
INTERSECTIONAL LENS TO BODILY AUTONOMY

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ABSTRACT

This paper examines the concept of bodily autonomy through an intersectional lens within the context of India, drawing insights from feminist jurisprudence. The aim is to critically analyse how intersecting identities, such as gender, caste, class, and religion, shape and influence women's experiences of bodily autonomy within the legal framework of India. It aims to expand the discussion on intersectionality by drawing insights and concepts from the experiences of white feminists and black feminists and applying them to the Indian context. The objective is to uncover and shed light on forms of oppression that may not be immediately apparent or acknowledged within Indian society. By exploring intersectionality within the Indian context, this paper aims to bring attention to the unique forms of oppression and discrimination that exist. It highlights the need to address the multifaceted nature of inequality and recognize the overlapping systems of privilege and disadvantage that shape the lives of individuals within Indian society.

INTERSECTIONALITY

Indian society is intricately woven with various layers, including class, caste, and urban-rural divisions. Within this complexity, women encounter distinct forms of inequality and abuse that result from the intersection of two or more of these categories. Intersectionality, a term coined by Kimberlé Crenshaw, recognizes the interconnected nature of social categorizations such as gender, race, class, caste, religion, and sexuality¹. These intersections give rise to intricate systems of discrimination and oppression. Despite the growing recognition of intersectionality in contemporary movements, it often remains overshadowed by mainstream feminism.

It is important to understand that pathologies like racism and sexism are not isolated systems; instead, they are intertwined and interconnected, resulting in a complex interplay of privileges and burdens. For instance, an upper-class woman may face gender-related disadvantages while benefiting from privileges associated with her caste. Conversely, a lower-class man may experience disadvantages based on his caste, but enjoy advantages tied to his gender. In contrast, lower-class women find themselves in a doubly precarious situation as they face disadvantages stemming from both their race and gender.

BODILY AUTONOMY

Bodily autonomy refers to the fundamental right to have control over one's own body. This includes the ability for individuals, including women, nonbinary individuals, and transgender individuals, to make decisions about their physical selves and to assert their presence in society².

Regrettably, the concept of bodily autonomy remains consistently challenged by various entities, including individuals, governments, and systemic structures, even in the present year. Laws influenced by patriarchal beliefs persist in restricting and regulating individuals' bodies. This is particularly true for women, and even more so for women of colour and LGBTQIA+ individuals, as external forces continue to assert authority over how their bodies should exist within society.

¹ Crenshaw, K. (1991) 'Mapping the margins: Intersectionality, identity politics, and violence against women of color', *Stanford Law Review*, 43(6), p. 1241. doi:10.2307/1229039.

² Christian, K. (2023) 'What is bodily autonomy?', *The Good Trade*. Available at: <https://www.thegoodtrade.com/features/reclaiming-body-autonomy-for-women/> (Accessed: 12 May 2023).

INTERSECTIONAL LENS TO REPRODUCTIVE AUTONOMY

Reproductive autonomy recognizes the inherent right of individuals to exercise control over their bodies and make decisions pertaining to their reproductive choices in alignment with their personal values, beliefs, and specific circumstances without the intervention from others or the state. It encompasses the freedom to choose whether to have children, when to have them, and the desired number, as well as the entitlement to access comprehensive reproductive healthcare services, encompassing contraception, abortion, and fertility treatments.

When approaching the topic of health through an intersectional lens, it is crucial to challenge the perspective that individual factors or singular identities alone determine health outcomes. Factors such as biology, income levels, education, race, refugee status, or gender do not operate independently but intersect and interact with each other, shaping health outcomes and contributing to inequalities within diverse contexts and population groups³.

Feminist theory has long challenged the concept of biological essentialism, which suggests that the unequal position of women and men in areas such as marriage, employment opportunities, and unequal pay stems from inherent biological differences between the sexes⁴. This viewpoint seeks to scientifically justify the notion that women belong in the private sphere due to their reproductive abilities. On top of that, sexual and reproductive health services and interventions tend to assume cisgender and heterosexual identities and relationships as the standard, thereby marginalizing and overlooking the diverse needs of sexual and gender minorities⁵.

Intersection of gender and disability

From the perspective of individuals with disabilities, they are frequently depicted as medical abnormalities, helpless individuals who impose lifelong burdens on both their families and society at large. Efforts are often concentrated on improving educational and employment prospects to foster self-sufficiency. Unfortunately, amidst these endeavours, their sexual needs are often disregarded. Disabled women, in particular, face a compounded form of oppression

³ Kapilashrami, A. (2019) 'What is intersectionality and what promise does it hold for advancing a rights-based sexual and Reproductive Health Agenda?', *BMJ Sexual & Reproductive Health*, 46(1), pp. 4–7. doi:10.1136/bmjshr-2019-200314.

⁴ Saumya Maheshwari, *Reproductive Autonomy in India*, 11 NALSAR Stud. L. REV. 27 (2017).

⁵ Müller, A. *et al.* (2018) 'The no-go zone: A qualitative study of access to sexual and reproductive health services for sexual and Gender Minority Adolescents in Southern Africa', *Reproductive Health*, 15(1). doi:10.1186/s12978-018-0462-2.

rooted in both their gender and disability. They are often deemed incapable of fulfilling traditional feminine roles such as that of a homemaker, wife, or mother. Due to the societal importance placed on women as guardians of family honour, they are often hidden and kept out of public view⁶.

Although disabled women in India encounter various common obstacles, adopting an intersectional perspective reveals that perceiving them as a homogeneous group that is uniformly "de-sexualized, feminized, and powerless" would be an inaccurate portrayal of their lived realities. Such a perspective would likely overlook the multiple differences that exist among them. A thorough examination of social processes and structures is required, including their interconnectedness at both macro and micro levels, in order to comprehend how they collectively shape individuals' lived experiences.

A study conducted in Gujarat⁷, India, involved interviews and focus group discussions with disabled women, as well as service providers and stakeholders in the field of sexual and reproductive health and rights (SRHR). The study aimed to examine the intersection of gender structures, socio-economic conditions, and disability, shedding light on various aspects. The findings indicated that the majority of women's decision-making regarding marriage was restricted and predominantly controlled by their parents or guardians. Additionally, it was observed that the women interviewed sought SRH services only when faced with a problem, rather than utilizing them as a preventative measure. Among participants from lower socio-economic backgrounds, there was a prevailing belief that the doctor's opinion was unquestionable, while those from higher socio-economic backgrounds were more discerning in their interpretation of medical services. Notably, disabled women with higher socio-economic status had greater opportunities to exercise autonomy, challenge assumptions of their asexuality, and influence or directly participate in decision-making processes.

In the realm of sexual and reproductive health rights (SRHR), it is essential to address biases and disparities related to class, ethnicity, race, disability, and other social inequalities among

⁶ Addlakha, R. (2007) 'How young people with disabilities conceptualize the body, sex and marriage in urban india: Four case studies', *Sexuality and Disability*, 25(3), pp. 111–123. doi:10.1007/s11195-007-9045-9.

⁷ Dean, L. *et al.* (2017) "“you're disabled, why did you have sex in the first place?” an intersectional analysis of experiences of disabled women with regard to their sexual and reproductive health and rights in Gujarat State, India", *Global Health Action*, 10(sup2), p. 1290316. doi:10.1080/16549716.2017.1290316.

different groups. This understanding should inform targeted policy and program responses to ensure inclusivity and equity

INTERSECTIONAL LENS TO BODILY SERVICES IN EXCHANGE OF MONEY

The fundamental principle of any profession is the provision of services in exchange for compensation. Therefore, it is worth questioning why there is an emphasis on professions that involve the use of a person's body. The term "bodily services" encompasses a range of labour or work that directly utilizes one's physical being. This can encompass activities like sex work, surrogacy, organ donation, and other forms of work where the body is directly involved in providing a service in return for monetary compensation.

There is a prevalent belief that engaging in transactions or contracts involving one's sexual and reproductive capacities is inherently morally wrong. However, it is crucial to critically examine the reasons behind this perception. As Martha C. Nussbaum points out, we must determine whether such views are grounded in valid reasons or simply prejudice⁸. It is essential to consider the various motivations that may lead a woman to enter such a profession. Some women may engage in these activities due to limited economic opportunities or being coerced into prostitution, which raises legitimate concerns for society. Conversely, if the involvement is a voluntary choice, it should not be a cause for concern, especially considering existing legal protections and barriers in place to safeguard individuals involved in these professions.

Taking prostitution as an example, the reasons that stand out that causes stigmatisation around this profession is firstly- owing to the gender hierarchy, women and their sexuality had often been controlled and in need of male domination; secondly- female lust is commonly seen as immoral or bad or dangerous. Therefore, people committed to maintain this gender hierarchy will continue to oppress it as a profession as it posits a threat to control by man on women's sexuality.

Intersection of gender and caste

In "Caste and the Bar Dancer," Sameena Dalwai presents an alternative perspective on the

⁸ Nussbaum, M.C. (2017) "whether from reason or prejudice": Taking money for Bodily Services', *Gender and Rights*, pp. 451–482. doi:10.4324/9781351157728-20.

profession of bar dancers⁹. She sheds light on the fact that many bar dancers, who primarily belong to a specific caste, serve as the traditional breadwinners for their extended families through engaging in sexual and erotic labour. This discussion by Dalwai highlights the intricate intersection between caste and gender.

It brings out the complex dynamics at play in the interaction between bar dancers and their predominantly upper-caste male patrons. On one hand, the performances of lower-class women before upper-caste men can reinforce and perpetuate caste-based oppression. It signifies the power imbalances rooted in caste hierarchies, where the lower caste individuals often find themselves in positions of subservience and exploitation.

On the other hand, the gender-based oppression experienced by bar dancers. Their profession is commonly stigmatized and considered immoral based on societal expectations of an "ideal" woman. This perception reflects deep-rooted patriarchal norms that dictate women's behaviour, particularly regarding notions of respectability and sexual purity.

By examining the intersection of caste and gender in the context of bar dancers, the multi-layered nature of their experiences comes out. The analysis sheds light on the complex power dynamics, oppressive structures, and societal prejudices that bar dancers confront, which are influenced by both caste and gender factors.

LEGAL REGIME

Until recently, gender disparity prevailed within the legal profession in India, with men predominantly occupying influential positions across all its branches. For instance, the handling of evidence in rape trials has been a matter of concern, as the legal system has often failed to provide a supportive and sensitive environment for survivors to seek justice. Additionally, the regulation of pornography sales and display has lacked a comprehensive approach that considers the potential harms and objectification of women in such materials. Workplace sexual harassment has been another critical issue where women's voices and rights have been marginalized. Gender discrimination in employment and education, ranging from unequal pay to limited opportunities for career advancement, has also persisted within the legal profession. Similarly, regulations governing divorce and child custody have not always taken

⁹ Mandal, S. (2021) 'Book review: Sameena Dalwai. 2019. *bans & bar girls: Performing caste in Mumbai's dance bars*', *Contributions to Indian Sociology*, 55(1), pp. 142–145. doi:10.1177/0069966720979335.

into account the specific needs and circumstances of women, often perpetuating unequal power dynamics. Furthermore, legal restrictions on abortion have limited women's reproductive autonomy, denying them the right to make decisions about their own bodies and reproductive choices. The provision of workplace accommodations for pregnancy, such as maternity leave and breastfeeding support, has been insufficient and lacking in many instances.

This imbalance can be attributed to the limited representation of women in key roles and the historical subordination of women in society. MacKinnon sheds light on the underlying reasons for this subordinate status by highlighting the exploitative nature of capitalism and the market economy, which have historically relied on women's unpaid domestic labour and sexual subordination to sustain their functioning¹⁰. This exploitation of women's labour within the capitalist system is intricately linked to their marginalized position in society.

Furthermore, it is crucial to recognize that the state, often perceived as a neutral entity, is deeply entrenched within patriarchal structures. Through its legal institutions and practices, the state has historically upheld and legitimized the subordination of women by reinforcing gender norms, perpetuating unequal power relations, and enacting discriminatory laws. As a result, the legal system has struggled to adequately address the concerns and perspectives of women on a wide range of issues. It is therefore imperative to integrate feminist perspectives into legal theory to develop a critical understanding of gender oppression.

Additionally, it is important to highlight the limitations of dominant approaches in jurisprudence, such as natural law theory, legal positivism, and legal realism, in addressing gender issues. These approaches tend to overlook or marginalize gender concerns, as they often prioritize and reinforce existing power structures within society¹¹.

Overall, the historical male domination within the legal profession has had significant implications for women's access to justice and their ability to have their concerns and perspectives adequately represented. Increased representation of women in influential positions and the recognition of gender-based biases and discrimination are crucial steps towards a more inclusive and equitable legal system that addresses the diverse needs and experiences of women

¹⁰ MacKinnon, C.A. (2018) 'Feminism, marxism, method, and the state: Toward Feminist Jurisprudence [1983]', *Feminist Legal Theory*, pp. 181–200. doi:10.4324/9780429500480-11.

¹¹ West, R. (2018) 'Jurisprudence and gender [1988]', *Feminist Legal Theory*, pp. 201–234. doi:10.4324/9780429500480-12.

in India.

On occasion, policies designed to benefit women can inadvertently have adverse effects. For instance, the provision of maternity leave may lead employers to hesitate in hiring female employees due to concerns about the paid leave they would be entitled to.

CRITICISM ADDRESSED

In the context of discussions concerning reservations for women, a common argument emerges suggesting that some women who may not possess the necessary capabilities or qualifications would be given opportunities solely based on their gender. This argument relies on the flawed assumption that all men currently occupying those positions inherently deserve to be there. This underlying presumption is deeply flawed and lacks sound reasoning¹².

By challenging the flawed presumption, the inherent unfairness and inequality within the current system can be recognised. It is crucial to acknowledge that the existing power structures have historically favoured men, particularly white men, while marginalizing and excluding women and other marginalized groups. The argument that some women may be undeserving of opportunities ignores the larger context of systemic discrimination and the barriers that have prevented women from accessing these positions in the first place.

Moreover, this argument fails to consider the diversity of experiences and capabilities among women. Affirmative action measures, such as reservations for women, aim to address historical imbalances and provide opportunities for those who have been systematically disadvantaged. It is a recognition that merit and potential are not solely determined by traditional markers of privilege or the existing power structures.

Intersectionality theory asserts that within the framework of a capitalist, patriarchy, males hold positions of power and enjoy unearned privileges. Regrettably, this perspective has led marginalized individuals to perceive these privileged individuals as deserving mistreatment. Paradoxically, members of marginalized groups have started exhibiting behaviours that they attribute to the privileged class, including stereotyping, demonization, shaming, and

¹² LiveLaw (2022) *Evolving a Feminist Jurisprudence*. Available at: <https://www.youtube.com/live/p5wgXEq8BUI?feature=share> (Accessed 12 May 2023).

silencing¹³. Consequently, this dynamic has fostered divisions and conflicts among morally impassioned groups rather than promoting unity.

By adopting a more nuanced understanding of intersectionality and challenging flawed presumptions, we can move towards a more inclusive society that values diversity, equality, and fairness. This involves recognizing the historical and ongoing injustices faced by marginalized groups, dismantling oppressive structures, and promoting equal opportunities for all individuals, regardless of their gender, race, or other social identities.

CONCLUSION

In conclusion, examining the layers of oppression through an intersectional lens reveals the existence of marginalized groups whose oppression has often been overlooked. The recognition of intersectionality allows us to comprehend the complex ways in which social identities interact and influence individuals' experiences. This does not imply that feminism is inherently flawed, but rather highlights the need to expand its scope to address the evolving complexities of society. While this paper has touched upon a few aspects of bodily autonomy due to constraints of word limit, it is important to recognize that there are numerous other issues such as sexual assault, domestic violence, and violence against women that warrant further exploration.

Moreover, this paper could have delved into detailed examples from Indian society to illustrate the different types of intersectionality, including structural, political, and representational. Furthermore, it is essential to apply an intersectional lens to various other areas of social justice and equality. In order to foster inclusivity, it is crucial to shift the focus from a gendered power struggle to a collective effort towards equitable distribution of resources and opportunities.

To promote gender equality and challenge systemic biases, it is essential to adopt feminist perspectives within legal theory. This entails recognizing the role of capitalism in perpetuating women's subordination, critiquing patriarchal influences within the state and legal institutions, and questioning the limitations of traditional jurisprudential approaches. By incorporating feminist perspectives, legal theory can provide a more comprehensive understanding of gender

¹³ American Enterprise Institute (2016) Intersectional Feminism: What is it? Available at: <https://youtu.be/cYpELqKZ02Q> (Accessed 12 May 2023).

oppression and contribute to the development of laws and practices that uphold women's rights and promote gender equality within the legal profession and society at large.

Undoubtedly, dismantling deeply rooted systems of class hierarchy, patriarchy, and heteronormativity is a complex task with a long history. However, acknowledging these inequalities and implementing reforms and regulations to bridge the gaps can serve as an important starting point. It is imperative to work towards creating a society that embraces inclusivity, recognizes intersectional identities, and strives for justice and equality for all.