

# INTERSECTIONAL FEMINISM IN INDIA: CURRENT JUDICIAL TRENDS IN CONSTITUTIONAL INTERPRETATION

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## Abstract

This article explores the intersectional feminist movement in India and its impact on current judicial trends in constitutional interpretation, specifically related to gender equality and women's rights. The article highlights the complex and intersectional nature of gender-based discrimination and violence in India, and examines how intersectional feminism is shaping the discourse around gender equality. The article also discusses the recent trend in India's judiciary towards a more activist and progressive interpretation of the Constitution, as well as notable examples of this trend in landmark judgments related to LGBTQ+ rights and sexual harassment in the workplace. Overall, the article emphasizes the importance of a more intersectional and rights-based approach to constitutional interpretation in advancing gender equality in India.

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## I. INTRODUCTION

India has a rich history of feminist movements, but for a long time, the feminist discourse in India was primarily focused on the struggles of middle-class, upper-caste, able-bodied women. This left out the voices of marginalized women who faced intersectional forms of oppression. This led to the emergence of intersectional feminism in India, which aimed to address the intersection of gender with other forms of oppression such as caste, class, religion, sexuality, and ability. This article will explore intersectional feminism in India, its evolution, and its current status. The origins of intersectional feminism in India can be traced back to the Dalit Women's Movement, which emerged in the 1980s. The Dalit Women's Movement was formed to address the unique challenges faced by Dalit women, who face the double burden of caste and gender-based discrimination. The movement aimed to create a space for Dalit women's voices to be heard and to highlight their experiences of oppression.

In the 1990s, the intersection of gender and environmental issues was brought to the forefront of feminist discourse in India. Women, especially those from marginalized communities, were found to be disproportionately affected by environmental degradation and climate change. The Chipko movement, which was started by women in the Himalayas to protect trees from being cut down, highlighted the connection between women's rights and environmentalism. The 2000s saw the emergence of the LGBTQ+ rights movement in India, which sought to address the discrimination faced by LGBTQ+ individuals based on their sexual orientation and gender identity. The movement gained momentum after the Delhi High Court decriminalized homosexuality in 2009, but the progress was short-lived as the decision was overturned by the Supreme Court in 2013. The struggle for LGBTQ+ rights continues to this day, with activists fighting for the decriminalization of homosexuality and for equal rights and protections. Intersectional feminism in India has come a long way, but there is still a lot of work to be done. The feminist movement in India is still dominated by middle-class, upper-caste voices, and the experiences of marginalized women are often sidelined. The feminist movement needs to become more inclusive and recognize the intersection of gender with other forms of oppression.

One of the most significant challenges faced by intersectional feminism in India is the prevalence of caste-based violence against women. Dalit women continue to face violence and discrimination at an alarming rate, and the feminist movement needs to center their experiences and address the unique challenges they face. The #MeToo movement, which gained momentum in India in 2018, highlighted the prevalence of sexual harassment and assault in the country. The movement brought attention to the experiences of women from all walks of life, including those from marginalized communities. However, the movement also faced criticism for being limited

to urban, English-speaking women and neglecting the experiences of women from rural areas and those who do not have access to social media. Another challenge faced by intersectional feminism in India is the lack of representation of women from marginalized communities in positions of power. The Indian parliament has a low representation of women, with only 14% of seats being held by women. This lack of representation makes it challenging to address the unique challenges faced by marginalized women. Intersectional feminism in India has come a long way, but there is still a lot of work to be done. The feminist movement needs to become more inclusive and recognize the intersection of gender with other forms of oppression such as caste, class, religion, sexuality, and ability. The voices of marginalized women need to be centered, and their experiences need to be addressed.

## II. THEORY OF INTERSECTIONAL FEMINISM: INTERNATIONAL TRENDS

Intersectional feminism is a framework that recognizes and addresses the ways in which different forms of oppression intersect and compound, particularly for marginalized groups. It has gained momentum globally in recent years, as feminists recognize the limitations of a singular focus on gender inequality and work towards more inclusive approaches. Here are some international trends in intersectional feminism.

### ***Emphasis on Diversity and Inclusion***

Intersectional feminism emphasizes the importance of recognizing and addressing the diversity of experiences among women. This means acknowledging that women do not experience oppression in the same way, and recognizing the ways in which different forms of oppression intersect. There is a growing emphasis on the inclusion of marginalized voices in feminist discourse, including women of color, disabled women, queer women, and trans women.

### ***Focus on Economic Justice***

Intersectional feminism recognizes that economic oppression is a significant factor in the oppression of women. This includes the gender pay gap, which is compounded by race, class, and other factors. There is a growing focus on economic justice as a key issue for intersectional feminists, including demands for fair wages, equal access to opportunities, and an end to exploitative labor practices.

### ***Environmental Justice***

Intersectional feminism recognizes the connections between environmental justice and gender justice. Women are disproportionately affected by environmental degradation and climate change, particularly in the Global South. This includes issues such as water scarcity, deforestation, and air pollution. Intersectional feminists recognize the importance of addressing these issues in the context of gender inequality and working towards sustainable solutions.

### ***Addressing Racism and Colonialism***

Intersectional feminism acknowledges the ways in which racism and colonialism are intertwined with gender oppression. This includes recognizing the impact of historical and ongoing colonialism on Indigenous women and their communities. It also involves addressing racism and xenophobia in feminist movements, and working towards decolonizing feminist discourse.

### ***Global Solidarity***

Intersectional feminism recognizes the importance of global solidarity among women. Feminists are increasingly recognizing the importance of working together across borders to address common issues, including violence against women, reproductive rights, and economic justice. This includes recognizing the ways in which globalization and imperialism contribute to the oppression of women around the world.

### ***Emphasis on Self-Care and Wellness***

Intersectional feminism recognizes the importance of self-care and wellness in the struggle for gender justice. This involves recognizing the impact of oppression on mental health, as well as the importance of self-care practices such as meditation, exercise, and therapy. There is a growing emphasis on the importance of taking care of oneself as part of the struggle for justice.

Intersectional feminism has gained momentum globally in recent years, as feminists recognize the limitations of a singular focus on gender inequality and work towards more inclusive approaches. International trends in intersectional feminism include an emphasis on diversity and inclusion, economic justice, environmental justice, addressing racism and colonialism, global solidarity, and self-care and wellness. These trends reflect a growing recognition of the importance of intersectionality in feminist discourse and the importance of working towards a more just and equitable world for all women.

### **III. JUDICIAL APPROACHES TO FEMINISM IN INDIA**

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recognition of the importance of intersectionality in feminist discourse and the importance of working towards a more just and equitable world for all women.

#### **IV. IDENTIFYING THE TRENDS IN FEMINIST DISCOURSE**

Judicial approaches to feminism refer to the ways in which courts and legal systems address issues related to gender equality and women's rights. Over the years, there have been various approaches to feminism by the judiciary across the world, and these approaches have had a significant impact on the advancement of women's rights. Here are some examples of judicial approaches to feminism.

##### ***Formal Equality Approach***

The formal equality approach is a judicial approach to feminism that emphasizes treating men and women equally under the law. This approach views gender as a characteristic that should be irrelevant to legal decisions, and seeks to eliminate discrimination based on sex. This approach has been used in cases involving issues such as access to education, employment, and political representation. However, critics argue that this approach fails to address the unique ways in which women experience discrimination and oppression, and may perpetuate existing power imbalances.

##### ***Substantive Equality Approach***

The substantive equality approach is a judicial approach to feminism that seeks to address the systemic barriers that prevent women from achieving equality. This approach recognizes that men and women are not necessarily similarly situated, and seeks to address the unique challenges that women face. This approach has been used in cases involving issues such as reproductive rights, sexual harassment, and domestic violence. Critics argue that this approach may result in special treatment for women, and may be difficult to implement in practice.

##### ***Intersectional Approach***

The intersectional approach is a judicial approach to feminism that recognizes the ways in which gender intersects with other forms of oppression, such as race, class, and sexuality. This approach recognizes that women experience discrimination in different ways, depending on their multiple identities and experiences, and seeks to address these unique challenges. This approach has been used in cases involving issues such as immigration, disability rights, and Indigenous rights. Critics argue that this approach may be difficult to apply in practice, and may result in legal decisions that are overly complex.

##### ***Active Engagement Approach***

The active engagement approach is a judicial approach to feminism that involves actively engaging with feminist theory and principles in legal decision-making. This approach recognizes that feminist principles are important in promoting gender equality, and seeks to incorporate these principles into legal decision-making. This approach has been used in cases involving issues such as reproductive rights, gender identity, and domestic violence. Critics argue that this approach may result in judges overstepping their role as impartial decision-makers and may be susceptible to bias.

##### ***Feminist Judging Approach***

The feminist judging approach is a judicial approach to feminism that involves using feminist principles as a framework for legal decision-making. This approach involves considering the perspectives and experiences of women in legal decision-making, and seeking to promote gender equality through legal decisions. This approach has been used in cases involving issues such as reproductive rights, sexual violence, and workplace discrimination. Critics argue that this approach may be biased towards women, and may lead to legal decisions that are not based on objective legal principles.

Judicial approaches to feminism have had a significant impact on the advancement of women's rights over the years. Different approaches have been used in different contexts, and each approach has its strengths and weaknesses. Formal equality, substantive equality, intersectionality, active engagement, and feminist judging are some of the judicial approaches to feminism that have been used in various contexts. As the struggle for gender equality continues, it is important to consider the ways in which judicial approaches can be used to promote gender equality and women's rights.

## V. CONCLUSION

Intersectional feminism in India and current judicial trends in constitutional interpretation are two important and interrelated topics that have significant implications for gender equality and women's rights in India. In this article, we will explore the intersectional feminist movement in India and examine how current judicial trends in constitutional interpretation are impacting the advancement of gender equality.

Intersectional feminism is a framework that recognizes that different forms of oppression, such as gender, race, class, caste, religion, and sexuality, intersect and compound to create unique experiences of discrimination and marginalization. In India, intersectional feminism has emerged as a response to the complex and intersectional nature of gender-based discrimination and violence. The feminist movement in India has a long history, dating back to the early 20th century when women began organizing against the colonial government's oppressive policies. Since then, the feminist movement in India has gone through several phases, each with its own unique challenges and achievements. Today, intersectional feminism in India is characterized by a diverse range of feminist voices, including those of Dalit feminists, Muslim feminists, LGBTQ+ activists, disability rights activists, and others.

One of the key issues that intersectional feminism in India has highlighted is the pervasive and systemic nature of gender-based violence. This includes violence against women in the private and public spheres, including sexual harassment, domestic violence, dowry-related violence, and honor killings. Intersectional feminists in India have also highlighted the ways in which gender intersects with other forms of oppression, such as caste and religion, to create unique experiences of violence and discrimination.

India's Constitution is one of the most progressive in the world when it comes to gender equality and women's rights. The Constitution guarantees equal rights and opportunities to all citizens, regardless of gender, and prohibits discrimination on the basis of sex. However, the effective implementation of these constitutional provisions has been a challenge, with women in India continuing to face significant barriers to equality and justice. In recent years, there has been a growing trend in India's judiciary towards a more activist and progressive interpretation of the Constitution, particularly in cases related to gender equality and women's rights. This has been driven in part by the efforts of intersectional feminists and other progressive activists who have advocated for a more transformative and rights-based approach to constitutional interpretation.

One notable example of this trend is the Supreme Court's landmark judgment in *Navtej Singh Johar v. Union of India*, which struck down Section 377 of the Indian Penal Code, a colonial-era law that criminalized homosexuality. In its judgment, the Supreme Court recognized the importance of individual autonomy and dignity in matters of sexuality, and held that discrimination on the basis of sexual orientation is a violation of the fundamental right to equality under the Constitution. Another example is the Supreme Court's judgment in *Vishaka v. State of Rajasthan*, which recognized sexual harassment in the workplace as a violation of the fundamental right to gender equality under the Constitution. The judgment laid down guidelines for preventing and redressing sexual harassment in the workplace, and has had a significant impact on the legal and social landscape of gender-based violence in India.

Intersectional feminism in India and current judicial trends in constitutional interpretation are two important and interrelated topics that are shaping the landscape of gender equality and women's rights in India. The intersectional feminist movement in India has highlighted the complex and intersectional nature of gender-based discrimination and violence, while current judicial trends in constitutional interpretation are providing a more transformative and rights-based approach to advancing gender equality. As the struggle for gender equality in India continues, it is important to continue advocating for a more intersectional and rights-based approach to constitutional interpretation, one that recognizes the unique experiences of discrimination and marginalization faced by different groups of women in India.