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Intersectionality in the Indian Society

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The Indian constitution is a vast document sworn to protect the rights of the citizens of the country, however, the question that should be shaping the present political discourse is that does the constitution does an adequate job? Intersectionality is a lens through which you can see where power comes and collides, where it interlocks and intersects. A certain level of identity politics courses through the veins of people which is extremely understandable when living in a country that houses several distinctions, be it on the basis of caste, class, religion, or other. There have been numerous cases where the Indian courts have blatantly ignored the concept of intersectionality and proceeded to pronounce judgments on the basis of the exact wording of Article 15(1) of the Indian Constitution. This essay tackles concepts like patriarchy, caste, and class, all of which contribute to some of the other forms of oppression with the added need of viewing it all through the lens of intersectionality.

Keywords: *the constitution of India, art. 15, identity politics, intersectionality.*

INTRODUCTION

The Indian Constitution finds its grounds in the freedom struggle, the battle to not be governed by foreigners. It is a vast document sworn to protect the rights of the citizens of the country, however, the question that should be shaping the present political discourse is that does the Constitution does an adequate job? A certain level of identity politics courses through the veins of people which is extremely understandable when living in a country that houses

several distinctions be it on the basis of caste, class, religion, or other. Further on, more identities are being recognized in the social sphere every day like one's sexual identity or other. However, social acceptance isn't enough, which itself holds a transient form for the majority of the time. The identities should have their own space in the political arena with the document of rights guaranteeing them the protection that they deserve. National identity is built through the many communities that exist in particular surroundings. One's identity is formed by interlocking the several social structures that have been imposed upon a person by the society which they inevitably and sometimes unwillingly carry with them throughout their life. Identity politics has internal heterogeneity¹ and intersectionality carries the burden of rectifying it. Every social position is defined by an interaction between the hierarchical systems which take on the form of oppression. Intersectionality refers to the relationship between these social structures.²

INTERSECTIONALITY IS THE INDIAN JUDICIAL SYSTEM

Justice DY Chandrachud in the case of *Patan Jam Vali v the State of A.P.* puts forward the view of intersectionality. He says that pain is subjective but it can be appropriately judged only after carefully analyzing all the factors at play³ i.e. the manifold oppressive values that blend together to weave a web of subordinate conditions for the less privileged. The system of organised social relations depends on a system of values of equality, liberty, and fraternity, which at times are not compatible with each other. Justice acts as a synthesizer between conflicting values. Law enforces our duties but it doesn't cover the foundation of moral justice. Thus on this ground, the law can be called unjust. Moral justice is an idea of equality based on strong principles and immortality. They constitute the foundation of society. D.D. Raphael viewed justice in two forms, conservative justice, a system that sticks out its neck to protect the status quo and obey the orders of the established way of society, and the other being reformative justice, a system that calls for the revision of social order. A blind emulation of the

¹ Nivedita Menon, 'Is Feminism about 'Women'? A Critical View on Intersectionality from India' (2015) 50 (17) Economic and Political Weekly, 37, 42

<https://www.jstor.org/stable/24481823?seq=1#metadata_info_tab_contents> accessed 04 February 2022

² Dorothy E. McBride, Amy Gale Mazur, *Politics, Gender and Concepts* (Cambridge University Press 2008) 207

³ Patan Jamal Vali v State of A.P. (2021) SC 343

written rules and regulations without a conscious inspection in the specific context is not consistent with judicial impartiality⁴ and is a step down the wrong road. There have been numerous cases where the Indian courts have blatantly ignored the concept of intersectionality and proceeded to pronounce judgments on the basis of the exact wording of Article 15(1) of the Indian Constitution which prohibits discrimination and classifications only on the grounds of religion, race, caste, sex and place of birth. In the case of *Mahadeb v Dr. BB Sen*⁵ it was held that when there are several add-ons along with sex so as to make the law discriminatory, then the said discrimination doesn't exist itself. However, for every one case which didn't seem to look outside the written text, there also lies one that did.

The groundbreaking case of *Navtej Singh Johar v Union of India*⁶ which decriminalized consensual sex between all adults, including homosexuals, also was one which saw the concept of intersectionality being applied to understand the holistic protection against discrimination guaranteed under the Constitution. Justice DY Chandrachud observed how a formalistic interpretation of Article 15 won't be aligned with the reason behind including the article in the first place. He said a narrow view of the article fails to take into account the intersectional nature of sex discrimination which isn't isolated from other identities.

INDIAN CONSTITUTION

The Indian Constitution commands the necessity of equality of people before the law. However, there is no mention of the word 'equity'. Though, with the assistance of various judgments, the Hon'ble courts of India have widened the scope of Article 14 and included the aforementioned. Equality is a prescriptive term that also acts as a leveling process. There exists a requirement for prescriptions when there are imperfections present in the system. Harold J. Laski believed that the correct application of the process of equality will be complete when there is an absence of special privileges. The black law dictionary defines equality as the condition of possessing substantially the same rights, privileges, and immunities, and being liable to substantially the same duties, whereas equity denotes equal and impartial justice as

⁴ *R. v S. (R.D.)* (1997) 3 SCR 484

⁵ *Sri Mahadeb Jiew and Anr. v Dr B.B. Sen* AIR 1951 Cal 563

⁶ *Navtej Singh Johar v Union of India* (2018) SC 4321

between two persons whose rights or claims are in conflict. The two words under the garb of two words being partially alike are used interchangeably by people not realizing that the concept of equity begins where equality ceases. A Brahmin woman and a Dalit woman would be subjected to identical treatment under equality, but when it comes to a system governed by laws of equity then they both would be treated after taking cognizance of the social structures that surround them. The system of discrimination and intersectionality runs parallel to equality and equity, with the latter concept in both the duos needing more attention as only then will the larger portion of the community will be covered under the justice system. Justice is ascertained by natural reason or ethical insight, it readily accepts the multifacetedness of an individual and how it affects one's relationship with others and stature within the society.⁷

The need for the Constitution to have an intersectional aspect written down arises because of the different interests that lie with each group and no one group can be preferred over the other. There could be a call for the eradication of the various personal laws present in the country because many of them subjugate women, however, the opposite side yearns to keep things the way they are doing so in the fear of having their personal religious identity being eroded by byways of the majoritarian rule.⁸ This flow of argument continues but in midst of this, a third group arises whose identity is made up of gender and religion being intertwined. Women of the minority religion lie in the combined sphere thus belonging in both groups but not really belonging anywhere. Their separate identities have separate interests and they thus become marginalized in both groups as nowhere are their interests completely aligned with the majority view.⁹

⁷ Anuj Kapilashrami, Sarah Hill, Nasar Meer, 'Understanding Social Dynamics with an inter-categorical approach: what can health inequality researchers learn from an intersectionality perspective?' (*Strath Prints*) <https://strathprints.strath.ac.uk/54135/1/Kapilashrami_et al_STH_2015_What_can_health_inequalities_researchers_learn_from_an_intersectionality_perspective.pdf> accessed 16 January 2022

⁸ Nivedita Menon (n 1)

⁹ Sujata Gadkar-Wilcox, 'Intersectionality and The Under-Enforcement of Domestic Violence Laws in India' (2012) 15 *University of Pennsylvania Journal of Law and Social Change*, 455, 469

<<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1120&context=jlasc>> accessed 16 January 2022

INTERSECTIONAL FEMINISM

Kimberle Crenshaw is the woman who coined the term ‘intersectionality’ to give a name to the oppression of African American women. In her words “intersectionality is a lens through which you can see where power comes and collides, where it interlocks and intersects”.¹⁰ If it is to be explained in a western sense, it will be said that a white man is at the top of the chain of society, followed by a white woman, a black man, and finally a black woman will be at the bottom of the food chain. This is so because there will be circumstances where a white woman is preferred over a black man but so will situations exist where vice versa takes place. However, a black woman will always be on the receiving end of the oppression because her two identities intersect, and one way or the other she remains subjugated. The equivalent state of affairs transpires in the Indian context. A Dalit woman will face more discrimination than her female counterparts of a higher caste and the male counterparts of the same caste. The Feminist theory brought the issue of patriarchy into the limelight and expanded its meaning in the second half of the 20th century. Feminist Legal theory also known as feminist jurisprudence can be understood as a philosophy of law based on the political, economic, and social equality of the sexes. One important characteristic of feminism is that it represents the integration of practice and theory and following the same pattern, feminist legal theory studies the systematic devaluation of women that takes place in our society and proceeds in a way so as to fathom how to correct the inequity and inequality buried deep into the roots of law.

Many feminists believe that Patriarchy is more than just civilizations that existed in the ancient past and that it certainly goes beyond the unequal distribution of power. It is also a social construction that can be dissolved by disclosing and critically analyzing manifestations and institutions. Since the inception of time men have made the rules for men and women have been treated as second-class citizens, thus feminism focuses majorly on getting the rights of

¹⁰ Kimberlé Crenshaw, ‘Intersectionality More than Two Decades Later’ (*Columbia Law School*, 8 June 2017) <<https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later>> accessed 16 January 2022

women on the same level as men. Equality must be a substantive concept that goes ahead and disrupts the existing power structure.¹¹

Patriarchy is understood as a conceptual category that helps in the critical understanding of the status of women in any society, it manifests and institutionalizes the domination of women and children in the family and explains the influence over the public society. The women are kept subordinate in this system and it takes various forms such as bigotry, disrespect, abuse, power, aggression. Karl Marx's concept of Marxist feminism investigated the association between patriarchy and capitalist mode of production and believed that female subjugation in patriarchy cannot be isolated from other forms of exploitation, similar to the present topic at hand.

CLASS AND CASTE

This problem doesn't prevail on an individual level, it exists at the core of our society which operates on class distinction and discrimination to this day. The crisis has gained headway because of little to no interference on a systematic level. The collective consciousness of the society leans towards a pecking order. The concept of collective consciousness could be understood to be a totality of beliefs and sentiments common to the average of the members of the same society which in turn forms a determinant system that has a life of its own and is realised through particular individual consciousness. The stronger the collective consciousness the greater it implies that it envelopes an entirety of consciousness of people impressing itself on nearly every facet of lives, thus reiterating the need for intersectionality to protect against the discrimination that is rooted deep. Two bases of discrimination present in Indian society are said to be class and caste. Class is a pyramidal social grouping which according to Karl Marx, has played an important role in the evolution of society over the years. It is the most powerful concept of stratification. Marx defined class as a large group of people that differ from one another by their relation to means of production, role, and labor, mode of acquiring social wealth, his definition of class is focused on differences and seen worldwide. Whereas

¹¹ Melissa Burchard, 'Feminist Jurisprudence' (*Internet Encyclopedia of Philosophy*) <<https://iep.utm.edu/jurisfem/#SH2a>> accessed 16 January 2022

caste is more confined to the Indian society; it is a type of social stratification which means a ranking of people or group of people within society.

The four castes: Brahmin, Kshatriyas, Vaishyas, and Dalits are all hereditary endogamous groups that live with a structurally closed rank system and a set of values, beliefs, and practices that shouldn't be violated at any cost. This stratification is the embodiment of the principle of inequality. A study was conducted by International Dalit Solidarity Network on Dalit women from across India who have experienced violence shows that 62.4% of them have faced one or more incidents of verbal abuse, 54.8% have faced physical assault, 46.8 % had encountered sexual harassment and assault, 43% of them were victims of domestic violence and 23.2% were victims of rape. There is also a fear of discrimination at the hands of police, coupled with lack of judicial action, results in many of these cases going unreported and hence it becomes extremely difficult to ascertain the true magnitude of this problem which is needed if we want discussions regarding the safety of Dalit women to be taken seriously. Other reports show that only 1% of the cases filed by Dalit women have actually ended in convictions and the conviction rate for rapes against Dalit women is below 2%, whereas the conviction rate of rape cases filed by all other women in the country is about 27%.¹²

CONCLUSION

The book titled *The Transformative Constitution: A Radical Biography in Nine Acts* by Gautam Bhatia talks about the Indian Constitution being committed to erasing social and economic hierarchies.¹³ We, as a society haven't yet had the good fortune of seeing such a heavyweight task being accomplished. But the question is will we ever? One look out the window onto the ground reality confirms the fear. A scene of intolerance against minorities is visible in the largest democracy of the world which has caught the eye of the world; a report on global political rights and liberties by the Freedom House demoted India's status as a

¹² Shonotra Kumar, 'Intersectional Discrimination: Understanding the Indian Perspective' (*Nyaaya*, 25 August 2020) <<https://nyaaya.org/blog/intersectional-discrimination-understanding-the-indian-perspective/>> accessed 16 January 2022

¹³ Gautam Bhatia, 'The Constitution of India was not just a founding document. It had a radically transformative vision' (*Scroll.in*, 4 March 2019) <<https://scroll.in/article/914555/the-constitution-of-india-was-not-just-a-founding-document-it-had-a-radically-transformative-vision>> accessed 16 January 2022

democracy and free society from “free” to “partly free” in 2021 citing bigoted attacks on minority sections, violation of human rights among others as reasons.¹⁴ The entire concept of democracy lies on the premise of a society based on equal opportunity, a structure devoid of privilege and hierarchy. A system should be set in place which seeks to narrow down social inequalities through schemes of welfare, a form of rule which protects the rights and interests of the minorities by keeping checks on the powers of the majorities. An ideal democratic government is said to have to serve the interest of people irrespective of differences, an event that seems too farfetched at this point in time. In cases of endeavoring for equality, the key goals remain the same but the difference comes in when we take into consideration the geographical and cultural changes. The Indian constitution has been amended one hundred and five times since its inception in the year 1950. This statement strives to establish how the ultimate goal of our welfare society has always been to move forward, adapt to the changing times, and be better. We constantly aim to be better; everybody’s perception might always differ and who is to say which viewpoint is correct and which isn’t, but if we look at things from a social standpoint which excludes all questions of traditions but includes the issue of morality there has been its own share of good and bad amendments.

The Constitution of India acts as the supreme law of the country and it has, for the most part, tried to place the rights of all people on the same level; after all, until everyone begins their race from the same starting line as their counterparts we can’t say equality has been achieved. The fundamentals of learning rely upon unlearning and relearning. If asked about the purpose of education, be it in any form, several answers would be put forward. If I were to add my outlook to that basket of responses, I would say that the purpose of education and learning is said to be fulfilled when a person is able to identify whether the perspective that they house is one of their own or that which was simply imposed upon them by the society at an early stage of their life; to be unfrozen from the perspective imposed upon us and moving towards one that is more integrative and descriptive of our lived and learned experiences.

¹⁴ ‘India downgraded from ‘free’ to ‘partly free’ in democracy report’ (*Hindustan Times*, 4 March 2021) <<https://www.hindustantimes.com/india-news/india-downgraded-from-free-to-partly-free-in-democracy-report-101614810847391.html>> accessed 16 January 2022