

## **Intersection of gender based discrimination with Special emphasis on Dalit Women: A Legal Analysis**

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### **Abstract**

This research paper explores the complex issue of discrimination experienced by Dalit women in India, with a particular emphasis on the intersectionality of biases related to specific castes and gender. The study examines the complex challenges faced by Dalit women, who are caught between caste and gender inequalities within the legal system, using a socio-legal perspective. The research seeks to illuminate the intricate aspects of discrimination experienced by this marginalised group and to suggest legal interventions tailored to specific contexts, with the goal of fostering a more inclusive and equitable society. The approach entails a thorough analysis of legal cases concerning Dalit women, examining both past and present occurrences. Through a socio-legal approach, this paper provides a critical assessment of how caste and gender influence the experiences of Dalit women within the legal system. The analysis reveals the systemic challenges that Dalit women encounter when seeking justice, illustrating how deeply ingrained social biases impact legal processes. The paper argues that the combination of caste and gender intensifies the vulnerability of Dalit women, leading to a complex form of discrimination that the current legal frameworks fail to adequately address. The paper offers specific suggestions for legal reforms, policy adjustments, and awareness initiatives to tackle the complexities of discrimination experienced by this vulnerable group in society. It provides valuable insights that can be used to inform legal actions and promote a fairer society.

Keywords: gender, caste, discrimination, women, Constitution.

### **Introduction**

The intersection of discrimination based on caste and gender, especially when it comes to Dalit women, is a significant and intricate socio-legal matter in the Indian context. In India, the struggle against systemic oppression and violence remains a pressing issue for marginalised groups, including Dalits, despite the progress made in legislation and policy frameworks to protect human rights and promote equality. Dalit women, who are often considered the most marginalised within society, face multiple forms of discrimination based on caste, gender, and socioeconomic status. India's caste system has long been a source of social division, with certain groups facing severe discrimination and marginalisation. Dalits, in particular, have historically been subjected to menial labour, social exclusion, and even violence. Meanwhile, the oppressive power structures continue to compound the challenges faced by marginalised women, depriving them of their rights, independence, and self-respect in all aspects of their lives. In spite of the constitutional provisions and legislative measures in place to safeguard the rights of marginalised communities and women, the actual situation

on the ground presents a strikingly contrasting image.<sup>1</sup> Dalit women endure widespread discrimination and violence, including sexual assault, exploitation, and caste-based atrocities, perpetrated by those in positions of power and privilege. The prevailing societal attitudes rooted in patriarchy and casteism contributes to the perpetuation of oppression and impunity, leaving Dalit women in India particularly vulnerable and marginalised. In addition, the legal environment concerning the safeguarding of the rights of Dalit women is filled with difficulties. Although laws like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act have the noble goal of tackling caste-based violence and discrimination, the effectiveness of these laws is often hindered by implementation gaps and systemic biases.<sup>2</sup> As a result, Dalit women survivors frequently face obstacles when seeking justice and redress. Recent judicial interpretations have also sparked concerns about the erosion of legal safeguards and the continued impunity enjoyed by those who commit acts of violence based on caste. This research aims to conduct a socio-legal analysis of the intersectionality of caste-based and gender-based discrimination, with a particular focus on Dalit women in India. The complexities surrounding this issue will be explored in depth. This study seeks to illuminate the complex nature of oppression faced by Dalit women by delving into their historical roots, socio-cultural dynamics, legal frameworks, and lived experiences. It also aims to explore potential avenues for legal reform, policy intervention, and social change. This research aims to contribute to broader discourses on social justice, human rights, and equality in India by exploring the complex factors that shape the lives of Dalit women.

### **Intersection of gender and caste**

When social categories like race, class, and gender are applied to a particular person or group, they are said to be interrelated. This is known as intersectionality, and it is thought to create overlapping and interdependent systems of disadvantage or discrimination. In the context of discrimination, intersectionality emphasises how different types of discrimination, such as those based on gender and those based on a particular case or circumstance, can intersect and exacerbate one another, giving people who belong to multiple marginalised group's unique experiences of oppression or marginalisation.

When we examine the confluence of gender-based and case-based discrimination, we recognise that people may experience discrimination based on their gender in addition to other unique circumstances or situations. As an illustration:

- **Employment Discrimination:** In some situations, a pregnant woman may experience discrimination based on her pregnancy as well as prejudice based on her gender. Due to prejudices against women in the workforce as well as prejudices towards expectant moms or people in general, she may have difficulties in being hired or promoted.
- **Legal Discrimination:** A transgender woman may face prejudice according to the particular facts of her case in addition to discrimination based on her gender identification throughout legal processes. This might show up as unfair treatment by jurors, judges or law enforcement.

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<sup>1</sup>Ajit Kumar Pandey and VN Mishra, "Dalit Women's Narratives on Sexual Violence: Reflections on Indian Society and State" available at: <https://doi.org/10.1177/00490857211032727>, (Last visited on Feb 12, 2023)

<sup>2</sup>Valmiki, Joothan: An Untouchable's Life 13 (Columbia University Press, New York, 2003)

- **Healthcare prejudice:** Due to his gender identity and the unique healthcare requirements associated with transgender health, a transgender man seeking healthcare services may face prejudice. This might include treating someone inappropriately or refusing them care out of prejudice or ignorance.
- **Discrimination in Education:** A girl from a minority racial group may experience discrimination in her education due to socioeconomic circumstances unique to her situation, such as attending a school with inadequate resources or encountering cultural prejudices in the educational system, in addition to discrimination based on her gender.

Understanding and resolving the intricacies of how many types of discrimination overlap and reinforce one another is essential to combating intersectional discrimination. It entails putting into effect laws and procedures that consider the particular struggles and experiences encountered by people who belong to many marginalised groups. This might include educating people about diversity, putting inclusive policies into place, fighting for legal safeguards, and encouraging a greater knowledge of intersectionality and social awareness.

### **Legal Framework Protecting Dalit Females**

Within the complex dynamics of India's social structure, the convergence of caste and gender discrimination poses a significant hurdle, especially for women belonging to the Dalit community.<sup>3</sup> Despite the constitutional guarantees and legislative measures in place, the plight of Dalit women remains a pressing issue, as they continue to endure systemic oppression, violence, and marginalisation. In order to gain insight into the challenges faced by Dalit women and the legal measures designed to safeguard their rights, it is crucial to examine the constitutional provisions and legislative acts that influence their lived experiences. The Indian Constitution is widely praised for its commitment to social justice. It includes various provisions that aim to tackle social inequalities and ensure equality and justice for all citizens, regardless of their caste or gender.<sup>4</sup> One provision that carries great significance in the context of Dalit women is Article 17. Article 17, which abolishes untouchability, showcases the framers' dedication to eliminating caste-based discrimination, a harmful practice that has long marginalised Dalits, especially Dalit women, within society. In addition, the Constitution's Article 23 provides safeguards against trafficking in persons and forced labour, offering crucial protection against exploitative practices that have a disproportionate impact on Dalit women. This provision highlights the state's duty to safeguard the dignity and welfare of all individuals, particularly those who may be susceptible to mistreatment and harm. Similarly, Article 24 aims to prevent child labour, acknowledging the vulnerability of Dalit girls to dangerous work environments and striving to protect their right to education and a childhood free from exploitation. Furthermore, there have been specific legislative enactments put in place to tackle the distinct challenges encountered by Dalit women, in addition to these constitutional provisions. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, commonly referred to as

<sup>3</sup> Uma Chakravarti, *Gendering Caste Through a Feminist Lens* 20 (Sage Publications Pvt. Ltd, 1st edition, 2018).

<sup>4</sup>Anupama Rao, *The Caste Question: Dalits and the Politics of Modern India* (Sage Publications, New Delhi, 2009).

the Atrocities Act, is a significant law that seeks to prevent acts of violence and discrimination against marginalised communities, particularly Dalits and Dalit women.<sup>5</sup> This extensive legislation highlights particular crimes that target Dalits, including assault, rape, and humiliation, and enforces severe consequences for those responsible. In addition, it requires the creation of dedicated courts to handle cases related to crimes against Dalits, guaranteeing prompt justice for the victims. Another important legislative measure is the Protection of Civil Rights Act, 1955, which supports the constitutional provisions by tackling discriminatory practices against Dalits, including Dalit women.<sup>6</sup> This legislation offers legal avenues for addressing instances of discrimination and social exclusion rooted in caste. The Act aims to empower and uphold the dignity and equality of all individuals by prohibiting practices such as the enforcement of untouchability and the imposition of social disabilities. In addition, there are certain laws that specifically address practices that have a greater impact on Dalit women, such as manual scavenging and human trafficking. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, addresses the issue of manual scavenging and emphasises the importance of rehabilitating those involved in this practice, particularly Dalit women.<sup>7</sup> In a similar vein, the Immoral Traffic (Prevention) Act, 1956, tackles the issue of human trafficking by providing safeguards for at-risk women, including Dalit women, to shield them from exploitation and mistreatment.<sup>8</sup> In addition, there are specific laws in place to protect children from labour exploitation and sexual offences, particularly those targeting vulnerable groups such as Dalit girls. These laws establish different types of abuse and impose strict penalties for those who commit them, thus guaranteeing the protection and welfare of Dalit children, especially girls, who are frequently at risk of being exploited and mistreated.

### **Judicial Approach**

Ensuring equal justice for women in India requires a comprehensive approach that goes beyond just legal frameworks and court decisions. It necessitates the active involvement of individuals, communities, and the government. Understanding the impact of laws and court decisions is essential in creating a more equitable society. However, achieving gender justice goes beyond legal measures and requires a holistic approach that tackles systemic barriers and fosters societal transformation. In India, the judiciary has played a crucial role in promoting gender justice by interpreting constitutional provisions and legal statutes. Throughout the past five decades, Indian courts have played a crucial role in interpreting and advancing the rights of women, drawing from both domestic laws and international human rights agreements that prioritise women's rights. The judiciary has made significant rulings that have established crucial legal principles and offered guidance in addressing issues of gender-based discrimination and inequality.

Nevertheless, it is crucial to acknowledge that the judiciary's responsibility extends beyond mere interpretation of established laws. It also encompasses the task of influencing the

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<sup>5</sup>R Ahuja, *Indian Social System* 36 (Rawat Publication, New Delhi, 1993).

<sup>6</sup>V Kumar, "Locating Dalit Women in the Indian Caste System, Media and Women's Movement", 39(1) SC 64-84 (2003).

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

development of the law to address the evolving demands of society. As seen in cases such as **C. Ravichandran Iyer v. Justice A.M. Bhattacharjee**<sup>9</sup> and **S. P. Gupta v. President of India**<sup>10</sup>, courts have recognised the ever-changing societal values and have taken proactive steps to adjust legal interpretations accordingly. It is crucial for judges to breathe life into legal principles, ensuring that laws stay current and impactful in upholding justice and equality. In addition, the legal system has shown a readiness to use its judgement and innovative thinking when interpreting laws to tackle social issues, especially those related to women's rights. In cases such as **M.C. Mehta v. Union of India (Shriram - Oleum Gas case)**<sup>11</sup>, the court highlighted the importance of legal principles adapting to societal changes, even if it means establishing new norms and principles. This approach demonstrates the judiciary's dedication to preserving constitutional values and ensuring justice for every individual.

An important element of this legal framework is affirmative action, which is protected by constitutional provisions like Article 15(3). This article acknowledges the state's power to implement specific measures for individuals who face disadvantages, such as women and other marginalised groups. These measures may include reservations in education and employment. An interesting case, **P. Sagar v. State of Andhra Pradesh**<sup>12</sup>, sheds light on the application of a certain principle. In this case, the Andhra Pradesh High Court upheld reservation policies that granted a 30 percent quota for women applicants who wished to be admitted to medical colleges. In the face of obstacles, the court has upheld the constitutionality of these measures under Article 15(3), highlighting their significance in rectifying past wrongs and advancing gender equality.

In **Padmaraj Samarendra v. State of Bihar**<sup>13</sup>, the judiciary supported the allocation of seats for female students in medical colleges. They acknowledged the state's valid interest in promoting gender diversity in the healthcare sector. This decision highlights the significance of affirmative action measures in promoting the inclusion of women in crucial fields such as medicine, thus addressing gender inequalities and empowering marginalised women. In addition, the involvement of the judiciary has been crucial in confronting discriminatory practices and promoting the rights of Dalit women.

The Supreme Court, in cases such as **C.B. Muthamma v. Union of India**<sup>14</sup>, ruled against unfair regulations that limited women's opportunities for employment in the Indian Foreign Service due to their marital status. This decision emphasised the importance of upholding equality and non-discrimination as outlined in the Constitution, particularly in relation to addressing gender biases in the workplace. In the case of **Vijay Lakshmi v. Punjab University**<sup>15</sup>, the court supported regulations that allowed for the hiring of female principals and teachers in women's colleges. This decision acknowledged the significance of policies that take gender into account, as they contribute to the empowerment of women and create a

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<sup>9</sup>1995 SCC (5) 457

<sup>10</sup>[1982]2SCR365.

<sup>11</sup>1986 SCR (1) 312.

<sup>12</sup>AIR (1968)165.

<sup>13</sup>1979 BBJ 310.

<sup>14</sup>1980 SCR (1) 668.

<sup>15</sup>(2004) 1 ANDH LT 45.



favourable learning atmosphere for female students. This decision emphasised the judiciary's dedication to advancing gender equality and fostering an environment where Dalit women can excel in education and leadership positions. In addition, the judiciary has played a crucial role in safeguarding women's rights in the workplace.

A notable example is the case of **Mrs. Neera Mathur v. Life Insurance Corporation of India**<sup>16</sup>, where the Supreme Court acknowledged and upheld women's right to privacy. Moreover, the court took a firm stance against discriminatory practices in employment. The court's recognition of the principle of equal remuneration for equal work is a significant step towards addressing gender disparities in the workplace and empowering women economically.

However, even with the judiciary's active efforts to promote gender justice, there are still obstacles to overcome in order to achieve equal treatment for women, particularly for marginalised groups such as Dalit women. Instances like the *Bhanwari Devi* case highlight the ongoing presence of caste and gender prejudices in the legal system, creating barriers for marginalised women seeking justice. It is crucial for the judiciary to actively address biases and uphold equal access to justice for all individuals, regardless of their background. Moreover, in order to achieve gender justice, it is essential for all members of society to come together and contribute, in addition to the important role played by judicial interventions. All members of society, including the government, civil society organisations, legal professionals, and individuals, have a crucial role in addressing discriminatory practices and advocating for gender equality. Through collaboration, India can further its progress in achieving the constitutional principles of equality, dignity, and justice for all its citizens, including women and marginalised communities such as Dalits.

### **Conclusions and Suggestions**

To sum up, the situation of Dalit women in India is still critical and needs immediate attention and action. Due to deeply ingrained caste norms and cultural biases, Dalit women continue to experience discrimination, abuse, and exploitation despite constitutional safeguards and legal structures intended to protect their rights. Dalit women endure several forms of discrimination, including ignorance of their legal rights, low educational attainment, and socioeconomic condition. They experience sexual harassment, physical and verbal abuse, and medical carelessness; the people who inflict these harms often escape punishment because of their social privileges. This vulnerability is further increased by the criminal justice system's frequent failure to provide Dalit women sufficient protection and reparation. In order to really empower Dalit women, these structural problems must be fully addressed. Essential measures towards empowerment include raising knowledge of legal rights, giving Dalit community members access to education and economic opportunities, and promoting social cohesiveness. Creating an atmosphere that is favourable for Dalit women to flourish also requires strict implementation of laws against violence and discrimination and actions to eliminate antiquated social customs. The government and civil society have a responsibility to give Dalit women's empowerment top priority and to guarantee their full involvement and

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<sup>16</sup>AIR 1992 SC 392.

inclusion in all aspects of society. We may endeavour to create a more fair and just society for all by tearing down obstacles to their progress and standing up for their rights.

Given below are the suggestions:

- Caste and gender-based data disaggregation: All information pertaining to criminal, economic, social, and political elements must be analysed in light of caste and gender. This will make the particular difficulties and inequalities that Dalit women experience clear, enabling the development of tailored interventions and policies to meet their particular need.
- All-encompassing approach to end impunity: To end impunity and guarantee that Dalit women get equitable treatment in the criminal justice system, a well considered plan is required. This entails upholding current regulations for the compassionate treatment of prisoners and making offenders—especially those from upper castes—liable for their deeds.
- Empowerment of national human rights authorities: To combat discrimination and violence against Dalit women, national human rights authorities have the authority to create unbiased monitoring frameworks and make legally binding recommendations. This means making it possible for victims to report incidents without worrying about facing consequences and making sure that their complaints are handled correctly and on time.
- Passage of domestic abuse laws: Given Dalit women's particular susceptibility to abuse of this kind, laws targeting domestic abuse of these women need to be passed. To guarantee that these laws are effectively enforced, sufficient funding and methods for their implementation should be included, including monitoring systems with representation for Dalit women.
- Promotion of political participation: At all levels, initiatives should be taken to encourage Dalit women to participate proportionately in political processes. This entails providing funding for their assistance and representation in political institutions, for example, via awareness campaigns, mentoring programmes, and training courses designed to promote their active participation in the political process.

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