

Introducing Intersectionality

The law must understand the social to which it speaks and responds. Its ability to do justice depends on this understanding. While the law recognizes that there exists difference, the more attentive it is to how difference manifests itself or is lived, the better its capacity to live up to its own ideal and imagination. Difference is not always discreet and inequality can often be aggravated by the simultaneity of more than one form of difference that manifests as marginality. This is precisely what intersectionality equips us to pay attention to and address. There are many ways of writing the history of intersectionality but a broad consensus exists around Kimberle Crenshaw's work on anti-discrimination law in the US as pioneering the field. While a thin approach to intersectionality may choose to focus on an additive approach to forms of difference (caste +gender and so on), this course seeks to introduce students to a thicker conception of intersectionality that not only understands what happens when one lives a life where more than one difference manifests as marginality but also how already formed analytics may be insufficient to understand and address what happens when one experiences discrimination that does not separate what are imagined as discrete identities.

The course uses academic writing, legal texts, commentaries, personal narratives, fiction and cultural texts to understand how intersectionality affects our study of the law, advocacy, and activism; how the law, legal studies and legal practice is transformed by intersectionality; and how intersectionality challenges, resists, and reimagines legal normativity.

Objectives and Learning Outcomes:

1. To understand and engage with intersectionality – as analytic, theory and method – to reflect on structures of power and operations of norms that frustrate the struggle for justice, equality, and freedom.
2. To improve our knowledge of the experiences that inform the lives of people who are addressed by the law or come to it with their grievances.
3. To respect how our positionality affects our capacities, practices, and normative attachments.
4. To use intersectionality to better our engagement with existing laws to secure rights and freedoms of marginalized communities and in imagining laws and frameworks that are responsive to the complexity of the social.

Teaching and Evaluation Framework:

The teaching shall occur over two weeks starting late-November to mid-December.

Students are expected to read the assigned materials in advance of each class and be prepared to engage in a discussion of the readings. There are supplementary readings in some modules that shall be discussed in the lecture but are optional to be read. Evaluation in the course shall be based on your class participation and written work assigned to you during the course.

This evaluation break-up will be-

1. Class Participation - 20%

Each student is expected to submit a question in writing that arises from the readings before the class. The question can emerge from a particular provocation in the reading or from its relation to the theme under discussion.

2. Preliminary Research Presentation - 20%

Students would be expected to make a preliminary research presentation on their chosen term papers outlining their interests, tentative arguments and sources. This presentation is expected to open a space for conversations that would help peers and teachers to guide and sharpen the term paper the student will write.

3. Term Paper - 60%

Students are expected to write an essay of 2500 words in response to a topic to be shared in middle of the course.

Module One

Intersectionality: History, Analytic, Contestation

In this module we shall understand intersectionality through a genealogy of black feminist texts, texts in which similar conceptions emerge but that do not use the term intersectionality; texts in which the word is used explicitly, sometimes as a theory, other times as an analytic, or a method; and texts which sharpen our understanding of the life worlds intersectionality sought to address and their complexities. We shall also look at some critical engagements with intersectionality that help sharpen its capacity to do justice. Since its explicit use in Crenshaw's work, intersectionality has been used to address the law and this module would help establish and sediment that relationship. We will finally look at a place where the conversation on intersectionality can be found in Indian law.

- (i) Combahee River Collective, 'The Combahee River Collective Statement' in Barbara Smith (ed.) *Home Girls: A Black Feminist Anthology* (Kitchen Table: Women of Colour Press 1983) 272-283 at <http://circuitous.org/scraps/combahee.html>.
- (ii) Crenshaw, Kimberle, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) *The University of Chicago Legal Forum*, 139-167.
- (iii) Jasbir Puar, "'I would rather be a cyborg than a goddess": Becoming-Intersectional in Assemblage Theory' (2012) *philoSOPHIA*, State University of New York Press, 49-66.
- (iv) Protection of Children from Sexual Offences (POCSO) Act, 2012

Module Two

Analysing Normativity

This module allows us to understand intersectionality as generative of new knowledges and practices of the law by unsettling some of its normative assumptions. It is not sufficient just add intersectionality to legal realism and stir but to take its insights to imagine ways in which the law may better respond to the complexity of our life worlds, oppressive power structures and norms that incapacitate justice.

- (i) Patricia Williams, "The Brass Ring and the Deep Blue Sea,' 'Gilded Lilies and Liberal Guilt,' 'Crimes without Passion,' 'The Obliging Shell,' 'On Being

the Object of Property,' *Alchemy of Race and Rights* (Harvard University Press 1992), 3-43, 80-97, 133-145, 216-238.

- (ii) Judith Butler, 'Endangered/Endangering: Schematic Racism and White Paranoia' in Robert Goodling-Williams (ed.) *Reading Rodney King/reading urban uprising* (Routledge 1993) 15-23.
- (iii) Leigh Gilmore, 'Anita Hill, Clarence Thomas, and the Search for Adequate Witness,' *Tainted Witness* (Columbia University Press, 2017), 27-58.

Supplementary reading:

- i. Flavia Agnes, 'To Whom Do Experts Testify? Ideological Challenges of Feminist Jurisprudence' (2005) Vol. 40(18) *Economic and Political Weekly* 1859-1866.
- ii. Joseph J. Fischel and Hilary R. O'Connell, 'Disabling Consent, or Reconstructing Sexual Autonomy' (2015) Vol. 30 *Columbia Journal of Gender & Law* 428-528.

Module Three

Intersectionality in India

In this module, we grapple with how intersectionality might illuminate our context in India, not just in the times when more than one marginality leads to an aggravated situation of inequality or injustice but how intersectionality might help us better understand what are hitherto imagined as discrete categories - caste, gender, disability, sexuality - as intertwined and co-constitutive. We will figure what intersectionality does to our analysis of each of these categories - what happens to sexuality when it is understood as a function of caste? How do we rethink disability as engendering? And so on. The module seeks to bring these insights to critically analyse legal texts like acts and judgments. Even though the module is divided by analytic frames and forms of oppression, the module doesn't imagine them as discrete. Each module will emphasise how forms of oppression are related and cannot be severed from each other.

- a. Caste: Historically, intersectionality has been used mostly by dalit women and dalit feminist collectives. In this part of the module, we shall engage with scholarship on caste to not only understand graded inequality in India but also what it tells us about gender and sexuality.

- (i) B.R. Ambedkar, *Castes in India: Their Mechanism, Genesis and Development* (Columbia University 1919)
- (ii) Jenny Rowena, *The Dirt in Dirty Picture*, Round Table India , October 8, 2012.
- (iii) Urmila Pawar, 'Aaidan,' in Sharmila Rege ed. *Writing Caste/Writing Gender* (Zubaan, 2006) 345-416.

Supplementary Reading:

- i. Aniket Jaaware, *Practicing Caste: On Touching and Not Touching* (Fordham University Press 2018).
 - ii. V Geetha, 'A Part Apart: Dr. Ambedkar's Indictment of the Hindu Social Order' in Kalpana Kannabiran (ed.) in *Violence Studies* (Oxford University Press 2016).
- b. Gender and Sexuality: Using the insights of the conversations on caste, this module would analyse the position of trans persons and communities in India. We shall look at contradictions of legal legibility and the demand for horizontal reservations to qualify the ways intersectionality may be put to work in India.
- (i) *National Legal Services Authority (NALSA) v. Union of India*, AIR 2014 SC 1863.
 - (ii) *Arun Kumar & Anr v The Inspector General of Registration & Ors.*, WP (MD) No. 4125 of 2019 dated 22 April 2019.

Supplementary Reading:

- i. Aniruddha Dutta, 'Contradictory Tendencies: The Supreme Court's NALSA Judgment on Transgender Recognition and Rights' (2014) Vol.5 *Journal of Indian Law and Society* 225-236.
 - ii. Gee Imaan Semmalar and Karthik Bittu Kondaiah, Interview with Living Smile Vidya, (Trans)gender and caste lived experience – Transphobia as a form of Brahminism, (26 January 2013).
- c. Disability: In this module we would apply our learnings from the previous modules to read a legal text via intersectionality. In this way, the student is encouraged to examine seemingly neutral and universal texts for their normative assumptions, construction of legal subjects and unavowed exclusions.

- (i) Ghai, Anita, 'At the Periphery: Marginalised Disabled Lives,' and 'Politics of Identity: Oppression and Resistance' in *Rethinking Disability in India* (Routledge 2015). 101-165, 261-297.
- (ii) Rights of Persons with Disabilities Act, 2016
- (iii) Intersectionality: A Report on Discrimination based on Caste with the intersections of Sex, Gender Identity and Disability in South India' (08 Aug 2019) <<https://clpr.org.in/wp-content/uploads/2019/08/Intersectionality-A-Report-on-Discrimination-based-on-Caste-with-the-intersections-of-Sex-Gender-Identity-and-Disability-in-Karnataka-Andhra-Pradesh-Tamil-Nadu-and-Kerala.pdf>>

Module 4

Intersectionality: Paradoxes and Pulls

Some people and identities fall to the wayside even with the best of intentions. This module will look at the construction of legal subjects and resistant subjectivity, its interaction with caste, and the irreconcilability of some political articulations. It is not easy to apply to intersectionality to legal frames and arrive at seamless resolutions of social conflicts and inequality. Sometimes intersectionality pulls us from an easy rights-based approach to one that recognizes how social positions lead to seemingly irreconcilable demands and that is where law must do impossible justice. The emphasis is to debate what the maps of justice look like when there is no consensus and universality seems fraught by positions of participants. How does the court do its work then? How is the Constitution to be interpreted? Is it only a matter of taking sides? We see these debates as further invitation to understand the complexity of our location and the dilemmas of law and social transformation.

- (i) *Navtej Johar v. Union of India*, (2018) 1 SCC 791.
- (ii) Akshay khanna, 'The Social Lives of 377,' 'See You in Court,' 'The Cleavage on the Queer Body' *Sexualness*, (New Text: 2016), 156-327
- (iii) Dhruvo Jyoti, 'A Letter to My Lover(s),' in *Eleven Ways to Love* (Penguin Random House: 2018) 3-30.
- (iv) *Indian Hotel and Restaurant Association & Anr. v. State of Maharashtra & Ors.* WP (Civil) No. 576 of 2016 dated 17 January 2019 and the Dalit Feminist critique
- (v) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
- (vi) The Devadasi Prevention of dedication laws

Module 5

Anti Discrimination and Equality Law in India

We bring these conversations to a close by bringing anti-discrimination work and intersectionality in conversation to discuss an equality bill that might understand the constitutive nature of different structures of power and norms and address better cases of aggravated marginalization. Is intersectionality merely an analytic category or can intersectionality be put to work to imagine and make a comprehensive law to address the forms of inequality and oppression in India?

- (i) Tarunabh Khaitan, 'The Problem,' 'The Essence of Discrimination Law,' 'The Architecture of Discrimination Law,' 'The Point of Discrimination Law,' in *A Theory of Discrimination Law* (Oxford University Press 2018) 1-17, 23-44, 45-88, 117-139.
- (ii) The Equality and Anti-Discrimination Bill, 2016
- (iii) The Need for a Single Equality Law in India, Centre for Law and Policy Research
- (iv) The Equality Bill, 2019