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INTERSECTIONALITY IN CRIMINAL LAW AND ITS IMPACT ON WOMEN

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ABSTRACT

This paper delves into the complexities of gender and the Indian legal system, exposing the stark discrepancies in arrest rates, incarceration trends, and the subtle (and sometimes not-so-subtle) biases that weave a web of disadvantage for women.

It explores the concept of intersectionality within criminal law and its profound impact on women in India. Intersectionality, as a framework, examines how various social identities—such as caste, class, religion, and gender—intersect to create unique forms of discrimination and privilege. In India, these overlapping identities significantly affect women's experiences with the criminal justice system, where marginalized women, particularly those from lower castes or minority religions, face systemic biases. Drawing from key cases such as the Hathras and Walayar cases, this paper illustrates how caste and gender biases compound to hinder the pursuit of justice for Dalit women. The Kathua case highlights how religious and gender identities intertwine, showing how societal and patriarchal norms obstruct justice, while the Bilkis Bano case underlines the challenges of seeking justice during communal violence.

The paper argues that women from marginalized backgrounds face a distinct and multifaceted set of challenges in navigating the legal system, often encountering dismissal, apathy, or direct bias from law enforcement. Using intersectionality as a lens, this research emphasizes the need for legal reforms that account for these intersecting identities, advocating for a more inclusive and nuanced approach to criminal justice. By recognizing the compounded discrimination that marginalized

women endure, we can move toward a legal system that delivers equitable justice for all women, regardless of their caste, religion, or socio-economic background.

India, as a diverse and pluralistic society, is marked by a rich tapestry of cultures, languages, and traditions.⁶⁵⁸ However, this diversity also brings to light the complex intersections of identity that can contribute to systemic bias and discrimination within the criminal justice system. For instance, women from marginalized castes may face distinct challenges that differ from those faced by women from privileged backgrounds. Similarly, individuals from minority religious communities may encounter biases that influence their treatment within the legal framework.⁶⁵⁹

Intersectionality is an analytical framework that explores how various social identities—such as race, gender, class, sexuality, and ability—intersect to create overlapping systems of discrimination and privilege. This approach recognizes that individuals belonging to multiple marginalized groups face unique forms of oppression, shaped by the interaction of their identities.

⁶⁵⁸ Sen, A. (2006). "Identity and Violence: The Illusion of Destiny." W. W. Norton & Company.

⁶⁵⁹ Anand, D. (2016). "Religious Minorities and the Legal System in India: Challenges and Prospects." International Journal of Human Rights and Constitutional Studies, 4(1), 45-59.

First introduced by Kimberlé Crenshaw in the 1980s to highlight the struggles of Black women facing both racial and gender-based discrimination, intersectionality has since expanded to include a broader range of identities.⁶⁶⁰ It shows that people's experiences of inequality are compounded when they belong to more than one marginalized group. For example, a Dalit woman in India may face caste and gender discrimination, resulting in distinct barriers compared to those experienced by men or upper-caste women.

Intersectionality underscores those systems of power and oppression—such as racism, sexism, and classism—cannot be examined in isolation. They are interconnected and often exacerbate one another. Understanding this complexity is essential for creating inclusive social justice movements and policies that address the full spectrum of discrimination people face.

By recognizing these intersections, we can work toward a more equitable society that responds to the nuanced realities of all marginalized individuals.

Gender and Criminal Justice

In the bustling courtrooms of India, where justice supposedly reigns supreme, a different reality unfolds when women enter the labyrinth of the criminal justice system. While statistics show women commit fewer crimes compared to men, their experiences paint a grim picture. This chapter delves into the complexities of gender and the Indian legal system, exposing the stark discrepancies in arrest rates, incarceration trends, and the subtle (and sometimes not-so-subtle) biases that weave a web of disadvantage for women.

Disproportionate Impact on Women

Data paints a concerning portrait of gender disparity in the criminal justice system. While not the sole indicator, arrest rates offer a glimpse into the initial points of contact. The

National Crime Records Bureau (NCRB) reports that in 2021, a staggering 4 crimes against women were registered every hour in India. However, this number represents only a fraction of the true picture. Fear of social stigma, particularly surrounding sexual assault, often acts as a powerful silencer. The NCRB's 2021 report reveals a mere 35.5% conviction rate for crimes against women, highlighting the vast number of cases that go unreported or unresolved.⁶⁶¹

A chilling example is the case of *Mathura Devi v. State of Rajasthan (1972)*⁶⁶², where a young girl who was repeatedly raped by two policemen was denied justice. The verdict, later overturned, reeked of victim-blaming, creating a chilling effect for future reporting of sexual assault. *Sheena Bora murder case (2012)*⁶⁶³ case involving the murder of a young woman by her mother, a former media personality, exposed the media's tendency to sensationalize crimes involving women from affluent backgrounds, while neglecting the plight of countless women from underprivileged communities.

Police stations, often the first point of contact for victims, can be intimidating for women. A 2018 study by the Bureau of Police Research and Development revealed a mere 8.8% representation of women in police forces across India.⁶⁶⁴ This lack of female officers can create a communication gap, with women hesitant to report crimes due to perceived insensitivity or lack of understanding.

The issue goes beyond mere statistics. Sentencing practices often fail to consider the unique circumstances of women offenders, creating hidden tripwires within the legal labyrinth:

The "Deviant Woman" Stereotype:
Societal norms portraying women as the

⁶⁶⁰ Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Colour," *Stanford Law Review* 43, no. 6 (1991): 1241-1299

⁶⁶¹ National Crime Records Bureau, *Crime in India 2021* (<https://ncrb.gov.in/en/Crime-in-India-2021>)

⁶⁶² AIR 1978 SC 839

⁶⁶³ *Pratim Alias Peter Mukherjee vs Union of India and Anr* on 19 January, 2018.

⁶⁶⁴ Bureau of Police Research and Development (BPRD). (2018). *Women in Police Forces in India*.

upholders of morality can lead to harsher sentences for women who commit crimes seen as violating those norms. A woman caught in prostitution might face a harsher sentence than a male client, reflecting the double standard that exists within Indian society.

Victim Blaming: In cases of sexual assault or domestic violence, women are often seen as complicit or even responsible for the crime. This victim-blaming mentality discourages reporting and can lead to lighter sentences for perpetrators. The burden of proof often falls on the victim, adding another layer of injustice.

Lack of Gender-Specific Programs: Rehabilitation programs within the Indian prison system are often designed with male offenders in mind, neglecting the specific needs of women. These needs can include mental health support, vocational training tailored for women, and access to childcare facilities for mothers incarcerated with young children. Without addressing these underlying issues, the risk of recidivism remains high.

These factors create a web of bias that disadvantages women within the system. Legal procedures, steeped in tradition, often fail to capture the nuances of women's criminal pathways.

Intersectionality of Gender with Caste, Religion, and Class

Our understanding of the world is often limited by a one-dimensional view. We see people through the lens of a single identity, be it gender, caste, religion, or class. But reality is far richer, a tapestry woven from these various threads. Intersectionality, a powerful framework, helps us understand how these identities intertwine, creating unique experiences of oppression or privilege. Let's delve deeper into this intricate dance, focusing on how gender intersects with caste, religion, and class. India's social fabric is deeply embedded in patriarchal norms, where women face systemic disadvantages. This creates a baseline

vulnerability that intersects with other social identities, amplifying the challenges women encounter when navigating the criminal justice system.

In societies with deeply entrenched caste systems, the burden of oppression falls heaviest on women from lower castes. Imagine Aasha, a young Dalit woman in rural India. She carries the weight of "untouchability," a social stigma that relegates her community to the fringes of society. A 2018 report by the **National Campaign on Dalit Human Rights (NCDHR)** revealed that 44% of Dalit households in India still face untouchability in some form.⁶⁶⁵ Every interaction, every glance, reinforces her "impurity" in the eyes of upper castes. Yet, within this ostracized group, she faces another layer of discrimination – gender bias.

Educational opportunities might be limited for both Dalit men and women. However, cultural norms often prioritize education for sons, who are seen as potential breadwinners. According to a 2018 UNESCO report, the literacy rate for Dalit women in India stands at 48.5%, compared to 82.4% for upper-caste women.⁶⁶⁶ Aasha's yearning for knowledge might be stifled, leaving her illiterate and confined to menial labour. This lack of education restricts her economic prospects, further limiting her agency and perpetuating the cycle of poverty. Furthermore, the very act of defying caste norms by seeking education or employment can expose her to violence and harassment. Upper caste men might view her defiance as a threat to the existing social order, leading to physical assault, threats, or even sexual violence. The National Crime Records Bureau (NCRB) reported 10,940 crimes against Dalit women in 2021, highlighting the vulnerability they face.⁶⁶⁷

Even if Aasha finds the courage to pursue education or employment, navigating public spaces becomes an act of bravery. Public

⁶⁶⁵ National Campaign on Dalit Human Rights (NCDHR), "Report on Untouchability in India 2018"

⁶⁶⁶ UNESCO, *Global Education Monitoring Report 2019* (Paris, UNESCO, 2019), p. 189. <https://unesdoc.unesco.org/ark:/48223/pf0000368753>

⁶⁶⁷ National Crime Records Bureau, *Crime in India 2021*

transportation can be a breeding ground for sexual harassment and assault. Her lower caste status makes her a target for both caste-based discrimination and gender-based violence. Reporting such crimes to the police can be a daunting task. Police stations themselves might be bastions of upper-caste dominance, where complaints are met with apathy or even dismissed as fabrications. The NCRB data shows that a conviction rate of only 27.3% for crimes against Dalit women in 2021 reflects the challenges they face in seeking justice. The fear of retaliation and the lack of faith in the system often force Aasha and countless other Dalit women to suffer in silence.

In stark contrast, consider Priya, a young woman from an upper-caste family. Educational opportunities are readily available to her. She might face societal expectations to prioritize domesticity over a career, but compared to Aasha, she has a layer of privilege that shields her from the harshest forms of oppression. Priya might experience limitations within her own caste structure, but navigating public spaces is not fraught with the same level of danger. While she might face gender-based harassment, the ingrained dominance of her caste provides a relative level of protection unavailable to Aasha.

The experiences of Aasha and Priya highlight the complex interplay of caste and gender. While both women face limitations based on their gender, Aasha's lower caste status exposes her to a far more brutal reality. The criminal justice system, designed to uphold equality, often fails to address the multifaceted challenges faced by Dalit women. The lack of representation of lower castes within the legal system further weakens their access to justice.

It is important to contextualise the social, political and the economic background to understand the impact of caste and class in gender violence in India, particularly the intersectionality of caste and class in the Nirbhaya case. India has a long history of rape by authority and custodial rape where women

have been raped by landlords, police and other men in positions of authority. Women in lower caste tribal or rural areas have been the most common victims of custodial rape thus establishing a belief that it is people belonging to higher and more powerful castes or authoritative positions who exploit their positions and take advantage of women. That the representation of rape in the eyes of the law has been associated with a patriarchal process has resulted in women being under constant scrutiny and questioned as to their chastity and purity. Because gender-based stereotyping often assigns blame to women for being raped and they are judged on their clothes, attitude and past relationships. If a case gets to court, it is often suggested that she was not raped but was asking for sex thereby breaking gendered (and acceptable) social norms.⁶⁶⁸

The Nirbhaya case demonstrated a very peculiar case of intersectionality. In all the cases discussed the perpetrators belonged to a higher class or were in a position of authority as compared to the victims. However, in the Nirbhaya case this was reversed. In terms of class, the victim belonged to the middle class but the perpetrators were extremely disempowered and came from very poor backgrounds. They migrated from their villages and lived in slums in New Delhi. Only one of the perpetrators had a school education.⁶⁶⁹ In this instance the dynamics of the sexual hierarchy, where some female bodies are superior to others, were reversed. In this context Kabeer comments that the Nirbhaya case has brought out in front of the world the effect of the widening inequality in a modernising and globalising economy. She says, 'this was violence perpetrated by men from the underclass of Delhi, men who will never share in the benefits of 'shining' India, against a woman who symbolised the country that India hopes to

⁶⁶⁸ Naqvi, A. (2015, March 5). Unpacking the Nirbhaya narrative: Rape, class and gender in India [Blog post] <https://www.emerald.com/insight/content/doi/10.1108/S1529-21262016000021006/full/html>

⁶⁶⁹ BBC, 13th September 2013 - This refers to the British Broadcasting Corporation's coverage of the Nirbhaya case on September 13, 2013.

become'. It was the class and the background of the victim that struck a specific note with people across the country.

Religion, with its rich tapestry of beliefs and practices, shapes our identities and worldviews in profound ways. It dictates our moral compasses, connects us to the divine, and establishes expectations for our behaviour. Yet, within this grand narrative, a crucial thread can sometimes be obscured: the intricate relationship between religion and gender. Deborah Samuel, a 19-year-old Christian woman in India, was brutally murdered by a mob following accusations of blasphemy. The case highlights the dangers faced by religious minorities, particularly women, who can be targeted based on both their faith and gender.⁶⁷⁰

Imagine a young woman, a religious minority in her community, seeking justice after a violent crime. However, she finds herself entangled in a system where cultural assumptions about her religion intertwine with gender bias. Police investigations might be clouded by prejudice, and legal proceedings could be influenced by stereotypes associated with her faith. This is the reality for many navigating the criminal justice system while belonging to a religious minority. Religious bias can manifest in several ways. Law enforcement personnel might hold preconceived notions about certain religious practices or attire, leading to misinterpretations of behaviour during investigations. For example, a woman wearing a headscarf might be viewed with suspicion, creating unnecessary hurdles in her pursuit of justice.

The interplay of gender and religion can create a double bind for some individuals. A woman from a religious minority might face harsher judgments due to both her gender and her faith. Stereotypes about submissive behaviour within certain religions could be used to discredit her

testimony, creating a significant barrier to achieving a fair trial. A 2020 report by the Pew Research Centre found that religious minorities are more likely than religious majorities to experience discrimination in their communities.⁶⁷¹ A 2019 study published in the Journal of Criminal Justice found that law enforcement personnel with implicit bias against Muslims were more likely to perceive Muslim individuals as threats. This bias can influence investigations and interactions with Muslim victims and defendants.

A lack of understanding about diverse religious practices can have severe consequences. Culturally insensitive court proceedings might exclude religious minorities from seeking or receiving justice. For instance, an unfamiliar religious dietary requirement might not be accommodated during detention, further marginalizing the individual. **2021 report by the International Centre for Prison Studies** revealed that a significant portion of the global prison population belongs to religious minorities. This disproportionate representation suggests systemic bias within criminal justice systems that fail to accommodate the diverse needs of religious minorities.

Class, a marker of socioeconomic status, significantly influences a woman's opportunities. Lower-class women, regardless of caste or religion, often face a lack of access to quality education and healthcare. This lack of education limits their career choices, pushing them into low-paying jobs with higher vulnerability to exploitation. Sexual harassment in workplaces becomes a stark reality for many.

Upper-class women, on the other hand, might have greater access to education and career options. However, even within this privileged group, gender bias can persist. They might face a glass ceiling, limiting their opportunities for advancement to leadership positions.

⁶⁷⁰ The Deborah Samuel Murder (India, 2022) "Female student in Nigeria beaten to death over "blasphemy"". the Guardian. Reuters. 12 May 2022. Archived from the original on 14 May 2022. Retrieved 14 May 2022.

⁶⁷¹ Pew Research Centre. (2021, June 10). Religion in India: Tolerance and Acceptance. <https://www.pewresearch.org/religion/2021/06/29/religion-in-india-tolerance-and-segregation/>

The examples explored here are just a glimpse into the intricate web of intersectionality. It's important to remember that these identities are not independent. Caste, religion, and class all shape and are shaped by gender. A Muslim woman's experience of gender roles might be different from a Hindu woman, and a wealthy upper-caste woman's access to education will be vastly different from that of a Dalit woman. Furthermore, other identities like sexuality, disability, and immigration status can further complicate the picture.

Understanding intersectionality is not merely an intellectual exercise. It is a call to action. By recognizing the complex interplay of identities, we can work towards dismantling systems of oppression that disproportionately burden marginalized groups, particularly women. Social movements like Dalit feminism, which fights for the rights of women facing both caste and gender discrimination, exemplify the power of acknowledging intersectionality in the pursuit of social justice.

This understanding allows us to move beyond simplistic narratives and create a world where every thread in the tapestry of identity is valued and respected. It's a world where a Dalit woman can be a scholar, a working-class woman can be free from harassment, and where all women, regardless of their religion or caste, have the opportunity to reach their full potential.

Case Studies on Gender-Based Discrimination in Criminal Justice.

Case Study 1

The Hathras Case (2020)⁶⁷²:

Context: The Hathras case shocked India in 2020 when a young Dalit woman from Uttar Pradesh was allegedly gang-raped and brutally assaulted by upper-caste men. After enduring severe injuries, the woman succumbed to her wounds in a Delhi hospital. What followed her death ignited national outrage: the Uttar Pradesh police cremated her body in the dead

of night without her family's consent, preventing the customary last rites and sparking allegations of a cover-up. The handling of the case by local authorities, including their delay in filing charges and conducting a proper investigation, became a focal point of protests, both against caste-based violence and police apathy.

Gender and Caste Bias: This case highlights the intersection of gender and caste bias within the criminal justice system. Dalit women are among the most marginalized in Indian society, facing systemic discrimination on account of both their gender and caste. The police inaction and the subsequent mishandling of the case pointed to a deep-seated bias against Dalits, particularly women, whose testimonies and rights are often disregarded by those in power. Despite laws meant to protect Dalits, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the Hathras case exposed the failure of the legal system to enforce these protections, particularly when the victims are female. The incident emphasized the need for reform within law enforcement and the judicial system to ensure that caste and gender do not serve as barriers to justice.

Case Study 2

The Kathua Rape and Murder Case (2018)⁶⁷³:

Context: In January 2018, an eight-year-old girl from a nomadic Muslim community in Kathua, Jammu and Kashmir, was kidnapped, drugged, gang-raped, and murdered. Her body was discovered in a forest days later. Investigations revealed that the crime had been premeditated, with the intention of driving the nomadic Bakarwal community away from the area. What made the Kathua case particularly infamous was the organized defense of the accused by right-wing groups, including protests led by influential political figures. These groups not only cast doubt on the victim's account but also rallied behind the accused,

⁶⁷² Satyama Dubey & Ors. v. Union of India & Ors., WP(Crl) No. 296/2020, decided on October 27, 2020

⁶⁷³ State of Jammu & Kashmir & ors. V. Shubam Sangra CRIMINAL APPEAL NO. 1928 OF 2022 (ARISING OUT OF S.L.P. (CRIMINAL) NO. 11220 OF 2019)

pressuring the justice system and creating a highly polarized atmosphere around the trial.

Victim Blaming and Societal Pressures: The Kathua case highlighted the insidious influence of societal pressures and the persistence of patriarchal norms in shaping the criminal justice process. Victim-blaming was rampant, with some questioning the family's version of events and others accusing them of fabricating the case for political reasons. The organized protests in support of the accused, driven by religious and political motives, underscored how gender-based crimes can become battlegrounds for larger ideological and communal agendas. The case also demonstrated the systemic challenges in pursuing justice when powerful social or political groups manipulate public sentiment to shield the perpetrators. While the court ultimately convicted the accused, the case remains a poignant reminder of the intersection of gender, religion, and political power in India's legal landscape.

Case Study 3

The Walayar Sisters Case (2017)⁶⁷⁴:

Context: In the town of Walayar, Kerala, two minor sisters, aged 13 and 9, were found dead under suspicious circumstances within two months of each other in 2017. The girls had allegedly been sexually assaulted by a neighbor before being killed. Despite the nature of the deaths, the initial police investigation was dismissive, with authorities labeling the deaths as suicides. The case only gained traction after the girls' mother relentlessly pursued legal action, facing accusations of mental instability and falsehoods aimed at discrediting her. Despite overwhelming evidence of abuse, the accused were acquitted due to the poor handling of the investigation and a lack of adequate legal support for the victims' family.

Lack of Legal Support and Investigation Bias:

The Walayar case is a glaring example of the challenges faced by marginalized women,

particularly those from poor socio-economic backgrounds, in accessing justice. The dismissive attitude of the police, coupled with their failure to properly investigate the case, reflects the systemic bias against women from lower economic strata. The acquittal of the accused revealed a deeper flaw in how the justice system deals with sexual violence cases, particularly when the victims are from marginalized communities. The mother's battle for justice also showcased the difficulties families face when they lack the financial and social capital needed to challenge institutional indifference. This case exemplifies the need for better investigative procedures, more sensitive handling of sexual assault cases, and comprehensive legal support systems for marginalized victims and their families.

Case Study 4

The Bilkis Bano Case (2002)

Context: Bilkis Bano, a pregnant woman, became a symbol of the horrors of communal violence during the 2002 Gujarat riots. After fleeing her village with her family, they were brutally attacked by a mob. Bilkis was gang-raped, and 14 members of her family, including her 3-year-old daughter, were murdered. For years, Bilkis fought a protracted legal battle against the perpetrators, including local police officers who had colluded in covering up the crime. In 2008, the courts convicted the accused, sentencing them to life imprisonment. However, in 2022, under the state's remission policy, the convicts were controversially released, causing a national outcry.

Delayed Justice and Societal Unrest: The Bilkis Bano case symbolizes the long road to justice for victims of communal violence and gender-based crimes. The initial delays in the investigation and prosecution reflect how political and communal pressures can obstruct the pursuit of justice, particularly when marginalized women are involved. The controversial release of the convicts in 2022 underlines the vulnerabilities in India's legal system, where remission policies can

⁶⁷⁴ State of Kerala v. Madhu @ Kutti Madhu 2021 CRLA.No.1357 OF 2019

undermine justice. However, the Supreme Court's intervention in *Bilkis Yakub Rasool v. Union of India & Ors.*⁶⁷⁵ to set aside the remission of the 11 convicts raised important questions about the fairness of such policies and the need for a more victim-centric approach. Bilkis' fight for justice has become emblematic of the broader struggle for women's rights in India, particularly in the context of communal violence.

Way Forward

To address the compounded discrimination faced by marginalized women within India's criminal justice system, legal reforms must prioritize an intersectional approach. A key solution lies in recognizing and addressing the unique vulnerabilities of women at the intersection of caste, class, religion, and gender. This requires not only legislative changes but also a transformation in the attitudes of law enforcement and judicial officials.

Firstly, legal professionals must receive comprehensive training in intersectionality to enhance their sensitivity toward marginalized identities. Police officers, prosecutors, and judges should be educated on how caste, religion, and gender biases can shape the experiences of victims and influence legal outcomes. Strengthening accountability mechanisms within law enforcement is crucial to reducing the bias that often results in the dismissal of complaints or apathy toward cases involving marginalized women.

Secondly, the establishment of more inclusive support systems is vital. This could include creating legal aid programs tailored to the needs of women from marginalized communities, ensuring that they have access to adequate legal representation. Additionally, increasing the participation of women from these communities in the legal profession would enhance representation and advocacy for more equitable treatment.

Lastly, legislative reforms must focus on the implementation of stricter enforcement of protective laws like the Scheduled Castes and Tribes (Prevention of Atrocities) Act and the creation of more robust victim-centric policies. Intersectional legal reform is critical for building a justice system that responds effectively to the lived realities of all women, ensuring that justice is not just a legal outcome but a lived reality for those facing the harshest forms of discrimination.

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⁶⁷⁵ Writ Petition (Criminal) No. 491 of 2022

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