such as sex discrimination or racial discrimination, without acknowledging how these categories intersected. Consequently, those facing compounded and overlapping forms of exclusion were left without adequate legal recognition or remedy [1]. The limitations of this approach became increasingly evident through the work of feminist scholars and critical theorists in the late twentieth century. The articulation of intersectionality by Kimberlé Crenshaw marked a turning point by exposing overlapping identities how traditional equality frameworks marginalized those at the intersections of multiple systems of oppression. Drawing from feminist legal theory, critical race theory, and anti-subordination theory, intersectionality challenged the assumption that sameness and neutrality could produce justice in societies marked by historical and structural inequality. These perspectives emphasized that discrimination is not merely a matter of individual bias but is embedded within institutional practices and power relations.

## **2. Literature Review**

Sandra Fredman's seminal work, Discrimination Law, outlines a four-dimensional model of substantive equality: redressing disadvantage, addressing stigma, enhancing participation, and accommodating difference [2]. Catherine Albertyn, writing in the South African context, emphasizes that substantive equality must be transformative, challenging institutional hierarchies and

redistributing power [3]. In the Indian context, Tarunabh Khaitan critiques the judiciary's overreliance on formal equality in *A Theory of Discrimination Law*, arguing for a shift toward a more purposive and context-sensitive model that aligns with the Constitution's egalitarian ethos [4]. Kimberlé Crenshaw introduced the concept of intersectionality in her essay "Demarginalizing the Intersection of Race and Sex," highlighting how legal frameworks often fail to address the compounded discrimination faced by individuals situated at the intersection of multiple identities [5]. In India, Kalpana Kannabiran's *Tools of Justice* applies intersectionality to constitutional law, showing how caste, gender, and religion intersect to produce layered exclusions [6]. Sharmila Rege's *Writing Caste/Writing Gender* foregrounds Dalit women's testimonies, revealing how both feminist and anti-caste discourses often erase their experiences [7]. Anup Surendranath critiques Indian equality jurisprudence for its single-axis approach, arguing that the courts' failure to recognize intersectional harms weakens the constitutional promise of equality [8]. Indian courts have occasionally gestured toward substantive equality. In *Anuj Garg v. Union of India* (2008), the Supreme Court struck down a law barring women from working in bars, emphasizing the need to dismantle patriarchal stereotypes. However, the judgment lacked an explicit intersectional analysis. In *Navtej Singh Johar v. Union of India* (2018), the Court decriminalized homosexuality and acknowledged the dignity of LGBTQ+ individuals, but did not explore how caste, class, or religion might compound queer marginalization. A rare exception is *Patan Jamal Vali v. State of Andhra Pradesh* (2021), where the Court recognized the intersectional vulnerability of a blind Dalit woman, acknowledging that her marginalization was compounded by both disability and caste. Madhavi Goradia Divan, in *Facets of Media Law*, critiques the mechanical



application of Article 14, arguing that it often masks structural inequalities under the guise of neutrality [9]. Usha Ramanathan and Anita Ghai have shown how formal equality fails to address the intersection of disability with gender, caste, and poverty. Ghai's Disability in South Asia emphasizes the need for a rights-based, intersectional approach to disability justice [10]. Saptarshi Mandal, in "Right to Love: Decriminalising Homosexuality in India," calls for a jurisprudence that centers lived experiences and recognizes the multiplicity of oppression [11]. Swethaa Ballakrishnen's empirical work on legal institutions similarly advocates for intersectional, context-sensitive legal reform. The Justice Verma Committee Report (2013), formed after the Nirbhaya case, explicitly recommended legal reforms that address the intersectional vulnerabilities of Dalit, Adivasi, and disabled women, marking a significant moment in policy discourse.

### **3. Beyond Formalism**

The Indian Constitution enshrines equality as a fundamental right under Articles 14, 15, and 16. However, the interpretation of these provisions has historically leaned toward a formalist understanding treating all individuals the same regardless of their social context. This approach, while appearing neutral, often fails to address the structural and intersectional nature of discrimination in Indian society. The heading "Beyond Formalism" captures the need to move past this limited view and embrace a substantive equality framework that recognizes and remedies layered disadvantage. Formal equality, as traditionally interpreted, is rooted in the idea of treating likes alike. It assumes a level playing field and presumes that identical treatment will yield just outcomes. However, in a society marked by entrenched hierarchies of caste, gender, religion, and disability, this assumption is flawed. Substantive equality, by contrast, acknowledges that different groups experience different forms of disadvantage and that achieving real equality may require

differential treatment or affirmative action. The Supreme Court of India has gradually evolved toward this understanding. In *State of Kerala v. N.M. Thomas* (1976), the Court upheld a rule granting preferential treatment to Scheduled Castes in promotions, stating that affirmative action is not an exception to equality but an essential component of it [12]. This marked a departure from rigid formalism and laid the foundation for a more substantive approach. Further, in *Anuj Garg v. Union of India* (2008), the Court struck down a provision of the Punjab Excise Act that prohibited women from working in establishments where alcohol was served. The Court emphasized that laws based on "protective discrimination" must be scrutinized for reinforcing patriarchal norms, and that equality must be interpreted in a manner that dismantles such stereotypes [13]. This case is significant for its recognition that formal neutrality can perpetuate inequality. Despite these advances, Indian constitutional jurisprudence still struggles to fully integrate intersectionality into its equality framework. Intersectional discrimination where individuals face overlapping forms of disadvantage due to multiple identity markers (e.g., caste and gender) is rarely addressed explicitly. The case of *Patan Jamal Vali v. State of Andhra Pradesh* (2021) is a notable exception. Here, the Court acknowledged that a blind Dalit woman faced compounded discrimination, recognizing the need for a more nuanced understanding of vulnerability. [14] Legal scholars such as Sandra Fredman have argued that substantive equality must be multidimensional, encompassing redistribution, recognition, participation, and transformation [15]. In the Indian context, this means not only providing reservations but also ensuring that legal reasoning reflects the lived realities of those at the margins.

### **4. Layered Injustice**

The Indian Constitution guarantees equality before the law and prohibits discrimination on specific



grounds such as caste, sex, religion, and place of birth under Articles 14 and 15. However, the legal framework often treats these grounds as isolated categories, failing to account for how they interact in real life. This results in what can be termed “layered injustice” a situation where individuals at the intersection of multiple marginalized identities face compounded discrimination that is not adequately addressed by single-axis legal reasoning. Intersectionality, a concept introduced by Kimberlé Crenshaw, critiques this fragmented approach. It emphasizes that people experience discrimination in overlapping ways, and that legal systems must recognize these intersections to provide effective remedies [16]. In India, this is particularly relevant for communities such as Dalit women, queer Muslims, or disabled Adivasi persons, whose experiences of exclusion cannot be understood through a single identity marker. Despite the transformative potential of the Indian Constitution, intersectional reasoning has rarely been applied in constitutional jurisprudence. Courts have traditionally analyzed discrimination claims by isolating one ground such as caste or gender without considering how these may interact. This has led to a jurisprudence that is often blind to the lived realities of those at the margins. A notable exception is the Supreme Court’s decision in *Patan Jamal Vali v. State of Andhra Pradesh* (2021), where the Court acknowledged that a blind Dalit woman faced “intersectional disadvantage.” The Court recognized that her vulnerability was not merely the sum of her caste and disability, but a unique form of compounded marginalization that required special attention [17]. This case marked a rare moment of judicial engagement with intersectionality, though it remains an outlier in Indian legal discourse. The absence of intersectional reasoning is also evident in cases like *Navtej Singh Johar v. Union of India* (2018), where the Court decriminalized

homosexuality and affirmed the dignity of LGBTQ+ individuals. While the judgment was progressive, it did not explore how caste, class, or religion might further marginalize queer persons in India [18]. A truly intersectional approach would have considered how these identities interact to shape access to justice, healthcare, and social acceptance. Legal scholars such as Kalpana Kannabiran have long argued that the Indian Constitution must be interpreted through a lens that captures the complexity of social hierarchies. In *Tools of Justice*, she emphasizes that equality must be grounded in the lived experiences of those who face multiple, overlapping forms of exclusion [19]. To move beyond layered injustice, Indian courts must adopt an intersectional framework that recognizes how different forms of discrimination reinforce each other. This requires not only doctrinal innovation but also a shift in judicial sensibility one that listens to the voices of those at the intersections and crafts remedies that reflect their realities.

### **5. The Limits of Neutrality**

The principle of neutrality in law is often celebrated as a hallmark of fairness. It suggests that laws should apply equally to all, without regard to personal characteristics such as caste, gender, or religion. However, in a society marked by entrenched hierarchies and systemic exclusion, neutrality can become a mask for indifference. This heading “The Limits of Neutrality” highlights how the Indian legal system’s commitment to formal equality and neutral application of laws often fails to address the complex, intersectional realities of discrimination. Article 14 of the Indian Constitution guarantees “equality before the law” and “equal protection of the laws.” In practice, this has been interpreted to mean that any classification must be reasonable and non-arbitrary. However, this formalist interpretation assumes that all individuals are similarly situated and that identical treatment will yield just outcomes. This assumption breaks down in the face of intersectional



disadvantage, where individuals experience multiple, overlapping forms of discrimination. For example, in *Air India v. Nargesh Meerza* (1981), the Supreme Court upheld service rules that imposed stricter retirement conditions on female flight attendants compared to their male counterparts. The Court accepted the airline's justification that these rules were based on "practical considerations," failing to interrogate the gendered assumptions underlying the policy [20]. A truly substantive approach would have questioned how such rules reinforced patriarchal norms and disproportionately affected women from marginalized backgrounds. The illusion of neutrality is further exposed when laws that appear facially neutral have disparate impacts on vulnerable groups. For instance, a regulation requiring all applicants to pass a physical test may seem neutral, but it can disproportionately exclude persons with disabilities or women from rural areas who lack access to training. Without an intersectional lens, such impacts remain invisible in legal reasoning. Kimberlé Crenshaw's theory of intersectionality critiques this blindness. She argues that legal systems often treat discrimination as occurring along a single axis such as race or gender ignoring how these identities intersect to produce unique forms of harm [21]. In India, this is evident in the limited judicial engagement with cases involving Dalit women, queer Muslims, or disabled Adivasi persons, whose experiences do not fit neatly into existing legal categories. The Supreme Court's decision in *Patan Jamal Vali v. State of Andhra Pradesh* (2021) offers a rare departure. The Court acknowledged that a blind Dalit woman faced "intersectional disadvantage," recognizing that her vulnerability was shaped by the interaction of caste, gender, and disability [22]. However, such reasoning remains the exception rather than the norm. Legal scholar Shreya Atrey argues that neutrality in law must be re-evaluated in light of intersectionality. She contends that a

commitment to substantive equality requires courts to move beyond abstract neutrality and engage with the social realities of discrimination [23].

## 6. Invisible Intersections

Indian constitutional law has long grappled with the challenge of ensuring equality in a society marked by deep social stratification. While the Constitution guarantees equality under Articles 14, 15, and 16, the judicial interpretation of these provisions has often been fragmented addressing caste, gender, religion, or disability in isolation. This siloed approach fails to capture the lived experiences of individuals who face discrimination at the intersection of multiple identities. The heading "Invisible Intersections" draws attention to this gap and argues that a substantive equality framework is essential to remedy the limitations of India's current equality jurisprudence. Intersectionality, as developed by Kimberlé Crenshaw, critiques the tendency of legal systems to treat discrimination as a single-axis phenomenon. In reality, individuals may face overlapping and mutually reinforcing forms of disadvantage. For example, a Dalit woman may experience caste-based exclusion in ways that are inseparable from her gender identity. Yet, Indian courts have rarely acknowledged such compounded harms, leading to what Crenshaw calls "intersectional invisibility".<sup>24</sup> The Supreme Court's decision in *Navtej Singh Johar v. Union of India* (2018) is illustrative. The Court decriminalized consensual same-sex relations and affirmed the dignity of LGBTQ+ individuals. However, the judgment did not explore how caste, class, or religion might further marginalize queer persons in India. A queer Dalit individual, for instance, may face exclusion not only from the dominant society but also within queer spaces themselves. The absence of intersectional reasoning in such a landmark case reveals the limitations of India's equality jurisprudence [25]. Substantive equality offers a corrective to this fragmented approach. Unlike formal equality, which



focuses on identical treatment, substantive equality demands that the law account for structural disadvantage and social context. Sandra Fredman's four-dimensional model redressing disadvantage, addressing stigma, enhancing participation, and accommodating difference provides a useful framework for Indian courts to adopt [26]. Kalpana Kannabiran, in her book Tools of Justice, argues that the Indian Constitution must be interpreted through the lens of lived experience. She emphasizes that equality cannot be achieved through abstract principles alone; it must be grounded in the realities of those who face multiple, overlapping forms of exclusion [27]. This requires courts to move beyond compartmentalized reasoning and engage with the full complexity of social identity. The case of Patan Jamal Vali v. State of Andhra Pradesh (2021) is a rare example where the Court recognized intersectional disadvantage. The judgment acknowledged that a blind Dalit woman faced unique vulnerabilities that could not be addressed through a single-axis analysis. This case demonstrates the potential of substantive equality to illuminate invisible intersections and provide more meaningful remedies [28].

## 7. Constitutional Equality in Crisis

The Indian Constitution envisions a transformative model of governance rooted in justice, liberty, equality, and fraternity. Yet, despite its progressive framework, the lived experience of many marginalized communities reveals a persistent failure to realize the promise of equality. This disconnects between constitutional ideals and social realities signals a crisis in the interpretation and application of equality rights. The heading "Constitutional Equality in Crisis" captures this moment of reckoning, where the limitations of formal equality are increasingly apparent, and intersectionality emerges as a necessary lens for a substantive turn in jurisprudence. Formal equality, as traditionally interpreted under Article 14, emphasizes uniform treatment and non-arbitrariness. However, this approach often overlooks

the structural and historical disadvantages that shape people's lives. For instance, treating a Dalit woman the same as an upper-caste man in a hiring process may appear neutral, but it ignores the systemic barriers she faces due to caste and gender. Substantive equality, by contrast, demands that the law account for these differences and provide equitable outcomes. The Supreme Court's decision in E.V. Chinnaiah v. State of Andhra Pradesh (2005) exemplifies the crisis of formal equality. The Court struck down a state law that sought to sub-classify Scheduled Castes for targeted benefits, holding that all SCs must be treated as a homogenous group. This decision ignored the internal hierarchies and unequal access to resources within the SC category, thereby reinforcing dominant-caste privilege within marginalized groups [29]. However, a significant shift occurred in 2023 when the Supreme Court upheld the validity of sub-classification within Scheduled Castes. The Court recognized that not all members of a group experience discrimination equally and that the state has a duty to ensure that the most disadvantaged among the disadvantaged receive the benefits of affirmative action [30]. This marks a move toward a more nuanced, substantive understanding of equality that aligns with intersectional reasoning. Intersectionality, as articulated by Kimberlé Crenshaw, emphasizes that individuals may face overlapping and interdependent systems of oppression. In the Indian context, this means recognizing that a Dalit woman, a disabled tribal youth, or a queer Muslim person may experience discrimination in ways that cannot be captured by single-axis legal frameworks [31]. Without this recognition, constitutional equality remains incomplete. Legal scholars such as Catherine Albertyn argue that substantive equality must be transformative it must not only redress disadvantage but also dismantle the structures that perpetuate inequality [32]. In India, this requires courts to move



beyond abstract principles and engage with the social realities of caste, gender, religion, and disability as they intersect. In conclusion, the crisis of constitutional equality in India is not merely a legal failure but a moral one. Intersectionality offers a path forward by demanding a jurisprudence that is responsive, inclusive, and grounded in lived experience. A substantive turn in equality law is not only desirable it is constitutionally imperative.

### **Conclusion and Suggestions**

The Indian Constitution enshrines equality as a foundational value, yet the persistence of intersectional discrimination reveals a deep disjunction between constitutional ideals and lived realities. The reliance on formal equality treating all individuals the same regardless of their social position has proven inadequate in addressing the complex and layered nature of disadvantage experienced by individuals situated at the intersection of caste, gender, religion, disability, and class. While the judiciary has occasionally gestured toward substantive equality, these instances remain sporadic and insufficient to dismantle the systemic structures that perpetuate exclusion. The crisis of formal equality is not merely a theoretical concern but a practical one, with real consequences for those whose experiences fall outside the narrow confines of single-axis legal reasoning. The failure to recognize intersectional harms leads to fragmented jurisprudence and partial remedies, leaving the most marginalized without meaningful redress. The promise of Articles 14, 15, and 16 remains unfulfilled unless the courts adopt a more context-sensitive, transformative approach that centers the lived experiences of those at the margins. To bridge this gap, Indian constitutional jurisprudence must undergo a substantive turn. This requires a deliberate shift in judicial reasoning from abstract neutrality to grounded responsiveness. Courts must be encouraged to recognize that equality does not mean sameness, and that justice often requires differential treatment

to achieve equitable outcomes. Intersectionality must be embraced not as an academic concept but as a constitutional tool to understand and address the compounded nature of discrimination. This transformation also calls for institutional and policy-level changes. Judicial training programs should incorporate modules on intersectionality, social justice, and the limitations of formal equality. Legal education must equip future lawyers and judges with the analytical tools to recognize and respond to complex forms of exclusion. Government bodies should collect and publish disaggregated data that reflects the intersection of caste, gender, disability, and other identities, enabling more targeted and effective policy interventions. Affirmative action policies must be refined to account for intra-group disparities, ensuring that benefits reach the most disadvantaged within marginalized communities. Furthermore, civil society organizations, legal aid clinics, and academic institutions have a critical role to play in advancing intersectional advocacy. By centering the voices of those who experience multiple forms of discrimination, these actors can help shape a more inclusive legal discourse and push for reforms that reflect the realities of India's diverse population. Ultimately, the path forward lies in reimagining equality not as a static principle of uniformity but as a dynamic commitment to justice. Intersectional reasoning, grounded in substantive equality, offers a powerful framework to realize the Constitution's transformative vision. It is only by acknowledging and addressing the full spectrum of disadvantage that Indian constitutional law can fulfil its promise of dignity, freedom, and equality for all.

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