

EMPOWERED OR MARGINALIZED? DALIT WOMEN AT THE CROSSROADS OF LAW, POLICY AND JUSTICE

Lisa P. Lukose*
Kanchan Lavania**

Abstract

In the past, when none of the prominent female leaders and also majority of members of the provisional Parliament did not support the great architect of India's Constitution, B. R Ambedkar, on the issue of Hindu Code Bill, he resigned for the greater cause of gender justice and equality.¹ Despite such a sacred sacrifice, after 75 years of political independence, Dalit women today face the surmounted spiral burden of the intersectionality of caste, class and gender discrimination. They are undernourished, remain in poor sanitation conditions, without proper water supply, working under scorching sunlight as poorly paid farm laborers as literacy rates are low (literacy rate for female belonging to ST's category is still less than 50 percent and for SC women is around 57 percent)² and economic opportunities for improving the financial status are meagre. Though the majestic pillars of justice, liberty and equality withhold the democratic polity of India in the visionary document of India's transformative Constitution, a critical examination of this structure reflects a different picture. The paper aims to examine the presence of her voice as an equal citizen of this country specifically in the socio-economic sphere of her life through various primary and secondary data especially through the armor of legislative and judicial efforts. It also critically evaluates and questions the role of the popular feminist movement and the Dalit movements in India. As women are not a homogenous entity,³ it becomes pertinent to examine their status from all the directions of a prism.

I Introduction

THOUGH CASTE discrimination was specifically outlawed when India got independence and became a republic almost 75 years ago, it is still prevalent in India as one of the most inhumane behavior/forms of discrimination and a social stigma

* Professor, University School of Law and Legal Studies (USLLS); Director- Legal Aid, Chairperson – IPU-IPR Cell, Guru Gobind Singh Indraprastha University (GGSIPU), New Delhi.

** Doctoral Scholar, University School of Law and Legal Studies (USLLS), GGS Indraprastha University (GGSIPU), New Delhi and Assistant Professor, VIPS, GGSIPU, Delhi.

1 “Ambedkar ushered in women-centric policies, now being pursued by governments”, *The Hindu*, April 20, 2022 available at <https://www.thehindu.com/news/national/karnataka/ambedkar-ushered-in-women-centric-policies-now-being-pursued-by-governments/article65338612.ece> (last visited on Aug. 25, 2025).

2 UN- Women, “Turning promises into action: Gender equality in the 2030 Agenda for Sustainable Development”, 2018 available at <https://digitallibrary.un.org/record/1475773?ln=en#:~:text=Details&text=%22Turning%20promises%20into%20action%3A%20Gender,SDGs%20from%20a%20gender%20perspective> (last visited on Feb 25, 2025).

3 Kamla Bhasin, *Understanding Gender* (New Delhi: Kali for Women, 2000).

on the rapidly growing and shining India. Indian society is thus considered to be one of the most unequal societies of the world.⁴ The factor of caste, still predominantly determines one's educational attainments, employment opportunities, health benefits, social services, accumulation of wealth, property, consumption levels, personal and professional network and overall status in the society. One's place in the hierarchy of caste not only determines the availability of economic resources and opportunities but deeply affects one's dignity, liberty and social status in the society. While referring to the work of sociologists and economists like Richard Sisio and Dilip Basu, in the case of *Appa Balu Ingale*,⁵ the court acknowledged that 'Dalits' are the world's most oppressed community' as stated by James Freeman in his contributed chapter "Consciousness of Freedom among India's Untouchables."⁶ In the same judgment, references are made to the work of Khosla - *Myth and Reality of Protection of Civil Rights Law: A Case Study of Untouchability in Rural India*,⁷ wherein a number of deplorable acts of untouchability and violence against Dalits are cited, prevalent even amongst the so called highly educated class and political corridors of this country. Probably, we as Indians have habituated to read the cruel acts of violence and discrimination against a specific community with no remorse, disgust or question just because it hardly disrupts our day to day lives. Ironically, the norms of discrimination and exclusion are sometimes practiced in institutes which are expected to dispel the idea of purity and pollution.⁸ This quiet acceptance has now multiplied the vulnerability of the people in the world of metaverse and artificial intelligence, where online abuse and exclusion on the grounds of caste is very dominant. Further, the inequitable and unfair access to the digital space further perpetuates the problem by the use of exclusionary algorithms and lack of social diversity in the digital workforce. The policy response to the problem could be done through insertion of a specific clause in the recently introduced law, The Digital Personal Data Protection Act, 2023, punishing such acts of digital violence and discrimination but on a larger landscape.

However, what seems a simple issue of caste discrimination, when analyzed in all its paraphernalia, presents before us the intersection of caste with other social identities, one of the most striking collision is that of caste and gender. In this context, Dalit women's voice has always been suppressed, as they have not found voice either in the mainstreams of caste and Dalit movements or the major feminist movements.

4 Pushpendra Singh and Falguni Pattanaik, "Unequal Reward for Equal Work? Understanding Women's Work and Wage Discrimination in India through the Meniscus of Social Hierarchy", 12 *Contemporary Voice of Dalit* (2020).

5 *State of Karnataka v. Appa Balu Ingale*, AIR 1993 SC 1126.

6 *Ibid.*

7 Dinesh Khosla, *Myth and Reality of Protection of Civil Rights Law: A Case Study of Untouchability in Rural India* (Hindustan Publishing Corporation, India, 1987).

8 Anurag Kumar, "Unequal Spaces: An In- depth Analysis of Caste Discrimination in Indian Universities"²² *Contemporary Education Dialogue* 200 (2015).

Therefore, ‘Dalit feminism’ has roots of its own and has emerged as a separate social movement demanding equality and justice. The movement tries to assert that Dalit women faces challenges that are unique and distinct from other upper caste and upper-class women in the society and therefore should not be either subsumed or universalized with the mainstream movements of gender equality and caste eradication.⁹The effort has been to raise the voice regarding the concerns that categorically affects Dalit women and not to homogenize the different feminist movements or Dalit movements. To fructify these efforts, National Federation for Dalit Women was founded in 1995 in Delhi, in the context of Beijing Conference on Women, 1995 to highlight that Dalit women face triple oppression due to multiple intersection of social identities like caste, class and gender.¹⁰As rightly stated, “a masculinization of dalithood and sarvanisation of womanhood has led to the exclusion of Dalit womanhood”¹¹and the statement is significant when we still see the cases of violence against Dalit women (regrettably NCRB does not provide complete disaggregated data related to crime against Dalit women though it has started publishing the data for crime/atrocities against Scheduled Caste(s) since 2014)¹², the system of ‘devadasi’ still being practiced in many states of India like Maharashtra and Karnataka, rather such practices are classic examples of direct linkages between caste based discrimination and forced prostitution.¹³ In this context, forced labour¹⁴ and low wages for Dalit women as most of them work in unorganized sector are some of the pertinent issues that demand attention.¹⁵ Further, how well the judiciary (more categorically the apex court) has responded to address the historical pattern of suppression and marginalization of Dalits and Dalit women in India is a crucial

9 Gopal Guru, “Dalit Women Talk Differently”³⁰ *EPW* 2548 (Oct 1995).

10 Kalpana Kannibaran, “A Cartography of Resistance: The National Federation of Dalit Women” in Nira Yuval Davis, Kalpana Kannibaran, Ulrike Vietan (eds.), *The Situated Politics of Belonging* 12 (Sage Publication Ltd. Aug, 2006).

11 Sharmila Rege, “Dalit Women Talk Differently: A Critique of Difference and Towards a Dalit Feminist Standpoint Position”,¹³ *EPW* 39 (2013).

12 Caste Based Gender Violence against Dalit Women and Girls in India: Data Analysis of NCRB 2014-22, *available at*: <https://idsn.org/wp-content/uploads/2025/03/AIDMAM-Factsheet-2024-Violence-again-women-Factsheet.pdf> (last visited on Sep. 21, 2025).

13 Anti- Slavery International, “Women in Ritual Slavery: Devadasi, Jogini, Mathamma in Karnataka and Andhra Pradesh (Southern India)” (2007) *available at* https://www.antislavery.org/wp-content/uploads/2017/01/women_in_ritual_slavery2007.pdf. (last visited on Sep. 09, 2025).

14 ILO committee of Experts remarked ‘devadasi’ as a violation of ILO Convention No. 29 on Forced Labour *available at*: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3255918. (last visited on Sep. 01, 2025).

15 Tameshine Deane, “The Devadasi System: An Exploitation of Women and Children in the Name of God and Culture”, 24 *Journal of International Women’s Studies* 3 (2022).

examination of the institution which is considered to be the *sentinel on qui vive* and the harbinger of peace, justice and equality.

The paper is structurally divided into the following segments to comprehensively understand and analyse the socio-economic status of Dalit women in India. First, it traces the origins of caste and its concomitant effect on gender dynamics for Dalit women. Second, the intersectionality is delved with its parallels from across the world coded in race and gender and thereafter its application in the Indian context is interrogated. Third, myths related to patriarchy is decoded to rightly arrive at the current narrative. Fourth, the empirical data related to health, education and employment is referred to understand the institutional barriers faced by Dalit women. Fifth, the role of judiciary is analysed through their interpretations to understand the legal position of Dalit women and how their vulnerabilities are addressed. Finally, a multi-dimensional roadmap for enhancing and improving the status of Dalit women in India is suggested in the paper.

II Unveiling the Dalit feminism

The interesting aspect of defining the ‘Dalit’ women is that there is no clear-cut formula (social, legal, cultural or economical) for their recognition. One common aspect of people who identify themselves to fall in this category is that they have faced some kind of repression and marginalization by the caste privileged Hindu communities, therefore now it is observed the Scheduled Tribe (ST) women, emerging identities like transgenders, Dalit Christians and Dalit Muslims to be the part of the larger category of ‘Dalit’ feminism.¹⁶

The articulation of Dalit women’s contribution and her struggle though began around 1990s but even before that, scholars have worked on accounting her contribution during the freedom struggle and various other political movements like the peasant or left movements. The discourse of gender equality encompassing the factor of caste was well presented, though in different time frames by Ambedkar, Jyotiba Phule and Pandit Ramabai.¹⁷ All these socio-political leaders worked on the gender construct keeping in mind the influence of caste on the lives of women and focused on educational attainments and political liberty to become independent, assertive and strong for creating a just society. The predecessors to the ‘Dalit’ feminism thus played a crucial role in cautioning the mainstream feminist movement not to appropriate and submerge the question of caste.

16 Rege, Sharmila, “Dalit Women Talk Differently: A Critique of Difference and Towards a Dalit Feminist Standpoint Position” 33:44 *EPW*, WS39–WS46, (1998). For recent and inclusive treatment of Dalit feminist identities, see, Shailaja Paik (ed.), *Dalit Feminist Thought: A Reader*, (Cambridge University Press, 2022).

17 Sunaina Arya and Akash Singh Rathore, *Dalit Feminist Theory: A Reader* 98 (Taylor and Francis Group, London and New York, 2020).

The Dalit women during 1990's were mobilized in the university spaces through the readings of autobiographies and other literature related to Dalit women's struggle and later with the coming of the technology, cyber space was used to gain the momentum.¹⁸ Dalit feminist scholars can be acknowledged for creating the consciousness, knowledge and spaces to discuss, dispute and resolve the matters related to Dalit women in India.¹⁹

III A historical retrospect: The origins of caste and the gender nexus

Dalit is a Marathi term that means 'downtrodden',²⁰ broken, oppressed or crushed. Etymological, historical and symbolic use of the word Dalit is frequently linked to the Sanskrit root '*dal*' in reference to 'crushed, cracked and broken' and several major works exemplify how Dalit identity has become a term of assertion.²¹ These are the sufferers of the ancient system of 'untouchability', derived from the notion of purity and impurity as an appendage of the Hindu caste system in India wherein rights and privileges are derived based on birth of an individual into a specific social order/caste. The term, as explained above, etymologically means broken or scattered and has Sanskrit origins.²² The usage of the term is of the recent origin, as James Massey, a scholar in Dalit social history, places it in the 19th Century whereas Jyotirao Phule, a social reformer has used the term to fight against the social ostracization and injustice suffered by this community.²³ B.R Ambedkar, however, used the term 'depressed Classes and Dalits' in his popular upsurges against the Brahmanical social order, it gained further prominence after a young group of people especially comprising of writers and poets, in Bombay formed the "Dalit Panthers" in 1972, a social organization on the lines of Black Panthers in United States to show their discontent

18 Bindu K.C, Dalit Feminism (New Delhi, IGNOU) available at: <https://egyankosh.ac.in/bitstream/123456789/40608/1/Unit-2.pdf> (last visited on Aug. 21, 2025).

19 *Id.* at 203.

20 Nidhi Sadana Sabharwal & Wandana Sonalkar, "Dalit Women in India: At the Crossroads of Gender, Caste and Class", 8 *Global Justice: Theory Practice Rhetoric* (2015).

21 See generally, B. R Ambedkar, *Annihilation of Caste* (1936); Sukhadeo Thorat & Umakant (eds.) *Caste, Race, and Discrimination: Discourses in International Context* (Rawat Publications, 2004); Eleanor Zelliot, *From Untouchable to Dalit: Essays on the Ambedkar Movement*, (Manohar Publishers, 1992); Gail Omvedt, *Dalits and the Democratic Revolution: Dr Ambedkar and the Dalit Movement in Colonial India* (Sage Publications, 1994). The Oxford English Dictionary defines Dalit as originating from the Sanskrit *dalita*, meaning 'broken' or 'oppressed', derived from the root *dal*; Oxford University Press. *Dalit*. In *Oxford English Dictionary* (last visited on Oct. 18, 2025, from <https://www.oed.com>).

22 "The Story of the Term Dalit" available at <https://egyankosh.ac.in/bitstream/123456789/38708/1/Unit-1.pdf> (last visited on Sep. 1, 2025).

23 UN- Women, "Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development", 2018 available at <https://digitallibrary.un.org/record/1475773?ln=en#:~:text=Details&text=%22Turning%20promises%20into%20action%3A%20Gender,SDGs%20from%20a%20gender%20perspective> (last visited on Oct. 27, 2025).

and anguish for the atrocities faced by them even after 25 years of independence.²⁴ The term might be comparatively of recent usage but the practice of untouchability is centuries old and different trivial terms had been used in past to refer to them. For example, *Dasyas*, *Asuras*, *Antyajas*, *Avarnas*, *Nisadas*, *Malecha*, *Chandalas*, *Panchamasetc.* are some derogative terms which also finds mention in some of the ancient texts but with no strong evidence of the system of untouchability is found in the *Vedic* texts except for a classification of people into four groups originating from various body parts of Brahma in the 10th Mandala of Rig Veda.²⁵

As per the understanding of B. R Ambedkar, what exists today in the form of caste system was earlier a class system and it had flexibility, thereby, people once qualified could change their class and it was not permanently ascribed to them since birth.²⁶ However, this flexibility was soon lost into oblivion and converted into a closed-door system, where caste system originated and acquired a rigid form. Further divisions and sub-divisions in this caste system also led to creation of category which was not fitted into any of the major four categories and were thus ‘outcasted’ as Dalits. This creation of a hierarchical system was justified by literary texts, religious practices and connected ideas of *karma*, *dharma*, *mokshaetc.* The upper three categories of Brahmin, Kshatriya and Vaishya were considered *dwija*, twice born, born as physical beings and other through the knowledge they acquire in their lifetime. The practice acquired so much sanctity that to maintain the purity of castes people were prevented from marrying outside their caste and thus the circle of interaction between sexes was circumscribed.²⁷

This further leads to crystallization of the inequality wall rooted in caste but spreading its thorny branches on gender. According to Ambedkar the problem of surplus women and men on the death of their spouses, was dealt in one of the most inhumane ways. Women were forced to either do sati or face the blunt of being a widow her entire life and as a widower can’t be asked to be a celibate or burn himself on the pyre as he is the dominant active participant of the system of caste, the practice of girl marriage gets started to solve the problem of surplus men in society, thus preventing them from becoming celibate, as it is in the interest of the caste system that such a

24 Nico Slate, *Black Power Beyond Borders: The Global Dimensions of Black Power Movement* 127 (Palgrave Macmillan, 2012).

25 Anup Hiwrale, “Caste: Understanding the Nuances from Ambedkar’s Expositions”, 6 *Journal of Social Inclusion Studies* 78 (2020).

26 B. R Ambedkar, *Castes in India: Their Mechanism, Genesis, and Development*, The Anthropology Seminar of Dr. A Goldenweizer, Held On (The Columbia University, New York, U.S.A, 9th May, 1916) available at <https://akscusa.org/wp-content/uploads/2020/04/lecture-2-collated-readings.pdf> (last visited on Oct., 2025).

27 Kimberle Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory and Antiracist Politics” *University of Chicago Legal Forum* 139 (1989).

man remains a *grabastha*.²⁸ The idea of caste was thus spread from Brahmins to other categories by the theory of imitation, which is a basic human nature. The Dharma of caste was further strengthened by law-givers like Manu, who codified what was already prevalent in the society. One of reasons cited for justifying controls over the freedom of women was to stop them from becoming Buddhist and achieve the stage of *Arhat* (liberated soul) as it was required for an agrarian society in the post-*Vedic* period that women should strictly remain in *Grihastha* ashram and gift her husband a son, who could manage and inherit the property maintained by the father.²⁹ The burden of maintaining purity of the lineage is thus, heavily casted on women, as they were considered not as an active participant of the economy but the preserver of the same through their natural capacity to give birth to male progenitor, leading to institutionalized control over women's sexuality and consequent violation of her rights and liberty. Thus, the origin and mechanism of caste grinded the women in their fold and more so the category of 'Dalit women', generally overlooked, ignored, extremely marginalized, was at the bottom of superstructure of exploitation and discrimination.

IV The intersectionality theory: The origins and the Indian context

Discrimination exists in different forms and at different levels and crucially it reflexes its arm not in one direction but reflects itself at multiple axis of one's life. This intersectional discrimination, first coined by Kimberley Crenshaw,³⁰ a civil rights activist and a lawyer, citing the decision of the Federal Court of U.S in 1976 wherein the court deprived Black Women their claim against a company which laid them off during recession with a reasoning that either they can claim for violation of their rights on the ground of gender or on the ground of race but they can't combine the claims. The court believed that combining the two grounds would altogether create a separate cause of action not covered under the law, which was the basis of the claim.³¹ This infamous case of *De Graffenreid v. General Motors Assembly Division*³² agitated the Black Women's movement in USA in the late 20th century and Crenshaw's work based on it showed how US anti-discrimination law failed to capture the agony and plight of black women who faced discrimination due to myriad reasons interacting and impacting her at the same time.

Despite, the presence of intersectionality theory in the realm of social affairs, it has not proliferated across regions and failed to transform the anti-discriminatory laws

28 *Ibid.*

29 Sumita Sinha, "Ambedkar's Role in Eradication of Untouchability and Emancipation of Women" 76 *The Indian Journal of Political Science* (2015).

30 *Supra* note 6.

31 *Emma Degraffenreid v. General Motors Assembly* 558 F.2d 480 (8th Cir. 1977).

32 558 F.2d 480 (8th Cir. 1977).

of nations.³³ In fact, the international law and many human rights instruments including CEDAW have failed to encapsulate the idea of intersectionality.³⁴ Thus, the remedies or policy recommendations are based on single-axis discrimination rather than on reinforced hierarchical power structures coming out of multiple identities of an individual and thus proves to be inadequate.

The concept of intersectionality has now crossed the international borders in the last three decades and reached India as well. In the Indian context, intersectionality can be analysed from multiple dimensions including gender, caste, class, religion, region, ethnicity *etc.* However, this research is limited to the two-pronged axis of caste and gender. The term became popular during the late 1990's and early 2000 within the realm of social-sciences in India and later occupied the attention of social media, researchers in universities and became a buzzword of the intelligentsia of this country.³⁵

Drawing inspiration from the struggles of Afro-American black women, some schools of Dalit feminism also applied the intersectionality principle in the analysis of Dalit women's position in India and labelled it as Brahmanical Patriarchy where a Dalit woman is at the crossroads of patriarchy, caste and class as well. It is stated by some Dalit feminist scholars that the origins of Brahmanical Patriarchy is rooted in the idea of exclusion and exploitation of women and lower caste people to become rich and powerful by subduing the others for labour and other menial works.³⁶ The issue of intersectionality came to light when recently, in 2022, Ashwini K. P, the first Asian Dalit, was appointed as a UN Special Rapporteur, she highlighted the discrimination faced by her at various stages of her life despite coming from an educated family and her determination to work on the aspect of gender and intersectionality.³⁷

In India, intersectionality is neglected in the legal framework *e.g.*, Indian legal frameworks treat caste and gender as separate categories, ignoring how Dalit women face compounded discrimination. Laws like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are caste-specific but gender-neutral, whereas

33 Jasmin Atul Purani, "Intersectional Discrimination in India" 4 *International Journal of Law, Management and Humanities* 1493 (2021).

34 Jena McGill, "Intersectional Discrimination", 33 *Canadian Journal of Women and Law* 122 (2021).

35 Vaishali Khandekar, "Revisiting Intersectionality in India: A Dalit Feminist Perspective", 59 *EPW* (May, 2024).

36 Uma Chakravarty, "Conceptualising Brahmanical Patriarchy in early India: Gender, Caste, Class and State" 28 *EPW* (April,1993).

37 "Will focus on racism in terms of gender, intersectionality: Says Kolar Native appointed UN Special Rapporteur", *The Indian Express*, Oct 21, 2022 available at <https://indianexpress.com/article/cities/bangalore/focus-racism-gender-intersectionality-kolar-native-un-special-rapporteur-8222598/>. (last visited on Sep. 29, 2025).

gender laws *e.g.*, Protection of Women from Domestic Violence Act, 2005 ignore caste-based vulnerabilities. Failure to recognize caste-gender-class intersections leads to the erasure of Dalit women's unique experiences.

Today, intersectionality is not only considered as a theory but as an approach and a tool to address human rights violations and larger questions of justice and equality. It is also considered as one of the major contributions of the feminist studies bringing right attention to the concerns of gender and caste as well. At the same time, the other side of the coin should not be missed and to understand the Indian, non-western experiences, a foreign concept should not be made the fundamental principle to evaluate the Indian experience.³⁸

V Dalit versus brahmanical patriarchy: A myth

Dalit women in India similarly face this multi-layered discrimination intertwined with caste, gender and class. A Dalit woman faces hostilities and discrimination from upper castes men and women as well as lower caste men.³⁹ Upper caste men and women discriminate against Dalit women due to their caste identity and they are oppressed by lower caste men due to their gender identity.

When the movement of 'Smash Brahmanical Patriarchy'⁴⁰ began, an unnecessary comparison between the Brahmanical and Dalit patriarchy was made by KanchaIlaiah, stating that latter is better than the former, as women always had the freedom to remarry among the Dalit/tribal culture and further there always existed a "democratic man-woman relationship."⁴¹ In response, Sunaina Arya believes that Dalit patriarchy is a reflection and manifestation of Brahmanical patriarchy only.⁴² She emphatically justifies her claim by pointing out how a significant piece of article by Guru Gopal⁴³ has been misinterpreted by the leading upper caste feminists. Their writings wrongly reflect that 'Dalit patriarchy' arises due to their oppression by the upper caste men and as a response they show their oppressive masculine behaviour to Dalit women, in

38 Nivedita Menon, "Is Feminism about 'Women': A Critical View on Intersectionality in India", 50 *EPW* (2015).

39 *Supra* note 18.

40 This phrase got popular when a poster having the image of a woman with the placard stating 'Smash Brahmanical Patriarchy' made by US based Dalit activist, Thenmozhi Soundararajan, was published with CEO Twitter Jack Dorsey holding the poster in his hands in 2018, also available at <https://indianexpress.com/article/technology/tech-news-technology/twitter-jack-dorsey-photo-5456455/> (last visited on Sep. 04, 2025).

41 Kancha Ilaiah Shepherd, "Two Patriarchies", *The Indian Express*, Jan., 9 2018, available at <https://indianexpress.com/article/opinion/columns/twitter-jack-dorsey-photo-brahminical-patriarchy-poster-controversy-sabarimala-temple-5458124/> (last visited on Oct. 8, 2025).

42 Sunaina Arya, "Dalit or Brahmanical Patriarchy: Rethinking Indian Feminism" 1 *Caste: A Global Journal on Social Exclusion* (2020).

43 Guru Gopal, "Dalit Women Talk differently" 30 *EPW* 41 (1995).

result, that Dalit men are more patriarchal than their counterparts upper caste men. This kind of portrayal and classification of patriarchy can hamper the struggle for an egalitarian society free from gender discrimination and thus, there is no need for a separate term for the same phenomenon.

The reality is, a Dalit woman is subject to torture in her own household as well as faces discrimination from the outside world. The avenues for enhancing their economic status are few and thus they are forced to menial jobs like manual scavenging or even forced prostitution. A concomitant effect of poor socio-economic status has a bearing on the health indicators, which are generally poor for a Dalit woman.⁴⁴ For example, according to the Fifth National Family Health Survey (NFHS-5) as far as life expectancy is concerned, Dalit women die 14.6 years younger than the higher caste women and healthcare accessibility is poor for them due to the caste factor.⁴⁵

VI Data based socio-economic analysis

The population of Dalit women in India stands at 9.79 crore out of total 57.9 crore women population and comprise 48.59% of the total Dalit population, as per the 2011 Census⁴⁶ (unfortunately, no official caste-wise census data is available after 2011). Alternatively, of the total population Dalit women constitute 16.3 % of which 18% live in rural areas.⁴⁷ To better understand their status in contemporary India, a comprehensive analysis of their educational attainments, employment opportunities, health indicators and violence statistics becomes important.

Breaking the wall: Educational status

The ‘social taboo’ attached with the Dalit community always conscribed their economic and social participation in the society. A society, where, even they were not allowed to walk in daylight because even their shadow was considered to be polluted, the demand for their education was faced with stiff opposition from the orthodox society during the era of freedom struggle when some social reformers worked for this cause. Savitribai Phule, for example, a great social activist, was the first modern feminist who took upon the cause of education for the untouchable girls in India, opened

44 Jyotsna Singh, “How Caste is a Major Barrier to Health Equity in India”, *Resolve: Global Health* (Aug 10, 2023) available at <https://www.resolveglobalhealth.com/post/how-caste-is-a-major-barrier-to-health-equity-in-india> (last visited on Oct. 20, 2025).

45 National Family Health Survey-5, Ministry of Health and Family Welfare, (2019-20) available at <https://www.nfhsiips.in/nfhsuser/nfhs5.php> (last visited on Oct. 20, 2025).

46 Office of the Registrar General, Census Commissioner, “A treatise on Indian Census Since 1981”, (Ministry of Home Affairs, Government of India, 2023) available at <https://censusindia.gov.in/census.website/> (last visited on Nov. 10, 2025).

47 National Sample Survey Organisation (NSSO), “Employment and Unemployment Survey” (Government of India, 2009–10) available at <https://www.data.gov.in/catalog/employment-and-unemployment-national-sample-survey> (last visited on Oct. 12, 2025).

school for them in 1852 and became the first female teacher but despite working for such noble cause she had to face hate crimes and incessant violence.⁴⁸ Education for lower caste population and specifically women was thus a battle which was hard to be won in a society where even recitation or hearing of *Vedas* by non-brahmans was considered ungodly and a sin.⁴⁹

The position changed after the entry of Britishers in India, with a motive to train the Indians with their system of administration and ruling introduced western education which had no place for the caste hierarchy. The Caste Disabilities Removal Act, 1850 and subsequent establishment of schools based on English education system provided the opportunity to the members of the lower caste to get education and free themselves of the shackles of caste discrimination.⁵⁰ The 'Dalit' students had to go through all these trials and tribulations to get even the basic minimum education.

After getting independence, the document of faith, the Constitution of India, developed under the guidance of Ambedkar, who himself was a 'Dalit', contained provisions for socio-economic justice for the people who had suffered in past due to the caste-class hierarchy. Thus, the guarantees were enumerated in form of rights like abolition of untouchability,⁵¹ affirmative action in appointments⁵² and admission to schools and higher educational institutes⁵³ as well in form of directives to the state.⁵⁴ The constitutional promise however, has not completely materialised into reality, which is also reflected from the facts and figures sourced from various reports and data. For example, as per MoSPI 2022 data, the literacy rate for Dalit women was 69.7 percent in comparison to Dalit men which stood at 83.1 percent and also lower than upper caste women which was 81.1 percent.⁵⁵ A geographic mapping further, highlights the rural and the urban divide in caste and gender dynamics. In

48 "Remembering Savitribai Phule, who pioneered women's education in pre-independent India" *The Economic Times* Jan 3, 2023 available at <https://economictimes.indiatimes.com/magazines/panache/remembering-savitribai-phule-who-pioneered-womens-education-in-pre-independent-india/articleshow/96701126.cms?from=mdr>. (last visited Oct. 12, 2025).

49 Kathleen Gough, *Rural Society in South East India* (Cambridge University Press, UK, 1981) available at https://indahwidiastuti911.wordpress.com/wp-content/uploads/2012/05/kathleen_gough_rural_society_in_southeast_india_cambridge_studies_in_social_and_cultural_anthropology_2008.pdf. (last visited on Nov. 16, 2025).

50 Geetha B. Nambisan, "Equity in education? Schooling of Dalit Children in India" 31 *EPW* (April, 1996).

51 The Constitution of India, art 17.

52 The Constitution of India, art 16.

53 The Constitution of India, art 15.

54 The Constitution of India, art 46.

55 Literacy rate, Ministry of Statistics and Programme Implementation (MoSPI, GOI), available at: <https://www.mospi.gov.in/literacy-rate-cent-persons-different-age-groups-each-social-group-4> (last visited on Oct. 21, 2025).

rural areas only, 67.3 percent Dalit women were literate in contrast to 78 percent Dalit women literate in urban India. Their counterparts, 68.5 percent upper-caste women were literate in rural areas in comparison to 86.6 percent in urban India.⁵⁶ This data clearly reflects the huge gap between the Dalit women and their peers from the upper caste. Not only the gorge exists between the upper caste and lower caste women but the gap exists between the women residing in urban areas *vis-a-vis* rural areas.

Further, the drop-out rate for Dalit students is very high. The enrolment for school level education is though roughly same for all the caste and communities, there are more dropouts among the Dalit students. Education, which is considered as a medium of social change and reform, a basic requirement to live a dignified life, if denied to an individual on the basis of caste or class discrimination, speaks volume about the mindset of the society and is also a concrete parameter to judge the progress a society is going to achieve in the future. As per the government data, more than 12 lakh students (combining elementary and secondary education figures) are out of school across the country⁵⁷ and with no surprise most of these students are ‘Dalits’ (32.4%), ‘Adivasis’, girls and the urban poor.⁵⁸ Though, a transformative law like Right of Children to Free and Compulsory Education Act introduced in 2009 provides for 25 percent reservation in private schools to the children coming from economically weaker section and marginalised section of society,⁵⁹ the law lacks an effective mapping and tracking system to cater to these out of school students.

The financial barrier: Economic disparities and discrimination

The contours of discrimination in the economic segment of nation’s and individual’s life was done for the first time by economist G S Becker in 1957.⁶⁰ According to him, discrimination on the basis of race and sex has been primordial.⁶¹ The idea of merit has always influenced the employers to recruit the employees. Interestingly, caste is not discernible in a similar way we identify one’s race or gender. Yet, the caste identity can be subtly known by one’s surname. Apart from what the government labels one

56 *Ibid.*

57 “Over 1.2 million students out of school, most of them at elementary level: Govt.” *Hindustan Times*, Feb 8, 2023 available at <https://www.hindustantimes.com/india-news/over-1-2-million-students-out-of-school-most-of-them-at-elementary-level-govt-101675858595780.html> (last visited Oct. 20, 2025).

58 Oxfam India, “Oxfam India Policy Brief, Issue 12, March 2015” available at <https://www.oxfamindia.org/sites/default/files/PB-Right-to-Education-Act-Claiming-Education-120315-EN.pdf>. (last visited Oct. 28, 2025).

59 The Right to Education Act (Act 35 of 2009), s. 12 (1) (c).

60 G S Becker, *The Economics of Discrimination* (University of Chicago Press, 2ndEdn., Chicago).

61 G S Becker, *Human Capital: A Theoretical and Empirical Analysis with Special Reference to Education* (University of Chicago Press, 3rd edn., Chicago).

as Scheduled Caste (SC), Scheduled Tribe (ST) or Other Backward Class (OBCs), wherein such labels are used while applying for a public sector job, the last name and one's family background is typically relied by private sector companies during recruitment drives.⁶² The problem with revealing the caste identities is that it directly affects the productivity of the workers in an organization resulting in statistical discrimination along with the gender discrimination.

The archaic institution of caste has always created and enforced discrimination through the practice of exclusion. The conventional practices of caste system like untouchability, however, got weakened due to the market forces, where each person is valued due to the contribution, he or she makes in the supply chain or where the scope of such practices due to advancement in technology, communication and transportation was reduced. However, still, a 'Dalit' woman is placed at the bottom of the education and employment pyramid. As per the NSSO, most of the women from the 'Dalit' community are not employed in regular jobs but are dependent on daily wages for sustenance.⁶³ Caste, further acts as the second burden over gender for Dalit women wherein they are deprived of the 'freedom of choice' in terms of occupation, profession or career opportunities. They are forced into so called archaic traditional occupations of manual scavenging, disposing carcasses of animals, peasantry *etc.* Despite the Supreme Court's landmark verdict in *Safai Karmachari Andolan v. Union of India*⁶⁴ and a significant statute in the form of Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, much has not changed to address the issue of rising deaths and deplorable work conditions of the people from the lower caste.⁶⁵ As per the data, out of 1.2 million people affected by this practice, 95-98 percent are Dalit women.⁶⁶

As per the Census of 2011, 26.7 percent SC women and 54.6 percent ST women were only engaged in the elementary occupations rather than in tertiary sector.⁶⁷ Data showed that only 3.4 percent ST women and 2.6 percent SC women engaged as

62 Karla Hoff & Priyanka Pandey, "Discrimination, Social Identity and Durable Inequalities" 96 *American Economic Review* 206.

63 *Supra* note 14.

64 AIR 2014 SC 224.

65 Shubham Kumar and Priyanka Preet, "Manual Scavenging: Women Face Double Discrimination as Caste and Gender Inequalities Converge" 55 *EPW* (June, 2020).

66 Human Rights Watch, "Cleaning Human Waste: Manual Scavenging, Caste and Discrimination in India" (Human Rights Watch, 2014), available at: <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>. (last visited on Nov. 15, 2025).

67 Census of India, *Population by Work Status, Work Type, Sex and Age* (2011), available at: https://censusindia.gov.in/census.website/data/data-visualizations/Workforce_Step-Line-Chart (last visited on Oct. 02, 2025).

professionals.⁶⁸ There is a clear paradox in terms of participation in the Indian economy, where lower the caste in the caste hierarchy, higher the participation in the labour workforce and these lower caste women contribute majorly to the rural economy. Further, higher caste women shall be seen in the regular employment than the lower caste. Those, from the lower caste, remarkably the SCs and STs who are in the regular employment, are mostly working in the public sector, probably due to the affirmative reservation policy of the state.⁶⁹ Women from the lower caste don't have the bargaining status and adequate resources for their social mobility through better employment opportunities. One of the obvious reasons for such obstruction is 'education', which is intricately connected with employment attainments.

Not only there is discriminatory hiring and occupational segregation but wage inequalities are significant too. A woman from SC or ST earns only 54 percent of what a woman from upper caste earn in their regular wage work.⁷⁰ Further, the share of women in self-employment is significantly high both in the urban and the rural set up but this should not be misunderstood for perfect entrepreneurship skills as in most of the developing countries self-employment comes out of necessity rather as a choice. This is recorded by National Sample Survey (NSS) in three major categories, one-own account workers (no employees), employers (at least one employee) and third helpers in household enterprises (counted as workers without pay).⁷¹ Of all these categories, the share of first and the third category is higher with significant number of females than males. Though the figures published by NSS are not caste disaggregated, many studies reflect the discrimination faced by Dalit women related to employment opportunities in India.⁷²

Due to this inequality in terms of employment opportunities as well as ownership of resources, the lower caste people had been forced into poverty, impoverishment and excluded from socio-cultural life of a society and this exclusion happens at different levels of society. Thus, for a 'Dalit' woman, the double burden of caste and gender has forced her to remain in 'traditional' and often demeaning, less paying occupations

68 Mala Mukherjee and Nidhi Sadana Sabharwal, "Status of Dalit Women in India, Working Paper Series, Vol IX" (Indian Institute of Dalit Studies, 2015).

69 Ashay Kadam and Kingshuk Sarkar, "The Role of Gender and Caste in Accessing Livelihood Opportunities in India", 58 *EPW* (Dec, 2023).

70 State of Working India 2023: Social Identities and Labour Market Outcomes, *available at*: https://publications.azimpremjiuniversity.edu.in/5166/1/State_of_Working_India_2023_ebook_revised.pdf (last visited on Oct. 2, 2025).

71 Government of India, Employment and Unemployment Situation Among Social Groups in India, National Sample Survey Office, Ministry of Statistics and Programme Implementation, 68th round (2011-12), *available at*: https://mospi.gov.in/sites/default/files/publication_reports/nss_rep_563_13mar15.pdf (last visited on Nov. 10, 2025).

72 Swagata Sarkar, "Depressed and Ostracized: Scrutinizing the Condition of Dalit women in India and their Fight for Justice against Barbarism", *Contemporary Voice of Dalit* (2023).

like scavenging, disposing of animal carcasses etc.⁷³ Due to this nature of job, nobody prefers women from the 'Dalit' community to work as a household helper or a cook. Most of them also work as debt slaves in the fields, brick kilns and garment industries and sometimes they are forced into the old practice of 'Devadasis', temple prostitution to sustain their life.⁷⁴ One of the empirical studies concluded that though the WPR (Worker Population Ratio) of women from SC/ST community is high, it does not convert into high scale payments.⁷⁵ Studies prove that the 1991 economic reforms definitely increased the share of Dalit women's employment in the private sector but it did not ensue higher wages, security of employment or even social welfare.⁷⁶ It is the trappings of the poverty cycle which force them to join the labor force and thus they continue to be discriminated. However, the rigidities in India's economic structure creates roadblocks for its transformation. Even the Dalit women do not have access to the common property resources of villages and there is no egalitarian principle to distribute the resources in the society.⁷⁷

On the other hand, patriarchal mindset affected not only pre-market social relations but market factors as well.⁷⁸ The prejudice against women exists in the idea that women are less skilled and less productive that can affect the profit maximization of the employers since human capital is only considered one of the factors of production, the cost of hiring female workforce is rather saved through either mechanization or a replacement by male workforce.⁷⁹ Thus, neoclassical theorist only prioritize profit and wealth generation rather than address market- labor discrimination. Even the waves of feminism have not fully succeeded in bringing the economic gender equality. The first wave fought for recognition, the second wave raised the voice against unequal pay and occupational segregation, it asked for freedom of choice in employment and recruitment of women in non-traditional areas as well. But even when they enter the market field for an unconventional white-collar job, they face the issue of sexual harassment at workplace.

73 "Dalit women suffer multiple discrimination at the intersection of caste and gender", International Dalit Solidarity Network (IDSN), available at <https://idsn.org/key-issues/dalit-women/> (last visited on Nov. 24, 2025).

74 *Ibid.*

75 Divya Pradeep, "Stagnant salaries, surge in women's self-employment: Rise in real wages is only half the picture", Feb 21, 2024, available at: https://scroll.in/article/1063752/stagnant-salaries-surge-in-womens-self-employment-rise-in-real-wages-is-only-half-the-picture?utm_source=chatgpt.com (last visited on Nov. 10, 2025).

76 Christina Thomas Dhanraj, "Being Dalit, Doing Corporate (Women-in Tech)", *In Plainspeak* Feb 22, 2017, available at <https://genderit.org/feminist-talk/being-dalit-doing-corporate-women-tech> (last visited on Oct. 24, 2025).

77 *Supra* note 1 at 3.

78 Malcolm C Sawyer, *The Challenge of Radical Political Economy: An Introduction to the Alternatives to Neo-Classical Economics* (Hemel Hempstead UK: Harvester Wheatsheaf, 1989).

79 *Supra* note 54.

One obvious conclusion from the analysis of all the economic theories of discrimination is that in a long run they will lead to market failure and will have adverse effects on the economy. The picture clearly shows that if India aims to realize the SDG-8 which talks about ‘sustained, inclusive sustainable and productive employment, decent work for all’⁸⁰ it has to cater to the needs of the disadvantaged section of society including Dalit women.

VII Judicial interpretations: A mix bag

The human rights and civil rights activist though indulge in the critical assessment of the issue and the prevalence of complex multi-layered discrimination, as a concept it hardly finds mention in the legal discourse either by the law makers or the law interpreters. Though, the creative judicial interpretations today are invoking concepts like transformative constitution or constitutional morality to deliver justice where the plausibility seems none, reliance on intersectionality doctrine is rare.

Employment and discrimination

Considered to be one of the landmark cases in the history of women empowerment through judiciary, the *Air India v. Nargesh Mirza*⁸¹ also missed the opportunity to rely on this doctrine to give relief to the air hostesses who were discriminated against male air flight pursers in terms of salary, promotion, removal grounds and retirement age. Though the court declared the challenged regulation as unconstitutional on stereotypical grounds of sanctity of motherhood and excessive delegated legislation, it failed to recognize the intersectionality of gender and socio-economic status in the present case. The words of article 15 (1), has been interpreted narrowly and with a rigid approach in identifying the grounds of discrimination as “only” mentioned therein.⁸²

A ray of hope was given by D Y Chandrachud J., in his opinion in the landmark verdict of *Navej Singh Jobar*.⁸³ While referring to the work of Gautam Bhan and Arvind Narrain,⁸⁴ he refers to the issue of intersectionality as the discrimination faced by queer owing to the other identities attached to them like from being a lower caste or disabled or coloured *etc.* and thus he emphasized that a narrow understanding of article 15 deprives the provision from its essential content and from a substantive

80 Sustainable Development Goals (SDGs), United Nations, Department of Economic and Social Affairs *available at* <https://sdgs.un.org/goals/goal8> (last visited on Nov. 15, 2025).

81 AIR 1981 SC 1829.

82 Art. 15: “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”, Constitution of India, 1950.

83 AIR 2018 SC 4321.

84 Gautam Bhan and Arvind Narain, *Because I have a Voice: Queer Politics in India* (Yoda Press, 2005).

meaningful interpretation. This was however, merely an observation and is yet to become the *ratio decidendi* for any upcoming case in the future.⁸⁵

Recently, the Supreme Court came to the rescue of a woman sarpanch, serving in Chattisgarh.⁸⁶ The court set aside the order of the High Court of Chattisgarh, which caused her unwarranted harassment. The court while delivering the judgment highlighted the issue of patriarchal mindset and regressive attitude wherein taking orders from a female leader is considered as demeaning. With a similar line of reasoning, the apex court in the case of *Manisha Ravindra Panpatil*,⁸⁷ observed that the goal of gender parity and women empowerment would be difficult to achieve if such covert attempts are made against a woman working as a constitutional functionary. Court cautioned against such actions which directly affects the democratic fabric of the Nation, especially a woman from a rural area breaking the barriers. Court thus advised the government to create congenial working environment for the elected female representatives.

Crime and violence

As per the NCRB data, crime is committed against Dalit every 15 minutes and six Dalit women are raped every day.⁸⁸ Further, more than 57,000 crimes were reported against SC in 2022, there is an increase of 35 % from 2018 to 2022. The details of crimes include rape (including of minors), attempt to rape, assault, kidnapping which stood at 16.8 % for SC women and 26.8 % for ST women.⁸⁹

The shrunken mentality of even the judicial officers was reflected when before the landmark verdict of *Vishakha*,⁹⁰ the trial court of Jaipur acquitted the accused of Bhanwari Devi rape on one of the grounds that men of higher caste can't touch a woman of a lower caste.⁹¹ This pathetic mentality even continues today. The shocking statements of some of the political leaders after the Hathras gang rape case proved the same, where the charges against the accused were refuted on the ground that a village which practices untouchability, a high caste man can't even touch a low caste

85 Jasmin Atul Purani, "Intersectional Discrimination in India" 4 *International Journal of Law, Management and Humanities* 1493 (2021).

86 *Sonam Lakra v. State of Chattisgarh*, 2024 Livelaw (SC) 929.

87 *Manisha Ravindra Panpatil v. State of Maharashtra*, 2024 INSC 762.

88 *Supra* note 8.

89 Lok Sabha Unstarred Question No. 2946, (Ministry of Home Affairs, GOI, 2025), available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2025-pdfs/LS18032025/2946.pdf> (last visited on Nov. 14, 2025).

90 *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011.

91 Sachin Saini, "Bhanwari Devi: Justice eluded her, but she stands resolute for others" *Hindustan Times* Sep 17, 2021, available at <https://www.hindustantimes.com/india-news/bhanwari-devi-justice-eluded-her-but-she-stands-resolute-for-others-101631811309362.html> (last visited on Nov. 10, 2025).

woman.⁹² Some feminist scholars even question the effectiveness of the *Vishakha* guidelines as they were made to address the violence faced by women in the organized or formal settings instead of informal or unorganized sector where most of the Dalit women are engaged, proving the allegations that most of the feminist solutions are uniformly devised without addressing the specific needs of the Dalit women.⁹³ Even, the Justice Verma Committee Report (2013)⁹⁴ at various places in the report like para 32, 34, 46 specifically mentions the ordeal of women from the lower caste in India in facing violence but unfortunately the caste dynamics of the report were overlooked while enforcing the Criminal Law Amendments, 2013 and thus the opportunity to rightly place the intersectionality angle in the Indian laws was missed by the State.

Similarly, the *Mathura* case⁹⁵ (wherein a tribal girl was raped by a police constable) that sparked a public unrest in India for the first time against the offence of rape in 1972, leading to a series of legislative reforms but could address the issue of sexual violence specifically faced by Dalit women.⁹⁶ The agony continues even today, as experienced in the recent *Hathras* case (2020) wherein there were allegations of delay in filing the FIR, the body of the victim, who was a Dalit girl, was cremated in a hushed manner without the consent of the family members probably as the accused belonged to higher caste and all this behavior of the state authority reflected nothing but notions of caste dominance and power.⁹⁷

The approach is seemingly changing, as seen in the case of *Patan Jamal Vali*⁹⁸ with the observations of D Y Chandrachud J, wherein he categorically abhors the reliance on single axis approach in understanding violence and discrimination. The case presents a matrix of intersectionality on three significant identities, as a woman, as a 'Dalit woman' and as a 'Dalit disabled woman'. The judgment acknowledges the trauma faced by any woman who has been raped but a deeper wound is found on the identity of a woman carrying the additional burden of caste and disability. The work of Crenshaw has been referred in detail, tracing the agony and trauma of discrimination

92 Suraj Yengde, "The Hathras Atrocity Proves Yet Again that Caste Solidarity is Firmer than Anything Else" *The Indian Express*, Oct 18, 2020, available at <https://indianexpress.com/article/opinion/columns/hathras-dalit-woman-death-case-suraj-yengde-6760935/> (last visited on Nov. 15, 2025).

93 Nidhi Agrawal, "The State of Exception: The Dalit women and the Law", *The Journal of Indian Law and Society* (2023).

94 Report of the Committee on Amendments to Criminal Law, 2013, available at: https://adrindia.org/sites/default/files/Justice_Verma_AmendmenttoCriminalLaw_Jan2013.pdf (last visited on Chattisgarh 5, 2025).

95 *Tukaram v. State of Maharashtra* (1979) 2 SCC 143.

96 Nidhi Agrawal, "The State of Exception: The Dalit women and the Law", *The Journal of Indian Law and Society* (2023).

97 Smita M Patil, "Gender Equity and COVID- 19: Dalit Standpoints" 56 *EPW* (Mar., 2021).

98 *Patan Jamal Vali v. State of Andhra Pradesh*, AIR 2021 SC 2190.

faced by black women. The attempt of law to simplify things to avoid possible permutations and combinations of identities and to put every experience and identity in a homogeneous category is criticised as being irrational. Further, it is clarified that intersectionality simply does not mean additional burden rather it means distinct experience for the subset category of women. It suggests that law should be read with different dimensions, inculcating the social and economic aspects leading to the power structure and hierarchy analysis rather than a strait jacket formula of sameness and differences. The judgment also cites the report of Justice J S Verma Committee submitted in 2013 after the infamous *2012 Delhi Gang Rape* case. In para 34 of the report,⁹⁹ it acknowledges the concept in the terms of ‘double burden’ that is faced by women on account of their gender and then any other social identity. It then criticises the approach of the High Court of Punjab and Haryana, wherein the credentials of a prosecutrix were doubted on the ground that she was partially paralyzed and mentally disabled.¹⁰⁰ To establish the link of human rights with the issue of intersectionality, the judgment does not miss out on mentioning the report of Human Rights Watch (2018)¹⁰¹ highlighting the case studies of violence against women with disabilities.

The judgment then mentions the series of judicial interpretations of Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 where consistently the court has followed a narrow approach and has stuck itself with the single axis vision while deciding on the issues of discrimination and violence under the Act. The judgment stands out for all the mentioning of praiseworthy scholarly work of various writers and social workers on the issue of intersectionality along with the reports of government and non-government organizations.

The court in a recent case, of *Pinky Meena*¹⁰² became cognisant of the fact that there is a low representation of women in the judiciary and an increased diversity in the terms of gender could possibly impact the quality of decision of making. The observations coming up from the bench comprising of B V Nagarathna J and authored by Satish Chandra J is especially welcomed. In para 27 of the judgment, three factors are highlighted to play a prominent role in increasing the representation of women in judiciary, which is, appointments, retention and advancement to senior positions. In para 30, the court further demonstrates how greater representation in judiciary is directly linked to gender equality. Though there was no question of discrimination on

99 Report of the Committee on Amendments to Criminal Law, 2013, available at https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf (last visited on Sep. 15, 2024).

100 *Samitri v. State of Haryana*, 2010 SCC Online P and H 2245.

101 Human Rights Watch, “Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India” (Human Rights Watch, April, 2018), available at https://www.hrw.org/sites/default/files/report_pdf/india0418_web.pdf. (last visited on Nov. 10, 2025).

102 *Pinky Meena v. The High Court of Judicature of Rajasthan*, 2025 LiveLaw (SC) 610.

the basis of caste or gender *per se*, the court has dedicated some space to the intersection of two social identities, one that the petitioner is from STs and other that she is a woman. Probably, due to this background, the court, in para 31, refers to the ‘societal stigmas’ faced by her and despite that has shown ‘great perseverance’. A more detailed and specific examination of the intersectionality aspect in this case would have enriched the judicial catalogue of the intersectionality phenomenon in India.

The same bench, has interestingly protected the rights of Dalit researchers while rejecting the Special Leave Petition (SLP) filed by the Maharashtra Government and upholding the decision of the High Court of Bombay.¹⁰³ The Nagpur Bench of the court has recognised intellectual property theft as an offence under SC/ST Prevention of Atrocities Act, 1989 and Rules, 1995. The court has thus in a unique way interpreted the definition of ‘property’ as provided under Section 15A(11)(d) of the Act.¹⁰⁴ The High Court of Bombay referred to Salmond’s jurisprudential analysis of the concept of property and highlighted that not only tangible but also intangible property in the form of intellectual property, digital records or research data should come within the ambit of property classification. The apex court by rejecting the SLP has strongly conveyed the message that harnesses the very idea of justice through meaningful and substantial remedies in case of human rights violations. Though the case does not involve the issue of intersectionality or gender but such verdicts are welcomed as they set a path for more reformative and revolutionary approach in future.

The literal v. expansive

In view of the existing facts and figures, the judgment of the apex court in *Subhash Mahajan*¹⁰⁵ was not welcomed wherein the court observed that the Prevention of Atrocities Act, 1989 should not result in perpetuating spread of casteism which adversely impacts societal integration and constitutional values” without appreciating the fact that the Act was implemented in response to caste hatred only. The court in this case-imposed restraint on the power of the police to register FIRs and make arrests under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. After so much of hue and cry, the directions were recalled in its review decision by the court.

In yet another judgment with narrow and literal interpretations of the statute, the court has restricted the application of the Act for future cases. One of the provisions

103 *Principal Secretary, Government of Maharashtra v. Khsipra Kamlesh Uke*, SLP (Ct.) 49832/2024.

104 “S. 15A (11) (d): “Rights of victims and witnesses- It shall be the duty of the concerned State to specify an appropriate scheme to ensure implementation of the following rights and entitlements of victims and witnesses in accessing justice so as- (d) to provide relief in respect of death or injury or damage to property;”

105 *Subhash Kashinath Mahajan v. Union of India*, AIR 2018 SC 1498.

of the Prevention of Atrocities Act, 1989 provides for enhanced punishment under IPC when it is proved that such offence was committed on the ground of SC or ST. The court in the case of *Khuman Singh*¹⁰⁶ has added ‘only’ word before the phrase ‘on the ground’ to the legislation, which are neither expressly mentioned nor should be impliedly construed. This qualification of ‘only’ ends the scope of considering intersectional discrimination, where the offence can be committed on the ground of gender or some other identity as well along with the caste.

The court, however, in judgments like *Indra Sawhney*¹⁰⁷ recognised caste as a criterion to give reservations observing that caste and class were used interchangeably in the past and rather caste was understood as an enclosed only while quoting the speeches of B.R Ambedkar in the Constituent Assembly to justify the use of word ‘class’ instead of ‘caste’ in article 16 (4). Following the footsteps of the *Indra Sawhney* judgment, we should realise that it is time that India should now leave its lackadaisical approach towards combating caste based discrimination and judiciary as a protector of our rights should stand firm and strong in protecting the rights of the most disadvantaged and rather diluting the existing legal framework of the protective laws should rather strengthen the same through their interpretations imbibing the concepts of transformative constitution and constitutional morality.

VIII Way forward

The time has come to take the fight on the global scale and thus, the Dalit feminist movement needs to have a broader global agenda. There needs to be a global discourse on the struggle of Dalit women, in a similar way, as Black women from United States have taken their efforts against anti-race discrimination to the global community. The story of both the categories of women beyond the global frontiers resemble on they being neglected by the mainstream feminist movements as well as anti-racist and anti-caste movements in their respective territories. Thus, we can *initiate cross-border dialogue on the interconnected struggle* of Dalit women and Black women across the globe. The cross-cultural global alliances to fight against anti-racist, anti-caste, anti-patriarchal forces, is the need of the hour.

At the international level, the document of faith in the form of various human rights related treaties, conventions, declarations should specifically deal with caste as a form of discrimination. While the definition of racial discrimination in the International Convention on Elimination of All forms of Racial Discrimination (CERD) includes discrimination based on descent, it does not explicitly provide for caste-based discrimination.¹⁰⁸ However, Office of High Commissioner for Human Rights

106 *Khuman Singh v. State of MP*, AIR 2019 SC 4030.

107 *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

108 Art. 1, CERD available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>. (last visited on Nov. 10, 2025).

(OHCHR) in its General Recommendation-29 in 2002, expanded the definition and included caste-based discrimination¹⁰⁹ but India did not adhere to the same and it still follows that ‘caste’ is beyond the ambit of racial discrimination. With this approach, India has escaped from its responsibility to provide information regarding its compliance to CERD to the Committee on ERD.¹¹⁰ The commitment at the international level speaks volume about the image of a particular nation.

At the national front, it is necessary that the state while designing its policies, programmes and laws consider the intersectional nature of discrimination faced by Dalit women and address the same at multiple levels. The judgments like *Sabarimala*¹¹¹ should be welcomed which targeted upon the notion of purity and impurity for temple entries. It read down the provisions of the Constitution to allow the entry of women aged between 10 to 50 to enter the temple premises and majority stating that fundamental rights cannot be narrowly interpreted and subjected to public morality rather the guiding star for the correct judicial interpretation is constitutional morality. Literal approach setting highest degree of proof for the application of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 should be discarded based on the criteria that ‘caste’ should be the only sole reason for discrimination and violence against the community. Such approaches, casts aspersions on the very idea of justice and equality ensured by the Indian Constitution.

An anti-discrimination legislation incorporating all the possible permutation and combinations of factors that result in intersectional discrimination, should be attempted so that the court’s do not restrict themselves to the limited grounds of discrimination provided under Article 15 (1) of the Constitution with the usage of the term ‘only’ in the text of the article. This would address the lacunae in the laws with single- axis identity approach. It can further fill the void related to addressing the discriminatory acts done by private entities performing private functions as the constitutional remedies are guaranteed against the state only in most of the cases of fundamental rights violations except a few. A remarkable change can be brought through various schemes and policies of the government. Though there has been no targeted evaluation of government schemes on improving the status of Dalit women in different dimensions of their lives but definitely it can ensure more autonomy and dignity to women by working on the fundamental levels like education, health, employment, skills etc.

109 CERD General Recommendation XXIX on Article 1, Para 1 of the Convention (Descent), available at <https://www.refworld.org/legal/general/cerd/2002/en/11409> (last visited on Nov. 20, 2025).

110 Aishwarya Singh & Meenakshi Ramkumar, “Failure of the Indian Supreme Court to Protect the Rights of Dalits”, *Oxford Human Rights Club*, Sep 30, 2019, available at <https://ohrh.law.ox.ac.uk/failure-of-the-indian-supreme-court-to-protect-the-rights-of-dalits/> (last visited on Oct. 17, 2025).

111 *Indian Young Lawyer’s Association v. State of Kerala*, AIR 2018 SC 243.

Schemes like Eklavya Model Residential Schools¹¹² could help in improving the literacy rate of the tribal girls and their enrolment in schools. PM Kaushal Vikas Yojana¹¹³ could help in building industry relevant skill sets, PM Awas Yojana (Gramin)¹¹⁴ can ensure right to shelter to Dalit Women, even homes could be registered in their names, also allocating a major resource and source of livelihood to them. Thus, such schemes have the potential to advance the position of Dalit women in the society.

India can also imbibe the South- African model on discrimination which sets standard for other countries to follow wherein they deal with discrimination based on contextual comparison in a flexible manner allowing the room for intersectionality and thus providing adequate reliefs.

Finally, Dalit men and upper caste women should not see the struggle of Dalit Feminist Movement as a divergence, rather they all should join the battle to demand equality and justice from the society and the state. Everyone becomes the embodiments of fraternity rather enforcing the rule of brute majority to give wings to the words of B.R Ambedkar: “If you ask me, my ideal would be a society based on Liberty, Equality and Fraternity.”¹¹⁵

IX Conclusion

The theoretical and monumental work done by Dalit/ feminist scholars in leading the Dalit feminist movement is a powerful achievement as challenges not only the upper-caste dominated feminist discourse but also questions the existing Dalit patriarchal norms. It has put Dalit women at the centre of entire discourse, who are otherwise side-lined and thus has asserted that their experiences are indigenous and peculiar and not westernized.

The subjugation of women throughout history has direct linkages with the origins of caste through the mechanisms of purity-pollution and endogamy. After the end of early *Vedic* period, the later texts have justified the gender and caste hierarchies. Women were just considered bodies to be exploited either to fulfil the societal caste norms or to forcibly assert patriarchy. The intersectionality theory further offers a structural framework to understand and evaluate how multiple social identities simultaneously operate to shape the status of Dalit women. It also highlights how law in India lacks a holistic approach and only provides for limited legal remedies based

112 Ministry of Tribal Affairs, Government of India, *available at*: <https://tribal.nic.in/EMRS.aspx> (last visited on Oct. 22, 2025).

113 Ministry of Skill Development and Entrepreneurship, Government of India, *available at*: <https://www.msde.gov.in/offering/schemes-and-services/details/pradhan-mantri-kaushal-vikas-yojana-4-0-pmkvy-4-0-2021-IT03ATMtQWa> (last visited on Nov. 8, 2025).

114 Ministry of Rural Development, Government of India, *available at*: <https://www.myscheme.gov.in/schemes/pmay-g> (last visited on Nov. 7, 2025).

115 B. R Ambedkar, “Annihilation of Caste” 45 (Navayana, 3rd edn., 2014).

on single axis approach. The response from judiciary so far has been inconsistent though recent strides have been made in the jurisprudence encompassing the intersectionality dimension.

Austin described law as the command of sovereign, backed by sanctions. Ambedkar, however, has his own understanding of law which was shaped from his experiences of life wherein he had to face discrimination in all aspects of his social life. Thus, he rightly believed that law is not limited to what sovereign legitimizes but what society sanctions. His understanding is thus well reflected in the making of the Indian Constitution, the remarkable provisions which consider untouchability as a criminal offence, the emphasis on fraternity in the preamble itself, the scope of affirmative action and directions for the state to incorporate the aspects of socio-economic justice in the state policies and legislations. The painstaking efforts of Ambedkar, however, seems to go in vain when a larger section of society, *i.e.*, Dalit women still face discrimination in plethora of ways at various stages of their life. The access to food, sanitation, education, employment opportunities and then stigma of belonging to the lower caste, she has to bear the entire life. As far as educational needs of a Dalit girl are concerned, there is inadequate incentive for them to join the schools and that is the reason for their increasing drop-out rates. The lengthy and complex procedure to claim reservation under the RTE Act, 2009 or apply for scholarships leave such children with no choice. Sadly, the New Education Policy (NEP) 2020, also failed to accommodate the dreams and desires of Dalit girls as the document failed to mention anywhere about caste and reservation despite its focus on quality education and skill development. This raises serious concern regarding 'equity in education' and it becomes pertinent to bring education at the centre-stage for successfully establishing a just society.¹¹⁶

That is not all, she is subjected to harassment at the workplace, and aggravated crimes against her are increasing at a faster pace. The NFHS (4th Round) illustrates that 33.2 % of SC women experience physical violence since the age of 15 as against 19.7 women in the 'other' category.¹¹⁷ She has neither economic resources to sustain her life, evidence shows that more than 60% of the Dalit households are landless.¹¹⁸

116 Karamala Areesh Kumar, "Caste'less NEP can't Achieve Equity", *Deccan Herald*, Nov 16, 2023, available at https://www.deccanherald.com/opinion/caste-less-nep-can-t-achieve-equity-2772553#google_vignette. (last visited on Nov. 30, 2025).

117 Shalini Nair, "Dalit women's rights activist to present accounts of caste violence at UNHRC" June 20, 2018, available at <https://indianexpress.com/article/india/dalit-womens-rights-activists-to-present-accounts-of-caste-violence-at-unhrc-5223007/> (last visited on Nov. 16, 2025).

To this, the institutions of state add to their burden of caste and gender. The liberal interpretations of the laws built on the idea of democratic dialogue, constitutional morality and transformative justice is the need of the hour and not the judgments based on literal and narrow understandings of the issue of caste stigma and hierarchy. The India, envisioned by Ambedkar, flourishing on the touchstones of equality, social-economic-political justice seems a far-sighted dream for Dalits in India and Dalit women specifically but with the right approach it is not impossible to realize.

118 Aarefa Johari, "A Dalit Women's Collective is fighting for the land it tills on in Gujarat" *Scroll.in* Dec 6, 2021, available at <https://scroll.in/article/1011700/a-dalit-womens-collective-is-fighting-for-the-land-it-toils-on-in-gujarat#:~:text=According%20to%20the%202015%2D16,land%20operated%20by%20their%20communities>. (last visited on Nov. 17, 2025).