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# The Theory

## Outlining the Intersectional Framework

### Introduction

The first of three questions that this book sets out to answer is what exactly is intersectionality or the idea that forms the kernel of the category of intersectional discrimination? This chapter is concerned with that question. It outlines the framework of intersectionality, which serves as the backbone of the project of redressing intersectional discrimination because it tells us what it is about this category of discrimination that we want redressed through law. It thus prepares the ground for answering the next two questions about how this understanding of intersectional discrimination differs from other categories of discrimination and how it can be accommodated in discrimination law practice.

The present chapter aims to do three things: delineate, defend, and apply the principal strands of the framework of intersectional theory and praxis. Section 1 identifies five strands in particular: the attention to both sameness and difference (section 1.1), in relation to patterns of group disadvantage (section 1.2), considered as a whole or with integrity (section 1.3), in their full context (section 1.4), with the purpose of furthering broadly conceived and transformative aims (section 1.5). Each of these has been present, emphasized, and developed in intersectionality thinking over the years. I argue that together they represent the intellectual core of intersectionality, and in turn the core of the category of intersectional discrimination is defined by it.

Section 2 responds to some of the key critiques of intersectionality theory that have emerged in the last three decades. Prominent amongst these is the reliance of intersectionality theory on identity categories and identity politics. Section 2.1 explains this reliance as reflexive and thus critical of its limitations while enabling the potential for transformation. Section 2.2 shows that intersectionality's reliance on identity categories is one shared with discrimination law and hence not utterly out of kilter. An understanding of intersectionality critiques and the responses to them clarifies each of the strands further. It confirms the continuing relevance and mettle of intersectionality in analysing the complexity of disadvantage in the world and particularly in discrimination law. Section 3 extends the framework to the Dalit feminist discourse. Its relevance in explaining the disadvantage suffered on the basis of caste and sex in a wholly different context—of Dalit women

in India—confirms the normative strength and global appeal of intersectionality beyond its paradigmatic case of Black women in the United States.

## 1. The Idea

Human lives are complex. Everyone has an ethnicity, gender, sexual orientation, age, marital status, and national or social origin; some are disabled, have political opinions or religious beliefs, are pregnant, or have parental responsibilities. All of these identities affect us in different ways and in the way we experience the world. The absence of disability helps some to navigate an able-bodied world efficiently. Belonging to a dominant race helps evade the negative stereotypes and prejudices suffered by racial and ethnic minorities. Practising a dominant religion helps people live undisrupted lives in a society which accommodates their preferences for working hours, holidays, grooming, clothing, and diet. Being male allows patriarchal privileges within structures of domination which have been conceived to subordinate and exclude women. Heteronormative assumptions similarly allow straight men and women to ‘fit in’ and be perceived as part of the mainstream culture. Straying from any of these positions of power brings well-known disadvantages associated with racism, sexism, homophobia, transphobia, ageism, ableism, etc. The anti-racism movement, feminism, LGBTQ advocacy, and disability activism have thus grown to resist the everyday injustices inflicted on disadvantaged groups and individuals around the world.

But human lives can be more complex still. Some people may not just belong to one of these disadvantaged groups but several of them at once. Those who are disabled can also be Black; those who are disabled and Black can be Muslims; some of these Black Muslims who are disabled will be women; and some of these Black Muslim women who are disabled can be gay. Disadvantage associated with each of these groups, and individuals belonging to them, will no longer be defined along a single categorial axis of racism, sexism, homophobia, transphobia, or ableism alone. The positions of these groups may represent a much more complex picture of disadvantage, caught between the throes of many movements at once.

Intersectionality is about cutting a wedge into this complexity. It helps understand the structural and dynamic consequences of interaction between multiple forms of disadvantage based on race, sex, gender, disability, class, age, caste, religion, sexual orientation, region, etc. In helping to understand this complexity, it opens up ways of addressing the disadvantage associated with it.

This basic idea of navigating complexity has itself developed into a complex body of intellectual thought and praxis. Intersectionality has been unmissable in the public discourse: from frequent references to intersectionality by the 2016 US presidential candidates Bernie Sanders and Hilary Clinton, its mounting relevance in the headscarf controversy embroiling Muslim women in Europe, and its

repeated invocation in the blazing Rhodes Must Fall campus movement at South African universities; to the swathe of signage embracing intersectionality during the recent Women's Marches around the world, its omnipresence in the #MeToo and #TimesUp movements, and its ubiquitous pop culture presence popularized by celebrities like Beyoncé and activists like Malala Yousafzai and adopted by on-line denizens alike. Movements around the world are animated with intersectional ideas even where the locution itself is absent. The Black feminist struggle in Brazil and Dalit women's resistance in India both work with intersectional frames in fighting multiple oppressions of race, caste, sex, gender, and class. The organization of microfinance and microcredit for rural women in the global south has similarly become increasingly attentive to intersectionality. Intersectional overtones have defined the discussions around the global refugee crisis, paying specific attention to the persecution and plight of women and children, disabled persons, and sexual minorities. Local and specific sites for applying intersectionality in practice have thus proliferated globally, elevating intersectionality to a level of international prominence.

Meanwhile, the intellectual project of intersectionality has also continued to flourish. Google Scholar alone returns tens of thousands of articles on intersectionality. But nowhere are its involute workings clearer and more consolidated than at its source in Kimberlé Williams Crenshaw's 1989 article where the term 'intersectionality' was first introduced.<sup>1</sup> Crenshaw used intersectionality to explain the disadvantage suffered by Black women on the basis of their race and sex. She showed how this combined form of disadvantage was similar to both the disadvantage suffered by white women on the basis of their sex and the disadvantage suffered by Black men on the basis of their race, as well as different from these forms of disadvantage, as disadvantage suffered by Black women *as Black women* on the basis of their race and sex both. The complexity of such disadvantage was lost on the discourses of three fields—discrimination law, feminism, and the civil rights movement in the US. All of them, Crenshaw argued, operated along a single categorial axis of either race or sex, thereby protecting only those who were disadvantaged *but for* their race or sex, viz. Black men and white women. They excluded from protection Black women, whose position of disadvantage was defined not by race or sex alone but by both of them at the same time. Crenshaw thus exhorted discrimination lawyers, feminists, and civil rights campaigners alike to rethink and recast the established analytical frames of understanding and redressing discrimination so that they included intersectionality.

The intellectual trajectory of intersectionality extends both backwards and forwards from Crenshaw's first intervention in 1989. Crenshaw drew from over

<sup>1</sup> Kimberlé W Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) University of Chicago Legal Forum 139 (hereafter Crenshaw, 'Demarginalizing').

a century's worth of rich Black feminist thought and those after Crenshaw have continued to draw on Crenshaw as well as other seminal intersectionalists, including Patricia Hill Collins, Angela Harris, Adrien Katherine Wing, Mari Matsuda, Gloria Anzaldúa, Richard Delgado, Patricia Williams, and others, to develop intersectionality in diverse contexts. Initially conceived as a Black feminist critique, the theoretical engagements with intersectionality now go beyond its disciplinary origins in Critical Race Feminism, Critical Race Theory, Critical Legal Studies (CLS), and feminist and postmodern jurisprudence and into literature, sociology, anthropology, gender studies, economics, history, psychology, political science, and political theory.<sup>2</sup> Its beneficiaries have multiplied beyond women of colour in the US, to Black women in Latin America, indigenous women in Canada, Roma women in Europe, and Muslim women, disabled women, lesbians, and transwomen around the world.<sup>3</sup> Intersectionality has thus transformed into a truly representative form of feminism capable of speaking to myriad systems of power and structures of domination in diverse contexts. It has also been used for intersectional groups beyond the intersections with sex to explicate the disadvantage suffered by, for example, disabled LGBTQ.<sup>4</sup> Improvisations to intersectionality have been offered in the forms of 'configurations',<sup>5</sup> 'assemblages',<sup>6</sup> 'cosynthesis',<sup>7</sup> 'symbiosis',<sup>8</sup> 'social dynamics',<sup>9</sup> 'interactions',<sup>10</sup> 'multidimensionality',<sup>11</sup> and

<sup>2</sup> For an exposition of the mixed origins and shared history of these discourses, see Adrien K Wing (ed), *Critical Race Feminism: A Reader* (2nd edn, NYUP 2003). See also Patrick R Grzanka (ed), *Intersectionality: A Foundations and Frontiers Reader* (Westview 2014) (hereafter Grzanka (ed), *Intersectionality*); Nina Lykke, *Feminist Studies: A Guide to Intersectional Theory, Methodology and Writing* (Routledge 2010); Yvette Murphy, Valerie Hunt, Anna M Zajicek, Adele N Norris, and Leah Hamilton, *Incorporating Intersectionality in Social Work Practice, Research, Policy, and Education* (NASWP 2009).

<sup>3</sup> R Aida Hernández Castillo, 'The Emergence of Indigenous Feminism in Latin America' (2010) 35 *Signs* 539; Patricia Monture-Angus, *Thunder in My Soul: A Mohawk Woman Speaks* (Fernwood 1995) (hereafter Monture-Angus, *Thunder in My Soul*); Elvia R Arriola, 'Gendered Inequality: Lesbians, Gays and Feminist Legal Theory' (1994) 9 *Berkeley Women's Law Journal* 103; Mary Eaton, 'At the Intersection of Gender and Sexual Orientation: Towards a Lesbian Jurisprudence' (1994) 3 *Southern California Review of Law and Women's Studies* 183.

<sup>4</sup> Kate Caldwell, 'We Exist: Intersectional In/Visibility in Bisexuality & Disability' (2010) 30 *Disability Studies Quarterly*; Robert McRuer, 'Compulsory Able-Bodiedness and Queer/Disabled Existence' in Lennard J Davis (ed), *The Disability Studies Reader* (2nd edn, Routledge 2006).

<sup>5</sup> Kum-Kum Bhavnani and Krista Bywater, 'Dancing on the Edge: Women, Culture, and a Passion for Change' in Kum-Kum Bhavnani, John Foran, Priya A Kurian, and Debashish Munshi (eds), *In on the Edges of Development: Cultural Interventions* (Routledge 2009).

<sup>6</sup> Jasbir K Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (DUP 2007).

<sup>7</sup> Peter Kwan, 'Complicity and Complexity: Cosynthesis and Praxis' (2000) 49 *DePaul Law Review* 673.

<sup>8</sup> Nancy Ehrenreich, 'Subordination and Symbiosis: Mechanisms of Mutual Support between Subordinating Systems' (2002) 71 *UMKC Law Review* 251.

<sup>9</sup> Davina Cooper, 'Intersectional Travel through Everyday Utopias: The Difference Sexual and Economic Dynamics Make' in Emily Grabham, Davina Cooper, Jane Krishnadas, and Didi Herman (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location* (Routledge Cavendish 2009).

<sup>10</sup> Rita Kaur Dhamoon, 'Considerations on Mainstreaming Intersectionality' (2011) 64 *Political Research Quarterly* 230.

<sup>11</sup> Darren Hutchinson, 'Identity Crisis: Intersectionality, Multidimensionality, and the Development of an Adequate Theory of Subordination' (2000) 6 *Michigan Journal of Race and Law* 285.

'interconnectivity'<sup>12</sup> theories. From the basic idea of understanding the complexity of disadvantage associated with multiple identities, intersectionality has thus diversified and developed into 'a burgeoning field of intersectional studies' of its own.<sup>13</sup>

So, before turning to understand the complexity of disadvantage through intersectionality, it is necessary to understand the complexity of the theory and practice of intersectionality itself. What is the core of intersectionality which binds decades of developments in the field? The rest of this section is dedicated to answering this question and distilling the core from the voluminous and insightful scholarship on intersectionality. It is useful to iterate the findings here. I argue that intersectionality is composed of five principal strands: first, it is concerned with tracing both **sameness and difference** in experiences based on multiple group identities; secondly, it is concerned with tracing the sameness and difference in **patterns of group disadvantage** understood broadly in terms of subordination, marginalization, violence, disempowerment, deprivation, exploitation, and all other forms of disadvantage suffered by social groups; thirdly, in order to make sense of these same and different patterns of group disadvantage they must be considered as a whole, namely with **integrity**; fourthly, intersectionality can only be appreciated in its full socio-economic, cultural, and political **context** that shapes people's identities and patterns of group disadvantage associated with them; and lastly, the purpose of this intersectional analysis is to further broadly conceived **transformative** aims which remove, rectify, and reform the disadvantage suffered by intersectional groups.

This is no more a definite account of intersectionality than Crenshaw's original postulation, which was meant to be 'provisional'.<sup>14</sup> Intersectionality literature is too vast and variously applied to be simply 'defined' in a single stroke. Like other academic work on theories of justice, theories of human rights, theories of discrimination law etc., intersectionality is a broad church and has many theoretical or justificatory accounts which have contributed to the development of the field. This is merely one such account from the point of view of discrimination law. It unpicks the strands that have been central to intersectionality in the way it was initially set out by Crenshaw and has been developed by others over the last thirty years. Individually or together, the strands do not represent an exhaustive case of intersectionality. But they do present some of the chief features developed in intersectionality literature, which are in turn salient in developing an account of intersectional discrimination in this book. For this purpose, then, the claim is that:

<sup>12</sup> Francisco Valdes, 'Sex and Race in Queer Legal Culture: Ruminations on Identities & Inter-Connectivities' (1995) 5 Southern California Law Review and Women's Studies 25.

<sup>13</sup> Sumi Cho, Kimberlé W Crenshaw, and Leslie McCall, 'Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis' (2013) 38 Signs 785 (hereafter Cho, Crenshaw, and McCall, 'Toward a Field of Intersectionality Studies').

<sup>14</sup> Kimberlé W Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43 Stanford Law Review 1241, 1244–45 n 9 (hereafter Crenshaw, 'Mapping').

Intersectionality illuminates the dynamic of sameness and difference in patterns of group disadvantage based on multiple identities understood as a whole, and in their full and relevant context, with the purpose of redressing and transforming them.

I elaborate on how each of the strands contributes to the idea of intersectionality below.

## 1.1 Sameness and Difference

Crenshaw set out to do two things in her 1989 piece: first, to explain what Black women's disadvantage or intersectionality was all about; and secondly, to show how their disadvantage was left by the wayside of dominant discourses in discrimination law, feminism, and the civil rights movement. The first inquiry was a precursor to the second. So, in order to critique the normative vision of discrimination law, Crenshaw had to explicate the normative vision of intersectionality itself. Three cases helped Crenshaw make this case: *DeGraffenreid v General Motors*,<sup>15</sup> *Payne v Travenol*,<sup>16</sup> and *Moore v Hughes*.<sup>17</sup>

In *DeGraffenreid*, Black female employees of General Motors challenged the 'last hired, first fired' lay off policy as discriminating against them on the basis of both their race and sex. The United States District Court of Missouri summarily dismissed the possibility that claims could be based upon two grounds. It interpreted the claim based on both race and sex as a demand for recognizing a 'new special sub-category' or 'special class' for the grant of a 'new "super-remedy"'<sup>18</sup> beyond the contours of Title VII of the Civil Rights Act 1964, which prohibits discrimination on the basis of race, colour, religion, sex, or national origin. It concluded that: 'this lawsuit must be examined to see if it states a cause of action for race discrimination, sex discrimination, or alternatively either, but not a combination of both'.<sup>19</sup> Thus, according to the Court, Black women could be protected only to the extent that their experience coincided with either Black men or white women, but they had no cause of action of their own.

While General Motors had not hired Black women before 1964, it had hired white women for the same positions. The favourable hiring statistics for white women apparently negated any basis for indirect sex discrimination against Black women. Similarly, the Court dismissed the possibility of race discrimination

<sup>15</sup> *DeGraffenreid v General Motors* 413 F Supp 142 (1976) (United States District Court, Eastern District of Missouri) (hereafter *DeGraffenreid*).

<sup>16</sup> 673 F 2d 798 (5th Cir 1982) (USCA) (hereafter *Travenol*).

<sup>17</sup> *Moore v Hughes Helicopters, Inc* 708 F 2d 475 (9th Cir 1983) (USCA) (hereafter *Hughes*).

<sup>18</sup> *DeGraffenreid* (n 15) 143.

<sup>19</sup> *Ibid*.

because it was seen as creating 'a new classification of "Black women"' with a greater standing than Black men under Title VII.<sup>20</sup> The unique disadvantages suffered by Black women thus fell through the cracks of both sex and race discrimination, defined through the experiences of white women and Black men respectively.

In *Travenol*, Payne, a Black woman, challenged a host of Travenol's employment practices as being discriminatory on the basis of race and sex. She was certified to claim on behalf of the class of Black women and her claim was allowed in part. Payne challenged the decision, including the relief, on the basis that Black males were erroneously excluded from the class certified by the district court. The concerned Rule 23(a) of the Federal Rules of Civil Procedure provided that: 'the representative parties will fairly and adequately protect the interests of the class.' In reaffirming its corollary that 'a class representative may not head a class including persons whose interests substantially conflict with his or her own,'<sup>21</sup> the Fifth Circuit Appeals Court dismissed the appeal upholding the district court opinion that a claim of sex discrimination necessarily denoted a conflict between men and women, notwithstanding their race. The Court denied the representation of Black males through Black females, and barred the possibility of Black females claiming for all Blacks as such. It failed to see Black women as capable of representing Blacks, just as Black men could represent all Blacks, including Black women. Even though the *Travenol* Court allowed Black women to claim as *Black women*, it isolated Black women's experiences into an uninteractive category of discrimination that had nothing in common with Black men's experiences of racial discrimination.

In the same vein, the case of *Hughes* revealed a judicial unwillingness to certify the class of Black women as representing all women. Tommie Moore, a Black female employee, had brought a complaint against Hughes Helicopters Inc, a manufacturer of commercial and military helicopters, for discriminating against Black females in the selection of supervisory and upper-level craft positions. The Court disagreed that Black women could represent all women since *only* Black women were potentially discriminated against. While *Travenol* forbade Black women from claiming on behalf of all Blacks, *Hughes* foreclosed the possibility of Black women claiming for all women. According to the Court, the claim did not concern the interests of women who were not Black, namely white women. Thus, it dismissed the lived realities of Black women's experiences as women's experiences. In doing so, the Court overlooked that Black women's experiences of sex discrimination could have been similar to the experiences of white women, or that the category of sex discrimination simply included all women irrespective of their race.

So, what is it that the courts missed in *DeGraffenreid*, *Travenol*, and *Hughes*? They missed the nature of Black women's disadvantage at the intersection of race and sex. Their disadvantage was one that was both similar to the disadvantage

<sup>20</sup> Ibid 145.

<sup>21</sup> *Travenol* (n 16) 810.

suffered by Black men and white women since they were both Black like Black men and women like white women, but also different in terms of being both Black and women at the same time and thus suffering disadvantage not just as Blacks or women alone but *as Black women*. In *DeGraffenreid* the Court denied that there was anything different about Black women as compared to white women and Black men, while in *Travenol* and *Hughes* the courts denied that Black women's disadvantage could be the same as the disadvantage suffered by white women and Black men. The lack of appreciation of this dynamic of sameness and difference in defining discrimination against Black women became the centrepiece of Crenshaw's critique and thus of intersectionality theory.

Though Crenshaw made her case with reference to legal claims brought under US discrimination law in the 1970s and 1980s, the lesson of focussing on sameness and difference at the same time appears in the Black feminist struggle of several generations prior to that. The attention to Black women's experiences within broader systems of disadvantage like racism and sexism, as well as their unique disadvantages suffered within these systems, has characterized Black feminist thought for almost two centuries. Sojourner Truth's raging speech in 1851 where she asked the epithetic Black feminist question 'Ain't I a Woman?'<sup>22</sup> and Anna Julia Cooper's appeal to the civil rights movement in 1892: 'Only if the Black women can say, when and where I enter . . . then and there the whole Negro race enters with me',<sup>23</sup> mark the early efforts for understanding Black women as having same and different experiences as women and Blacks generally. Ange-Marie Hancock in her recent work, *An Intellectual History of Intersectionality*, traces back this thought further to Maria Miller Stewart's *Religion and the Pure Principles of Morality* published in 1831 and, later, Harriet Jacobs's *Incidents in the Life of a Slave Girl* published in 1860.<sup>24</sup> Both Stewart and Jacob drew upon the experiences of Black women to critique slavery in broad terms as well as, in particular, the sexual exploitation of Black women within it. They showed how Black women not only suffered from state-sanctioned racism and slavery, and exploitation at the hands of their female masters, including sexual exploitation by white men, but also violence by Black men within their communities. Thus, while Black women suffered from patriarchal structures which inflicted white women (lower level of employment and wages, gender bias, sexual exploitation by men), and racial domination which subjugated Black men (slavery, segregation, lower level of employment and wages, racial stereotypes), they simultaneously also suffered racial and patriarchal violence at the hands of white women and Black men respectively. The former made their experience akin to the

<sup>22</sup> Sojourner Truth, 'Woman's Rights' in Beverly Guy-Sheftall (ed), *Words of Fire: An Anthology of African-American Feminist Thought* (New Press 1995) 36.

<sup>23</sup> Anna Julia Cooper, *A Voice from the South* (OUP 1988) 31.

<sup>24</sup> Ange-Marie Hancock, *An Intellectual History of Intersectionality* (OUP 2016) (hereafter Hancock, *An Intellectual History*).



experiences of white women based on their sex and Black men based on their race; the latter made their experience distinct in their own right.

The dynamic of sameness and difference has been reiterated in scholarship as the key to understanding the nature of discrimination based on multiple and interlocking systems of disadvantage. Barbara Smith declared this dynamic representing the ‘simultaneity of oppressions’ to be ‘one of the most significant ideological contributions of Black feminist thought’ as early as 1983.<sup>25</sup> Similarly, Crenshaw, in her survey of the field with Sumi Cho and Leslie McCall, notes that the ‘insistence on examining the dynamics of difference and sameness’ has been the running thread across varied disciplines and contexts in which intersectionality has been applied.<sup>26</sup> Vivian M May relates to this dynamic as one of the most basic takeaways from intersectionality throughout her work in *Pursuing Intersectionality, Unsettling Dominant Imaginaries*.<sup>27</sup> Jennifer Nash describes it as ‘intersectionality’s attention to difference while also strategically mobilizing the language of commonality’.<sup>28</sup>

What is interesting to note here, before we part with this idea, is that the simultaneous attention to sameness and difference is not unique to intersectionality but one known to discrimination law as well. Benjamin Eidelson alludes to this particular strand, when he defines wrongful discrimination, in his essay on ‘Treating People as Individuals’.<sup>29</sup> He explains that one dimension of discrimination harm involves failing to treat people as individuals in two senses—first, in a way which recognizes that they share their individual-ness in being human; and second, in that they are both distinct and unique as individuals. Individuals are thus same and different at the same time. Failing to treat them as the same and unique on the basis of their membership in disadvantaged groups is what constitutes, for Eidelson, the wrong of discrimination. He recognizes that other paradigmatic forms of wrongful discrimination include: (i) ‘those [which] express a kind of disrespect or contempt for the equal worth of those who are disfavoured’; (ii) those ‘allocat[ing] opportunities unfairly, and, in doing so, entrench[ing] status hierarchies that warp our social structures’; (iii) that which can ‘humiliate, stigmatize and demean’.<sup>30</sup> But Eidelson chooses to focus instead on what he believes is a hitherto neglected aspect in the moral case against discrimination.

Discrimination law and intersectionality theory thus coincide in their emphasis on the dynamic of sameness and difference as defining a particular kind of

<sup>25</sup> Barbara Smith (ed), *Home Girls: A Black Feminist Anthology* (RUP 2000) xxxiv (hereafter Smith (ed), *Home Girls*).

<sup>26</sup> Cho, Crenshaw, and McCall, ‘Toward a Field of Intersectionality Studies’ (n 13) 787.

<sup>27</sup> Vivian M May, *Pursuing Intersectionality: Unsettling Dominant Imaginaries* (Routledge 2015) 37, 70–71 (hereafter May, *Pursuing Intersectionality*).

<sup>28</sup> Jennifer C Nash, ‘Re-thinking Intersectionality’ (2008) 89 *Feminist Review* 1, 4 (hereafter Nash, ‘Re-thinking Intersectionality’).

<sup>29</sup> Benjamin Eidelson, ‘Treating People as Individuals’ in Deborah Hellman and Sophia Moreau (eds), *Philosophical Foundations of Discrimination Law* (OUP 2013) 203.

<sup>30</sup> *Ibid* 203, 205.

disadvantage that people suffer, based on their identity categories or grounds of discrimination. When multiple identities intersect to yield this dynamic, we can call it a case of intersectional discrimination.

## 1.2 Patterns of Group Disadvantage

When people belong to multiple disadvantaged groups, the disadvantage they suffer is intersectional in nature, that is, it is simultaneously both the same as and different from disadvantage suffered by members of the groups. Having established that identities intersect and result in a distinct form of disadvantage, intersectionality proceeds to answer what the sameness and difference in disadvantage actually refers or relates to.

The theme which animates the dynamic of sameness and difference, borrowing from O'Regan J, is that of 'patterns of group disadvantage'.<sup>31</sup> The phrase requires some unpacking. First of all, intersectionality conceives of 'disadvantage' broadly, including every kind of harm, oppression, powerlessness, subordination, marginalization, deprivation, domination, and violence. Moreover, the disadvantage is defined not by isolated or stray incidents but by its systemic or structural nature. It represents a pattern of historic motifs of disadvantage which have been entrenched over time. Such disadvantage is also not personally directed towards random individuals but suffered by individuals because of their membership in a social group. So, the focus is on disadvantage suffered by groups like women, disabled, Blacks, and gays, defined by their gender, disability, race, and sexual orientation, rather than individual choices or qualities viz. membership of a society, readership of a national daily, character, strength, morality etc. Furthermore, groups which matter are those which are relatively and substantially more disadvantaged (women, disabled persons, Blacks, gays etc.) compared to groups which are privileged (men, non-disabled people, white people, heterosexual people etc.).<sup>32</sup>

Thus, intersectionality, like discrimination law, is concerned with 'discrimination against people who are members of disfavoured groups [which] can lead to patterns of group disadvantage and harm'.<sup>33</sup> The difference lies in the fact that these patterns of group disadvantage, in the case of intersectional discrimination, are both simultaneously similar and dissimilar to patterns of group disadvantage associated with individual groups and also individual experiences within those groups. In this way, intersectional disadvantage is defined in terms of patterns of inter-group and intra-group disadvantage, which embody different kinds of substantive

<sup>31</sup> *Brink v Kitshoff* NO 1996 (4) SA 197 (SACC) (hereafter *Brink*).

<sup>32</sup> Sandra Fredman, *Discrimination Law* (2nd edn, OUP 2011) 26–28, 138–39 (hereafter *Fredman, Discrimination Law*); Tarunabh Khaitan, *A Theory of Discrimination Law* (OUP 2015) ch 2 (hereafter *Khaitan, A Theory of Discrimination Law*).

<sup>33</sup> *Brink* (n 31) [42] (O'Regan J).

harm in terms of oppression, powerlessness, subordination, marginalization, deprivation, domination, and violence. The dynamic of sameness and difference matters because it ultimately speaks to these patterns of group disadvantage suffered by those belonging to multiple disadvantaged groups.

Intersectionality's chief purveyors have maintained this emphasis on patterns of group disadvantage faithfully. Crenshaw used intersectionality to study similar and different experiences of violence against Black women. Far from looking for intentional harm perpetuated by single individuals, Crenshaw focussed on 'structures of domination', 'patterns of social power', and 'systems of subordination', which interacted with 'preexisting vulnerabilities' to reproduce Black women's disempowerment.<sup>34</sup> Crenshaw thus relied on identity politics to reveal how racism and sexism produced structural, political, and representational forms of violence against women of colour. Similarly, Patricia Hill Collins developed the 'matrix of domination' to understand how multiple forms of oppression are organized.<sup>35</sup> She identified four distinct but interrelated forms of oppressions as: structural, hegemonic, disciplinary, and interpersonal. Collins reshaped the thinking of systems of power as operating independently to one which always operated in an interlocking manner. Thus, oppressive systems of racism, sexism, homophobia, transphobia, ableism, ageism etc., are to be considered not as independent forms of oppression but in terms of their relationships with one another at every level of social organization, institutionally or interpersonally. bell hooks called this a 'politic of domination', which paid attention not only to the feminist movement's resistance to sexist domination but also to the racial, material, and cultural domination of all women.<sup>36</sup>

Even Adrien Katharine Wing, Mari Matsuda, and Angela Harris' highly ontological interventions querying the 'multiple consciousness' of those belonging to multiple identity-categories were concerned with consciousness of oppression in the first place: of awareness of concrete injustices suffered by those belonging to many disadvantaged groups at once. For Wing, once multiple consciousness—or intersectionality's dynamic of sameness and difference—is recognized, it is important to move on to recognizing its nature as residing in 'multiple layers of oppression'.<sup>37</sup> Similarly for Matsuda, what her jurisprudential method of multiple consciousness brought to the table was an appreciation of the 'reality and detail of oppression'.<sup>38</sup> Likewise, Harris argued for using multiple consciousness 'to describe

<sup>34</sup> Crenshaw, 'Mapping' (n 14) 1243, 1249, 1265, 1293.

<sup>35</sup> Patricia Hill Collins, *Black Feminist Thought* (2nd edn, Routledge 2009) 21 (hereafter Collins, *Black Feminist Thought*).

<sup>36</sup> bell hooks, *Feminist Theory: From Margin to Center* (2nd edn, SEP 2000) ch 2 (hereafter hooks, *Feminist Theory*).

<sup>37</sup> Adrien K Wing, 'Brief Reflections toward a Multiplicative Theory and Praxis of Being' (1991) 6 *Berkley Women's Law Journal* 181, 194, 196 (hereafter Wing, 'Brief Reflections').

<sup>38</sup> Mari Matsuda, 'When the First Quail Calls: Multiple Consciousness as Jurisprudential Method' (1989) 11 *Women's Rights Law Reporter* 7, 9.

a world in which people are not oppressed only or primarily on the basis of gender, but also on the bases of race, class, sexual orientation and other categories in inextricable webs.<sup>39</sup>

The inextricability of these patterns of group disadvantage alerts us to two further things—that these patterns are mutually reinforcing, and, hence, that there is no hierarchy between them. The point about mutual reinforcement undercuts imagining racism, sexism, homophobia, transphobia, ableism, cultural supremacy etc. as separate spheres of disadvantage at all. As Devon W Carbado and Mitu Gulati observe: ‘Fundamental to Intersectionality Theory [sic] is the understanding that race and gender are interconnected, and as a result, they do not exist as disaggregated identities.’<sup>40</sup> Intersectionality decries the idea of disaggregated identities and instead stresses their co-existing and co-constitutive nature, such that disadvantage associated with one could not be defined in isolation from other forms of disadvantage. This is true for those who are multiply disadvantaged as well as those who are not. For instance, Black women’s disadvantage is one defined by similar and different patterns of group disadvantage based on their race, sex, and class. But their experience is also defined, say for those who are straight and non-disabled, by privileges attached to heterosexism and ableism. Similarly, saying that white women and Black men are disadvantaged only on the basis of their sex and race, respectively, actually means that the disadvantage they suffer is a product of harm based on sexism and racism *and* privileges attached with their race and sex respectively, including privileges based on their religion, disability, sexual orientation, age etc. There are thus ‘no pure victims or oppressors’<sup>41</sup> because the patterns of group disadvantage created by multiple systems of power run along the axes of both privilege and disadvantage. Each form of disadvantage is ‘always already imbricated within multiple axes of power’<sup>42</sup> such that axes of disadvantage and privilege cannot be individually dismantled without an appreciation of how they are mutually reinforcing.

This mutual reinforcement, though, cannot be captured in the idea of addition or multiplication or any other mathematical rendition. Once it is admitted that patterns of discrimination associated with grounds like race, sex, gender, sexual orientation, etc. are not one dimensional, it becomes clear that one cannot simply add, multiply, or divide identities to understand intersectional discrimination. Intersectionality defies such simple arithmetic and insists on viewing patterns of group disadvantage simultaneously.

<sup>39</sup> Angela P Harris, ‘Race and Essentialism in Feminist Legal Theory’ (1990) 42 *Stanford Law Review* 581, 587.

<sup>40</sup> Devon W Carbado and Mitu Gulati, *Acting White? Rethinking Race in ‘Post-Racial’ America* (OUP 2013) 71 (hereafter Carbado and Gulati, *Acting White*).

<sup>41</sup> Collins, *Black Feminist Thought* (n 35) 229.

<sup>42</sup> Vrushali Patil, ‘From Patriarchy to Intersectionality: A Transnational Feminist Assessment of How Far We’ve Really Come’ (2013) 38 *Signs* 847, 848.

Moreover, because the patterns of group disadvantage are mutually reinforcing, they are not ranked or arranged in any form of hierarchy. That is, there is no hierarchy of disadvantage. Intersectionality resists a race to the bottom in a kind of disadvantage contest where intersectional disadvantage is understood as worse or more important in a mathematical sense. The importance of intersectionality lies in the appreciation of qualitatively distinct explanations of same and different patterns of group disadvantage, rather than their quantitative rendition of sorts. As Grillo insightfully remarks: 'We have spent a lot of time arguing over whose pain is greater. That time would be better used trying to understand the complex ways that race, gender, sexual orientation, and class (among other things) are related.'<sup>43</sup>

Finally, since the patterns are mutually reinforcing and co-constituted, and there is no hierarchy between the different arrangement of patterns, there are also no pure sites of identities or oppressions such that there is nothing like an essentialized or isolated site of being a woman or experiencing sexism. More importantly, there is no pure site of intersectional identity as a Black woman, or of intersectional disadvantage composed of racism, sexism, and classism either. Sameness and difference remain relevant down to the bottom of their complexity. Carbado and Gulati's trenchant account of intra-group differences between Black women in identity performance cases helps with understanding this point about anti-essentialism.<sup>44</sup> When four Black women have been promoted as partners in a law firm, the case of 'the fifth Black woman' Mary, cannot simply be explained as sameness and difference in relation to white women and Black men. While the four Black women choose to 'cover' their identities by wearing non-ethnic clothes, having straight hair, and playing golf, Mary wears her traditional clothing, participates in minorities and diversity committees within and outside work, and lives in a Black neighbourhood. So while Mary may have experiences of sexism and racism similar to white women and Black men respectively, and also share the unique experiences of Black women who face both racism and sexism together, her experiences may be different from not just white women and Black men but also other Black women, exactly on the same basis (of racism and sexism), depending on how Black women choose to 'perform' their identities. In other words, there is no essential category of Black women's experience either. The example of identity performance highlights that intersectional identities or experiences of intersectional disadvantage cannot be essentialized. At the same time, this does not undermine the shared or common experiences of disadvantage where they exist. The project of uncovering complexity through intersectionality thus strengthens the case for both similar as well as different patterns, discarding neither in favour of another. The absence of either chips away at intersectionality.

<sup>43</sup> Trina Grillo, 'Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House' (2013) 10 Berkley Women's Law Journal 16, 27.

<sup>44</sup> Carbado and Gulati, *Acting White* (n 40) ch 3.

We thus return to the idea of complexity in intersectionality. To reiterate, the discussion on the simultaneity of the dynamic of sameness and difference in experiences matters because it ultimately reveals the complex patterns of group disadvantage associated with the dynamic. And herein lies the critical bite of intersectionality: that it beckons rich explanatory accounts of patterns of group disadvantage and discrimination suffered on an intersectional basis, as shown below in section 3 with the example of Dalit women. The epistemic depth in marshalling explanations of what same and different patterns of group disadvantage look like is what gives intersectionality its deserved relevance. The accounts or evidence in sociology, anthropology, psychology, feminist theory, political theory, economics, and other disciplines, explored from the vantage point of those disadvantaged because of their multiple identities, all provide germane fodder for understanding intersectional disadvantage qualitatively. Without an explanation of *what* intersectional disadvantage and discrimination actually are in terms of structures of power and relationships of domination, intersectionality would remain merely a rhetorical tool.

### 1.3 Integrity

The dynamic of sameness and difference in patterns of group disadvantage may give the impression of a highly variegated and fragmented reality of intersectional discrimination. As if an individual or a group lives through multiple realities where some experiences of discrimination are similar to, whilst others are different from, disadvantage associated with each ground individually. But, in fact, the ontological reality that intersectionality seeks to convey is exactly the opposite: that sameness and difference in patterns of group disadvantage make sense only when they are considered *as a whole* or with *integrity*.

Etymologically, integrity appears from the word ‘integer’, which means wholeness or perfect condition. Semantically, it conveys ‘the state of being “undivided, an integral whole”’.<sup>45</sup> Integrity binds the multiplicity and complexity in intersectionality into a cohesive and complete understanding of discrimination suffered on the basis of several identities at the same time. This emphasis on considering intersectional identities or experiences of disadvantage associated with them as a whole or with integrity is widely dispersed throughout intersectionality literature.

Wing explains this eloquently: ‘[T]he experiences of black women . . . might reflect the basic mathematical equation that one times one truly does equal one . . . [Their] experiences . . . must be seen as multiplicative, multi-layered,

<sup>45</sup> Lynne McFall, ‘Integrity’ (1987) 98 *Ethics* 5, 7.

indivisible whole.<sup>46</sup> Rosario Morales extends this to her own positionality and proclaims: 'I want to be whole. I want to claim my self to be puertorican [sic], and U.S. American, working class & middle class, housewife and intellectual, feminist, marxist, and anti-imperialist'.<sup>47</sup> Audre Lorde, Dianne Pothier, and Patricia Monture-Angus make similar points as a Black woman, a woman with disability, and as an indigenous woman respectively:

As a Black lesbian feminist comfortable with the many different ingredients of my identity, and a woman committed to racial and sexual freedom from oppression, I find I am constantly being encouraged to pluck out some one aspect of myself and present this as the meaningful whole, eclipsing or denying the other parts of self.<sup>48</sup>

I can never experience gender discrimination other than as a person with a disability; I can never experience disability discrimination other than as a woman. I cannot disaggregate myself nor can anyone who might be discriminating against me. I do not fit into discrete boxes of grounds of discrimination. Even when only one ground of discrimination seems to be relevant, it affects me as a whole person.<sup>49</sup>

I am not just woman. I am a Mohawk woman. It is not solely my gender through which I first experience the world, it is my culture (and/or race) that precedes my gender. Actually, if I am object of some form of discrimination, it is very difficult for me to separate what happens to me because of my gender and what happens to me because of my race and culture. My world is not experienced in a linear and compartmentalized way. I experience the world simultaneously as Mohawk and as woman.<sup>50</sup>

The idea is simply that: 'Women don't lead their lives like, "Well this part is race, and this is class, and this part has to do with women's identities"'.<sup>51</sup> Even though defined by multiple axes of disadvantage (and privilege), their identities, and hence their experience based on those, are indivisible. Intersectionality theory relies on this idea to emphasize that disadvantage based on multiple identities is experienced and thus can be understood only as one single whole.

Seen this way, intersectionality might seem presumptively double-edged. In one way it asks us to be nuanced and complex in our view of identities. This essentially

<sup>46</sup> Wing, 'Brief Reflections' (n 37) 182, 200.

<sup>47</sup> Rosario Morales, 'I Am What I Am' in Cherrie Moraga and Gloria Anzaldúa (eds), *In This Bridge Called My Back: Writings by Radical Women of Color* (KTP 1983) 91.

<sup>48</sup> Audre Lorde, *Sister Outsider: Essays and Speeches* (Crossing Press 1984) 114, 120.

<sup>49</sup> Dianne Pothier, 'Connecting Grounds of Discrimination to Real People's Real Experiences' (2001) 13 *Canadian Journal of Women and the Law* 39, 59 (hereafter Pothier, 'Connecting Grounds').

<sup>50</sup> Monture-Angus, *Thunder in My Soul* (n 3) 177–78.

<sup>51</sup> Elizabeth Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (Women's Press 1990) 133–34.

requires us to study aspects of identities and their interactions closely and perhaps also disparately, analysing the constituent group identities for their individual and associated impact. In another way, it asks us to take a holistic view of identities by pressing on integrity. However, intersectionality embodies exactly this double-edged character. It emphasizes both complexity and completeness at the same time. Explanatory accounts of same and different patterns of group disadvantage are analysed in as much depth as possible. But they are not lumped together or understood in a piecemeal way. Intersectionality insists on considering them as a whole. Integrity supports complexity by providing the lens of completeness through which it is to be seen. Thus, integrity provides the epistemic perspective of wholeness for understanding the complex patterns of group disadvantage in line with their ontological experience.

In this way, integrity in intersectionality underscores that people should be treated *just as they are*. It fights the invisibility imposed on intersectional groups by making their oppression be seen for what it is, rather than just as a sum or fragments of experiences. As Davis declares: ‘we [Black women] have a right to be who we are. We have a right to emerge together from the historically imposed invisibility to which we have been subjected.’<sup>52</sup> Sachs J makes a similar statement in the context of discrimination law:

The acknowledgment and acceptance of difference is particularly important in our country where group membership has been the basis of express advantage and disadvantage. The development of an active rather than a purely formal sense of enjoying a common citizenship depends on *recognising and accepting people as they are*.<sup>53</sup>

Integrity as being seen for *what you are* has been particularly relevant in the context of disability discrimination. Viewed as insufficient and lacking, disabled people fight the negative portrayal of their identities by substituting it with a positive assertion of the disabled body and life as complete. The use of the language and meaning of integrity undercuts the notions of disabled life as incomplete, abnormal, or deficient. It allows a disabled person to affirm her identity as a whole person.<sup>54</sup> Thus, integrity guarantees the space for asserting respect for bodies and lives dissimilar to our own. It undercuts the pejorative and patronizing way of looking at others and gives voice to the richness of the human condition and experience, specifically by valuing disability and disabled life. It allows for breaking through the essentialist prism of ‘normal’ and provides a lens for respecting identities that are complex and

<sup>52</sup> Angela Y Davis, ‘Women of Color at the Center: Selections from the Third National Conference on Women of Color and the Law: Keynote Address’ (1991) 43 *Stanford Law Review* 1175, 1177.

<sup>53</sup> *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (SACC) [134] (emphasis supplied).

<sup>54</sup> United Nations Convention on the Rights of Persons with Disabilities (opened for signature 30 March 2007, entered into force 3 May 2008), art 17.



diverse. The relevance of integrity in the context of disability illuminates its appeal in relation to other personal characteristics, especially when they intersect.

Integrity also provides the opportunity and basis for groups like Black women to break through their image as victims and instead self-define themselves as whole and powerful. Jung recounts this process as: ‘Conscious realization or the bringing together of the scattered parts [which] is in one sense an act of the ego’s will, but in another sense [a] spontaneous manifestation of the self, which was always there.’<sup>55</sup> Similarly, Harris explains integrity as the will and creativity for groups like Black women to be masters of their destiny rather than victims of oppressions which undermine them. Because only they experience their multiple identities as an integrated whole, integrity is seen as an empowering tool for disempowered groups to define and fight their disadvantage. Thus, Black women use the idea of integrity in intersectionality to reconstruct their image ‘as powerful, independent subjects’—resolute, resilient, and more than just women, poor, Black, mothers, wives, labourers, or slaves.<sup>56</sup> In the final analysis, integrity in intersectionality rejects viewing intersectional groups like Black women as simply “multiply-burdened” entities subject to a multiplicity of oppression, discrimination, pain and depression’ but those characterized by ‘a multiplicity of *strength, love, joy . . . and transcendence* that flourishes despite adversity’.<sup>57</sup> Integrity humanizes the subjectivity of its intersectional subjects by appreciating them as a whole, as themselves, and as more than just objects for critical inquiry.

## 1.4 Context

The intersectional disadvantage associated with identities is a product of context. While Blacks and Muslims may not be disadvantaged *as* Blacks and Muslims in Nigeria and Tunisia respectively, they are disadvantaged as racial and religious minorities in the US and Europe. The reference to disadvantage associated with particular identities is thus not a universal claim but true of particular contexts. This holds for intersectional identities just the same. The demonization of Black women’s hair and Muslim women’s headscarves, while rife in contexts like the US and Europe, may not be so apparent in Nigeria or Tunisia. Other kinds of intersectional disadvantages might travel more easily. Dalit women in the UK face many of the disadvantages they face in India. Intersectional disadvantage thus is as much a product of intersecting identities and patterns of disadvantage as it is of contexts in which it exists.

<sup>55</sup> CG Jung, *Psyche and Symbol* (Violet Staub de Laszlo (ed), RFC Hull (trans), PUP 1958) 214.

<sup>56</sup> Deborah K King, ‘Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology’ (1998) 14 *Signs* 42, 72 (hereafter King, ‘Multiple Jeopardy’).

<sup>57</sup> Wing, ‘Brief Reflections’ (n 37) 196 (emphasis in original).

What makes up context is many things. As May describes, it includes ‘contexts of structural inequality, affective economies, ideological forces, history, social location, material structures, philosophical norms and more.’<sup>58</sup> Context comprises of more than just processes of identity formation and immediate patterns of disadvantage, and includes knowledge of how identities and disadvantage associated with them operate within the historical, social, legal, economic, ideological, national, and transnational frames. In this way, context itself is intersectionally constituted. This intersectional context then provides a 360-degree or a multi-dimensional view of intersectional disadvantage that goes beyond the rubric of identities and disadvantage and into the environment in which they exist. It thus unravels the background conditions in which intersectional disadvantage ensues.

Context also helps go beyond generalizations and into the specific circumstances of groups and individuals within the groups. According to Catharine MacKinnon: ‘That the location of departure and return for the analysis is on the ground, with the experience of a specific group, this group in particular, and not in universal generalizations or in classifications or abstractions in the clouds, even ones as potentially potent as race and sex, is the point [of intersectionality].’<sup>59</sup> Collins and Bilge reflect a similar understanding: ‘intersectionality as an analytical tool means contextualizing one’s arguments, primarily by being aware that particular historical, intellectual, and political contexts shape what we think and do.’<sup>60</sup> They thus identify ‘social context’ as one of the core tenets of intersectionality, which grounds the intersectional analysis in structural, cultural, disciplinary, and interpersonal domains. Deborah King too recognizes that ‘the relative significance of race, sex, or class in determining the conditions of Black women’s lives is neither fixed nor absolute but, rather, is dependent on the socio-historical context and the social phenomenon under consideration. These interactions also produce what to some appears a seemingly confounding set of social roles and political attitudes among Black women.’<sup>61</sup>

Hancock refers to this as a kind of ‘situational contingency’. In particular, she explains this in reference to the idea of choice and integrity. She argues that one way to understand intersectionality would be to imagine it as multiple criss-crossing forces which compel individuals to live their lives as warring souls. But, in fact, people’s ‘quotidian choices between analytically distinct multiple identities . . . reflect the consistency of an integrated identity, not an analytically fractured multiple category identity.’<sup>62</sup> In other words, Hancock uses the idea of choice for explaining that despite the multiple axes of oppression which afflict people, individuals make

<sup>58</sup> May, *Pursuing Intersectionality* (n 27) 99.

<sup>59</sup> Catharine A MacKinnon, ‘Intersectionality as Method: A Note’ (2013) 38 *Signs* 1019, 1028.

<sup>60</sup> Patricia Hill Collins and Sirma Bilge, *Intersectionality* (Polity Press 2016) 28 (hereafter Collins and Bilge, *Intersectionality*).

<sup>61</sup> King, ‘Multiple Jeopardy’ (n 56) 49.

<sup>62</sup> Hancock, *An Intellectual History* (n 24) 113.

everyday choices about how they relate back and respond to those, and that is what makes the full situational context of their lived intersectional reality. For example, Muslim women's headscarves are symbolic of this sort of situational contingency of intersectionality where their position defined by forces of racism and sexism does not always imply oppression when they don the headscarf. But the insistence on seeing the choice of wearing the hijab as either a challenge to Western hegemony or coercive oppression misses the particular and sophisticated contexts that frame Muslim women's choices and lives. Their continuous negotiation with systems of power defines the *actual* situational context in which that choice is made, which symbolizes their intersectional position.

To this, Hancock adds the idea of 'time contingency' which 'marshals the continuities of structures of racism, sexism, classism, and homophobia while noting episodic interventions that may change in particular Black women's positionality and opportunity structure in their reference to "temporarily class-privileged Black women"'.<sup>63</sup> She thus warns against sweeping generalizations which discount the privileges members within certain groups come to enjoy over time and, thus, simply using membership in a group as a touchstone for suffering intersectional discrimination.

The need for what Hancock calls contingency or, more broadly, intersectional context is then one of specificity, which reflects the actuality of the intersectional disadvantage rather than some pre-packaged version of what it is like. It feeds into discrimination law's tort-like model which has an interest in assessing each situation most closely in relation to a broader category of wrongs but having its own unique specificities. It also reminds us that wrongs, especially of discrimination, take place outside of and beyond what come to be the narrow adversarial contexts of disputed claims. Appreciation of this broader intersectional context allows us not only to do discrimination law better in particular cases but to do it at all: because discrimination, like intersectionality, is nothing but a product of context. Sandra Fredman captures this aptly:

Anti-discrimination law is necessarily a response to particular manifestations of inequality, which are themselves deeply embedded in the historical and political context of a given society. Discrimination laws are only effective if they are moulded to deal with the types of inequality which have developed in the society to which they refer.<sup>64</sup>

Context thus becomes both a methodological imperative and a substantive tool for understanding intersectional discrimination. Neither intersectionality nor

<sup>63</sup> Ibid 115.

<sup>64</sup> Fredman, *Discrimination Law* (n 32) 38.

discrimination law have a place aside from the actual discriminatory practices and contexts to which the theory and praxis of each refer.

In sum, the application of intersectional thinking in a specific context is a complex and unique process. The explanations of intersectionality will look different because of the different intersectional contexts which go beyond simply the difference in the identities intersectionality works with. Thus, explanations of intersectionality of Black women in the US will be different from Black women in Europe, where raciality does not immediately or does not only take on the historical context of slavery in the same way as in the US; or Black and indigenous women in South Africa who experienced settler colonialism in the reverse; and even newly arrived 'Black' immigrant women in the US who may not be deemed Black in their own countries. But they may all have something shared amongst themselves and with, as Hancock says, the 'intersectionality-like thinking' of other groups in different contexts. Section 3 below explores how these contextual analogies can be made in the context of Dalit women in India.

## 1.5 Transformation

Intersectionality aims to accomplish many things. As a form of critical inquiry, it seeks to challenge the received wisdom about identities and the disadvantage associated with them as running along a single categorial axis. It furnishes the basis for understanding, and hence including, multiple standpoints in identity politics, social movements, and social institutions with the aim of making them more inclusive and effective. This is an epistemic project. It enhances our knowledge of identity categories and their intersections, the resulting complexity of disadvantage, and the context in which they operate. It thus uncovers a certain blind spot in our normative conception of the world by illuminating its complexity.

Intersectionality also serves the ontological aim of giving space and voice for multiple identities to exist and thrive. It enhances the recognition and representation of those belonging to multiple disadvantaged groups. By allowing intersectional groups and their disadvantage to be seen as a whole and for what it is, intersectionality acknowledges the ontological plurality in people's existence and experiences.

The epistemic and ontological aims naturally flow into one another. As Sara Salem helpfully remarks: "The aim of intersectionality is to listen to the voices of women and men on their own terms, in order to piece together narratives and unpack experiences that can help in understanding social life."<sup>65</sup> In recognizing intersectional experiences we allow them to exist and be self-defined, and

<sup>65</sup> Sara Salem, 'Feminist Critique and Islamic Feminism: The Question of Intersectionality' (2013) 1 *The Postcolonialist*.

in allowing them to exist and self-define, we recognize them for what they are. Epistemic understanding and ontological plurality thus reinforce each other in intersectionality theory.

Intersectional praxis on the other hand is defined by these aims, as well as the aim of redressing intersectionality and the broader aim of transcending it. Those who use intersectionality as a tool of social reform use it with the purpose of removing the intersectional disadvantage the theory seeks to uncover. These efforts aim to break the cycle of the patterns of group disadvantage which afflict those belonging to multiple disadvantaged groups.

As Cho, Crenshaw, and McCall explain, what binds these diverse and ambitious aims of intersectionality theory and praxis is ultimately ‘a motivation to go beyond mere comprehension of intersectional dynamics to transform them.’<sup>66</sup> Hancock identifies this as: ‘[i]ntersectionality’s will to progressive social transformation [that] is indisputable throughout its history.’<sup>67</sup> She thus posits: ‘[i]ntersectionality challenges scholars and activists alike to partake in an analytic shift that transforms the questions to be asked, the evidence to be considered, and the methods with which we analyze it.’<sup>68</sup>

This book shares the transformative vision of intersectionality. Its immediate concern is to render redressable claims of intersectional discrimination. But it feeds into the larger and more emancipatory aim of intersectionality to transform the creation, sustenance, and reproduction of intersectional disadvantage. In this process, it hopes to transform discrimination law or law more generally, to attend to those who are multiply disadvantaged. It is thus premised on the conviction that:

the reformist dimensions of intersectionality embodied interventions that addressed the marginalization of, for example, Black women plaintiffs, [and are] co-extensive with a more radical critique of law premised in part on understanding how it reified and flattened power relationships into unidimensional notions of discrimination. Antidiscrimination doctrine and political discourses predicated on feminism and antiracism certainly do not exhaust the terrain of intersectional erasure, marginalization, and contestation.<sup>69</sup>

In this way, the project of realizing intersectionality in discrimination law, like intersectionality itself, pursues transformative goals that go beyond the successes of individual and specific claims of intersectional discrimination. In particular, the aim of transformation goes beyond the emancipation of Black women. It includes everyone, in that it hopes to eradicate all intersectional disadvantage and not just

<sup>66</sup> Cho, Crenshaw, and McCall, ‘Toward a Field of Intersectionality Studies’ (n 13) 786.

<sup>67</sup> Ange-Marie Hancock, ‘Intersectionality’s will Toward Social Transformation’ (2015) 37 *New Political Science* 620, 626.

<sup>68</sup> *Ibid* 622.

<sup>69</sup> Cho, Crenshaw, and McCall, ‘Toward a Field of Intersectionality Studies’ (n 13) 791.

that of Black women. Even Black feminist scholarship frames intersectionality in these terms. This is reflected as early as 1896 when, upon the formation of the National Association of Colored Women's Club, their chosen motto was 'Lifting As We Climb'. It echoed the commitment of Black feminists to the uplifting of all sisters and indeed all dispossessed. Smith shared this all-inclusive vision for Black feminism in 1984 when she wrote:

I have often wished I could spread the word that a movement committed to fighting sexual, racial, economic and heterosexist oppression, not to mention one which opposes imperialism, anti-Semitism, the oppressions visited upon the physically disabled, the old and the young, at the same time that it challenges imminent nuclear destruction, is the very opposite of narrow.<sup>70</sup>

Similarly, Austin urged 'Black female minority scholars to use their positions and their skills to promote the social and political standing of *all minority women*'.<sup>71</sup> King identified '[t]he necessity of addressing *all oppressions* [as] one of the hallmarks of black feminist thought'.<sup>72</sup> Crenshaw reiterated these commitments in her 1989 piece where she laid down the goal for intersectionality: 'to facilitate the inclusion of marginalized groups for whom it can be said: "When they enter, we all enter"'.<sup>73</sup> As she further clarified in her 1991 piece, the focus on the race and sex of Black women was only meant to highlight 'the need to account for multiple grounds of identity when considering how the social world is constructed'.<sup>74</sup> The case of Black women was thus illustrative rather than the whole of intersectionality. The whole of intersectionality's concern has been a complete and substantive transformation of all the relationships of power, structures of subordination, and systems of domination which disadvantage people on the basis of their multiple group identities.

These, then, were the five principal strands which run through intersectionality literature and make up the framework of the theory. By no means exhaustive or final, the framework is particularly relevant for the purposes of discrimination law and for the project of translating intersectionality theory into a redressable category of intersectional discrimination. But before turning to apply the framework to discrimination law, it is important to consider what criticisms have been levelled against it. It is useful to identify and respond to them to further clarify the framework, going beyond the apparent and uncontroversial aspects and querying some

<sup>70</sup> Smith (ed), *Home Girls* (n 25) 257–58.

<sup>71</sup> Regina Austin, 'Sapphire Bound!' (1989) *Wisconsin Law Review* (Fall 1989) 539 (emphasis supplied) (hereafter Austin, 'Sapphire Bound!').

<sup>72</sup> King, 'Multiple Jeopardy' (n 56) 45 (emphasis supplied).

<sup>73</sup> Crenshaw, 'Demarginalizing' (n 1) 167.

<sup>74</sup> Crenshaw, 'Mapping' (n 14) 1245.

of its underlying premises like its reliance on identity categories and identity politics. The next section sets out this defence.

## 2. A Defence

In the intervening decades since 1989, ‘the burgeoning field of intersectionality studies’ has continued to develop alongside a burgeoning field of intersectionality critiques.<sup>75</sup> These critiques have been far reaching, querying every aspect of intersectionality at the conceptual and practical level. Conceptually, intersectionality is attacked as lacking both depth and breadth. Depth-wise intersectionality is seen as too shallow in its reliance on identity-categories. This critique unfolds severally. Intersectionality is considered as addressing mainly locational, rather than material, structural, and relational systems of power. In particular, it is said to have ignored considerations of poverty and class, which sit uncomfortably against static cultural understandings of identity-categories like race and sex. Intersectionality is also seen as too categorial and essentialist in its assumption that independent identity categories exist and intersect, rather than being constantly in flux. In this way, it is considered exclusionary and not truly representative of disadvantages which defy intersectionality’s linear view of identities. Intersectionality thus assumes away the categorial distinction between identities instead of challenging it. Moreover, intersectionality potentially suffers from the infinite regress problem that splinters identity categories into ever smaller sub-groups incapable of saying anything meaningful about structural disadvantage. It is viewed as too experiential and individual-centric to be a useful tool for group struggles. The point of these identity-related critiques is to show that intersectionality’s conceptual reliance on identity categories is ultimately ineffective in carrying out the radical and transformative aims of the theory, which include transcending identity politics and group disadvantage.

Practically, even if all its theoretical challenges are met, intersectionality is critiqued for being toothless in actually realizing the vision it espouses. Not only do its legal roots limit the possibility of challenging law’s deep-seated and narrow assumptions about identity and disadvantage, but there is also no methodological clarity in actually using intersectionality as a critical theory or as an instrument of social change beyond the strictures of law.

Similarly, breadth-wise, intersectionality is considered too narrow, focussed on the ‘extreme’ example of Black women, and hence having little of the generalizable and normative qualities supposed of a theory. Intersectionality, in its best form, is reduced to a rhetorical tool without any analytic traction or global appeal.

<sup>75</sup> Cho, Crenshaw, and McCall, ‘Toward a Field of Intersectionality Studies’ (n 13).

So voluminous and vociferous are these challenges that, as May remarks, '[i]ntersectionality critiques have become something of their own genre—a form so flourishing, at times it seems critique has become a primary means of taking up the concept and its literatures.'<sup>76</sup> Thus, intersectionalists have had to not only develop and advance intersectionality on its own terms, but also, as a matter of priority, defend it from the onslaught. The recently published first set of monographs on the subject do this comprehensively and convincingly. Patricia Hill Collins and Sirma Bilge's *Intersectionality* (2016), Ange-Marie Hancock's *Intersectionality: An Intellectual History* (2016), Anna Carastathis' *Intersectionality: Origins, Contestations, Horizons* (2016), and Vivian M May's *Pursuing Intersectionality, Unsettling Dominant Imaginaries* (2015), provide formidable responses in defence of intersectionality's theory and praxis, in addition to scores of articles with pointed replies to every challenge. I do not mean to rehash the credible defences offered in these accounts. But I do wish to reiterate some of these defences, especially from the standpoint of discrimination law, because it is useful for the present project to do so. In particular, I wish to point out the shared, limited, but plausible identity-basis of intersectionality and discrimination law; and the general appeal of intersectionality theory beyond the context of Black women in the United States. Section 3 considers the latter. In this section, I want to consider the tension which exists between intersectionality, its reliance on identity categories, and its relationship with identity politics. This tension is at the heart of multiple critiques and its resolution, I argue, lies in recognizing the middle ground that intersectionality inhabits in both working with and being critical of identity categories and identity politics (section 2.1). This middle ground is one shared with discrimination law in its reliance on the construct of grounds (section 2.2). Neither intersectionality's reliance on identities nor discrimination law's reliance on grounds should detract us from addressing complex forms of disadvantage defined as broadly as possible, going beyond identity politics itself.

## 2.1 Intersectionality and Identity

The strongest theoretical challenge to intersectionality comes from the post-structural and Marxist critiques. As identified above, three challenges are particularly poignant: intersectionality's emphasis on social and cultural over material and structural inequalities; its overreliance on identity categories; and the infinite regress problem. The first critique considers intersectionality to be limited to the categories of race and sex, thus failing to engage with other categories like sexuality, weight, nationality, ethnicity, language, and class. For example, Crenshaw's

<sup>76</sup> May, *Pursuing Intersectionality* (n 27) 98.



work has been critiqued for: 'the wholesale abandonment of addressing how factors beyond race and sex shape Black women's experiences of violence [which] demonstrates the shortcomings of intersectionality to capture the sheer diversity of actual experiences of women of colour.'<sup>77</sup> The complaint is that, in keeping intersectional analysis limited to too few (two) and 'cultural' categories (like race and sex) alone, intersectionality falls short of its own promise of revealing truly complex systems of domination and structures of power. Even if one agrees that Crenshaw and other intersectionalists did echo, for example, the relevance of class inequality in examining systems of dominations, their class-consciousness was inevitably compromised by their primary focus on providing a 'total' account of oppressions defined primarily, if not exclusively, by social or cultural identities like sex and race.<sup>78</sup> According to this critique, material analysis has never been concretely pursued within intersectionality, given the lack of a conceptual framework for understanding the economic or redistributive forms of domination.

These critiques overstate the use of race and sex in intersectionality as giving epistemic priority to certain categories over forms of analyses, which are structural and multi-dimensional; while at the same time underplay how intersectionality pursues, for example, class analysis even if not on the same terms as, say, Marxist feminism. Class, poverty, material inequalities, and redistributive concerns have been writ large in intersectionality.<sup>79</sup> Angela Davis' *Women, Race and Class* (1981) and Spelman's *Inessential Woman* (1990) specifically interrogated not just the dynamics of race and sex but also class in entrenching Black women's disadvantage. Similarly, Austin led by example the 'research project based on the concrete material and legal problems of Black women.'<sup>80</sup> Thus, Austin not only charted similar and different patterns of group disadvantage between Black women on the one hand, and white women and Black men on the other, but also between groups of poor Black women and middle-class Black women, and Black teens and Black adults. Social movements like the Combahee River Collective kept material concerns at the heart of their agendas for improving the lives of Black women.<sup>81</sup> The bait to make intersectionality more class-aware, then, overlooks its extant resistance to capitalism and imperialism in the way it has been formulated and applied. Although class may not have been studied in exactly the same terms as social construction of 'identities' like race and sex, it has been a key component in examining how race is genderized and gender is racialized within conditions of material

<sup>77</sup> Nash, 'Re-thinking Intersectionality' (n 28) 9.

<sup>78</sup> Joanne Conaghan, 'Intersectionality and the Feminist Project in Law' in Emily Grabham, Davina Cooper, Jane Krishnadas, and Didi Herman (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location* (Routledge Cavendish 2009) 17.

<sup>79</sup> See esp Kelly Coogan-Gehr, 'The Politics of Race in US Feminist Scholarship: An Archaeology' (2011) 37 *Signs* 83, 95.

<sup>80</sup> Austin, 'Sapphire Bound!' (n 71) 546.

<sup>81</sup> The Combahee River Collective, 'A Black Feminist Statement' in Linda Nicholson (ed), *The Second Wave: A Reader in Feminist Theory* (Routledge 1997).

inequality. For example, while Scales-Trent studied Black women's position in the US as defined by 'disabilities of Blacks and the disabilities which inhere in their status as women,' her research was informed by their material inequality, including the fact of being the lowest paid, least employed, and most poor group as compared to white women, Black men, and white men.<sup>82</sup> Class, especially poverty, has thus acted as the authoritative foil which has shaped the accounts of intersections in intersectionality theory.

Just as with class, analyses of structures and relationships of power have been central to intersectionality from early days. Austin's incisive critique of the decision in *Chambers v Omaha Girls Club*<sup>83</sup> illustrates this central focus. In *Chambers*, a US district court had upheld the employer's decision to dismiss a young unmarried Black pregnant woman for being a negative role model to Black teenagers at the Girls Club. Austin criticized the Court's condemnation of the choices of young Black women, rather than the structures which led them to this Hobson's choice between difficult teenage years and early pregnancy and single motherhood. Austin presented a multi-layered interdisciplinary account of evidence which revealed how identity categories like race, sex, gender, class, and age interacted with the lack of equal education, employment, and healthcare to severely curtail valuable life choices for Black teenagers and young adults. In the same vein, Crenshaw explained violence against Black women as a product of the interaction of Black women's multiple identities with multiple systems of power. She grouped these systems of power into three: structural, political, and representational. She built from the ground up an account of how each of these exacerbated the incidence, obscuring, and dismissal of routinized patterns of violence against Black women at home and beyond. Crenshaw's recent contribution on mass incarceration of minority women tows this familiar line.<sup>84</sup>

As I highlighted in the last section, intersectionality is interested in the simultaneity of similarities and differences between identity categories *because of* the social, cultural, political, and material inequalities organized around them. Identity categories like race and sex are thus meant to provide a foot in the door for understanding disadvantage, which in turn is understood broadly in terms of institutional, structural, and relational systems of power in the relevant historical, social, political, and economic context.

Post-structural critiques find even this provisional reliance on identity categories problematic. The problem for them lies not in the ignorance of certain identity categories, or their interaction with systems of powers, but in the use of

<sup>82</sup> Judy Scales-Trent, 'Black Women and the Constitution: Finding our Place, Asserting our Rights' (1989) 24 Harvard Civil Rights-Civil Liberties Law Review 9 (hereafter Scales-Trent, 'Black Women and the Constitution').

<sup>83</sup> 834 F 2d 697 (8th Cir 1987) (USCA).

<sup>84</sup> Kimberlé W Crenshaw, 'From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control' (2012) 59 UCLA Law Review 1418.

categories at all. Intersectionality is seen as belying its anti-essentialist roots, which consider the social construction of identities like race and sex to be inherently inadequate and exclusionary. Instead of challenging the use of identity categories per se, intersectionality is criticized for fetishizing identity categories by pointing out their intersections alone, rather than abandoning allegiance to them all together. The theory is ultimately seen as too conservative and inconsistent with its radical roots in anti-essentialism and its avowed aim of social reform.<sup>85</sup>

Diametrically opposite to this runs the infinite regress problem which troubles advocates of identity politics. Intersectionality is feared for splintering identities into ever so small sub-groups which have little in common. Mapping intra-group differences can thus devolve into nothing more than collating disparate accounts of individual experiences—annihilating the basis of groups as the primary sites of organizational politics. Within this critique, intersectionality is considered too open-ended and uncontainable, such that it is buried under its own weight of identity politics.

I think intersectionality's own position lies somewhere in the middle. Whilst post-structural critiques overstate intersectionality's provisional reliance on identity categories and underemphasize its critical outlook on them, identity-based critiques misunderstand intersectionality's inclination to map differences and gloss over the relationship of individual experiences with broader patterns of group disadvantage.

The insistence on recognizing Black women's experiences as defined by both race and sex does not perforce sanction an uncritical and rigid understanding of race and sex. In fact, part of intersectionality's theoretical project *is* to reorganize the boundaries regulating the social meaning of being of a particular race or sex to include those who have been previously excluded at the altar of essentialist definitions. This is also evident in the discussion on Dalit feminism in the next section—the claim being that intersectionality or intersectionality-like thinking accommodates an inclusive and fluid understanding of caste and sex both. In that sense, intersectionality takes on board the post-structural insight and insists on a critical treatment of identity categories. It thus embraces a kind of transversal identity politics, which lies in the middle of, and as an alternative to, both universalistic or assimilationist and abortive identity politics.<sup>86</sup> Crenshaw sums it up as:

Recognizing that identity politics takes place at the site where categories intersect thus seems more fruitful than challenging the possibility of talking about categories at all. Through an awareness of intersectionality, we can better

<sup>85</sup> Leslie McCall, 'The Complexity of Intersectionality' in Grzanka (ed), *Intersectionality* (n 2); Barbara Risman, 'Gender as a Social Structure: Theory Wrestling with Activism' (2004) 18 *Gender and Society* 429.

<sup>86</sup> Nira Yuval-Davis, 'What is 'Transversal Politics'?' (1999) 12 *Soundings* 94.

acknowledge and ground the differences among us and negotiate the means by which these differences will find expression in constructing group politics.<sup>87</sup>

Intersectionality's provisional reliance on identity categories is meant to be strategic and inclusive at the same time. It is strategic in that intersectionality refers to identity categories as useful markers of inequality which can be transformed and reclaimed as tools of resistance. Intersectionality thus furthers the epistemological project of uncovering and redressing the disadvantage associated with identities and, at the same time, creates space for the ontological project of asserting identities as 'ideologically powerful, experientially salient (but not essentialist), and as fluid.'<sup>88</sup> In contrast with the post-structural critique which imagines identity nihilism as its logical victory, intersectionality is a project with transformation by reclamation at its heart. Scales-Trent called this a project of 'self-definition'—of asserting rights *as Black women* by rejecting the definitions imposed by the powerful and setting forth our own.<sup>89</sup> This is why the Black feminist critique insisted on including Black feminist standpoints in mainstream feminism, the civil rights movement, and discrimination law, and thus transforming, rather than transcending, these movements and spaces. Much of intersectionality can be understood in terms not of renouncing but of rehabilitating identity politics.

One way in which intersectionality does that is by using individual and concrete accounts of intra-group experiences as always relating to broader patterns of group disadvantage. Intersectionality shows a strong and balanced interest in both individual as well as coalitional implications of identity categories. Individual experiences of people within sub-groups, like Black women, are important not just by themselves, but because they furnish concrete and instructive evidence of wider group-based patterns. The range of experiences within groups also helps to prevent making a certain kind of experience archetypical of the disadvantage suffered by all group members. This is what is meant by saying that intersectionality is concerned with both the universal and the particular. And this is why intersectionality dodges the infinite regress problem—because its concentration on minute and specific differences between individuals in specific groups and sub-groups always relates back to those groups and sub-groups to which they belong in terms of sameness and difference. An infinitely fractured vision of intersectionality thus remains speculative in light of a grounded and purposeful invocation of group identities.

In any case, intersectionality was never meant to be a totalizing theory of identity or a totalizing theory of any kind at all. It leaves enough space for other theories and methodologies, including exclusively post-structural, Marxist, and those wholly imbedded in identity politics, to chart their own course to social justice. For

<sup>87</sup> Crenshaw, 'Mapping' (n 14) 1299.

<sup>88</sup> May, *Pursuing Intersectionality* (n 27) 113.

<sup>89</sup> Scales-Trent, 'Black Women and the Constitution' (n 82) 43.

itself though, it has chosen a reflexive middle ground, which is both pragmatic and transformative at the same time. Evelyn Glenn describes this standpoint fittingly:

As I struggle to formulate an integrated analysis of gender, race, and class, I have relied on a historical comparative approach that incorporates political economy while taking advantage of the critical insights made possible by post-structuralism. I use a social constructionist framework, which considers how race, gender, and class are simultaneously constituted in specific locations and historical periods through ‘racialized’ and ‘genderized’ social structure and discourse. I try to inhabit that middle ground . . . by looking at the ways in which race, gender, and class are constituted relationally.<sup>90</sup>

## 2.2 Intersectionality, Identity, and Discrimination Law

As a final point, it is useful to note that intersectionality shares the reflexive middle ground—of working with and being critical of identity categories—with discrimination law. Like intersectionality, discrimination law is based on identities or ‘designations that are listed as prohibited grounds in anti-discrimination laws.’<sup>91</sup> Prohibited grounds such as race, religion, caste, sex, gender, disability, sexual orientation, age etc. are chosen based on a host of factors like immutability, historical prejudice, political powerlessness, and fundamental choice.<sup>92</sup> Much like intersectional identities, grounds are designated not just for their own sake or for the sake of discrimination law, but because they serve as relevant ‘markers of the dynamics of power.’<sup>93</sup> In this way, grounds in discrimination law (and identities in intersectionality) are self-limiting: they are counted as grounds or identities *because* they signify patterns of group disadvantage which are historical, substantial, pervasive, and abiding.<sup>94</sup> So grounds like race, gender, disability, and sexual orientation protect groups like Blacks, women, those with disabilities, and gay people. Intersectional discrimination requires the protection of groups like Black women and disabled gay people who belong to groups otherwise protected and on the basis of grounds which are either already recognized or can be argued as analogous to recognized grounds. Recognition of their intersectional disadvantage in the form

<sup>90</sup> Evelyn N Glenn, ‘The Social Construction and Institutionalization of Gender and Race: An Integrative Framework’ in Myra M Ferree, Judith Lorber, and Beth B Hess (eds), *Revisioning Gender* (Sage 1998) 32.

<sup>91</sup> Suzanne B Goldberg, ‘Identity-based Discrimination and the Barriers to Complexity’ in Dagmar Schiek and Anna Lawson (eds), *European Union Non-Discrimination Law and Intersectionality* (Ashgate 2011) 177.

<sup>92</sup> Robert Post, ‘Prejudicial Appearances: The Logic of American Antidiscrimination Law’ (2000) 88 *California Law Review* 1.

<sup>93</sup> Pothier, ‘Connecting Grounds’ (n 49) 58.

<sup>94</sup> Khaitan, *A Theory of Discrimination Law* (n 32) 35–38.

of intra- and inter-group similarities and differences necessarily requires neither adding new grounds nor recognizing new groups per se in intersectionality or discrimination law. Thus, the fears imagined by the *DeGraffenreid* Court—of discrimination law devolving into a ‘many-headed Hydra’ and ‘opening the hackneyed Pandora’s box’ to any kind of identity—remain unrealized and with good reason. Far from splintering identities into unrecognizable and unusable categories, the legal construct of grounds in discrimination law provides a site for thinking about individual and specific instances of intersectional discrimination within a wider context of grounds and groups and thus as a whole. Discrimination law, like intersectionality, furnishes this opportunity to assert the integrity of identities and experiences of discrimination suffered because of them. As Scales-Trent confirms: ‘Thinking about and writing about the constitutional rights of black women [under the Equal Protection Clause which prohibits discrimination] has allowed me to pull those fragments of self back into a whole, focused and centered.’<sup>95</sup>

But, despite their reliance on identities or grounds, both intersectionality and discrimination law aim to do more than just provide adequate recognition, representation, and redress to disadvantaged groups. Their projects should be seen as much more ambitious, especially in terms of their redistributive, participative, and transformative aims. In the context of discrimination law, Fredman describes these overlapping dimensions as ‘substantive equality’, explained thus:

First, it aims to break the cycle of disadvantage associated with status or out-groups. This reflects the redistributive dimension of equality. Secondly, it aims to promote respect for dignity and worth, thereby redressing stigma stereotyping, humiliation, and violence because of membership of an identity group. This reflects a recognition dimension. Thirdly, it should not exact conformity as a price of equality. Instead, it should accommodate difference and aim to achieve structural change. This captures the transformative dimension. Finally, substantive equality should facilitate full participation in society, both socially and politically. This is the participative dimension.<sup>96</sup>

Intersectionality’s social justice aims are perhaps even wider than discrimination law’s goal of furthering substantive equality because intersectionality travels further than the domain of law and spurs wider possibilities of transformation through social movements. But neither of their aims are simply identity related or subsumed by transcendence or transformation of identity politics. In fact, the point of recounting the shared identity-basis of intersectionality and discrimination law is to drive home the plausibility of the vast and transformative pursuits of intersectionality and discrimination law by relying on a provisional understanding

<sup>95</sup> Scales-Trent, ‘Black Women and the Constitution’ (n 82) 42.

<sup>96</sup> Fredman, *Discrimination Law* (n 32) 25.

of identities which is inclusive and fluid. Identity or grounds are just the points of departure for what intersectionality and discrimination law are seeking: the end goal being the appreciation and redress of disadvantage suffered by people on the basis of these.

Of course, none of this denies the limitations of discrimination law, or even law *per se*, as a site for transformative politics and social justice. These limitations drawn up by Critical Legal Scholars are well known. The structure of discrimination law is highly formalistic, centred on adjudication, and triggered only *ex-post* by an individual claimant. The remedies, even if structural, are rather narrow, relating first and foremost to the specific claimant and fact situation at hand, and then only by extension to the broader group to which the claimant belongs. Added to these are difficulties in accessing—both in reality and ideologically—legal systems which literally operate from on high and are consequently too removed from some of the most insidious forms of discrimination like those captured by intersectionality. Discrimination law is thus considered too abstract to be able to truly relate to ‘real people’s real experiences.’<sup>97</sup> In fact, since many of Crenshaw’s initial problems with discrimination law—of essentialism of grounds and the perception of discrimination as operating along a single-axis alone—continue to plague intersectionality, one is compelled to ask why they must continue to expend intellectual energy on intersectional discrimination anymore? Surely the resistance to reform is a sign that the idea of reform through law is itself misconceived. Postmodern scholarship makes this point forcefully.<sup>98</sup>

This book exhumes the project of realizing intersectionality in discrimination law practice by borrowing a healthy dose of scepticism from post-structuralism, post-modernism, and CLS. But it goes beyond what Harris calls their ‘deconstructive excesses,’<sup>99</sup> leading to total refutation of rights and identity politics, and towards reconstruction and transformation of these tools. This is the standpoint which reverberates through this book which hopes to make a small but significant contribution to rights scholarship by letting intersectional claimants, like the fat Black man in Lord Phillips’ hypothetical scenario, succeed. Given the history of intersectionality’s struggles and discrimination law’s resistance, his success will be no mean feat. But, given the historical developments and current possibilities in the field recounted in the previous chapter, his claim is not a hopeless one either.

Thus, discrimination law need not be the only or even the primary site for engaging with intersectionality. Even for Crenshaw, whose earliest contribution in 1989 was concerned with the formal limits of discrimination law, it was but one of the ways in which she hoped and considered intersectionality to be relevant and

<sup>97</sup> See, for this critique in relation to Canadian discrimination law, Pothier (n 49).

<sup>98</sup> Anthony E Cook, ‘Reflections on Postmodernism’ (1992) 26 *New England Law Review* 751; Allan C Hutchinson, ‘Identity Crisis: The Politics of Interpretation’ (1992) 26 *New England Law Review* 1173.

<sup>99</sup> Angela P Harris, ‘The Jurisprudence of Reconstruction’ (1994) 82 *California Law Review* 741.

applicable. It is with an appreciation of discrimination law's limited capacity to address intersectionality, and the limits of intersectionality itself, that either can be made useful at all.

Does any of this help make intersectionality an idea of general applicability beyond its limited context of Black feminism in the United States? There is no doubt that 'intersectionality' originated in this specific context. But Black women were not supposed to be its sole protectorate, nor were race and sex mandated as the only categories to serve it. In fact, intersectionality has become one of the most successful 'travelling' theories of our times.<sup>100</sup> It has transcended national and continental boundaries, cementing itself in South America, Africa, and Asia; expanded to analyses beyond race and sex, including caste, nationality, age, disability, sexuality etc.; and applied across disciplines of literature, sociology, anthropology, psychology, gender studies, economics, history etc. This chapter closes by pointing out the wide presence and omnipotence of intersectionality and intersectionality-like thinking which existed even before the locution travelled. Intersectional analyses have been present, borrowed, applied, and hence been relevant in discursive environments. The example of Dalit feminism in India shines a spotlight on this.

### 3. An Illustration

It is time to see what the framework of intersectionality, composed of the five strands described in section 1, yields. What is the nature of disadvantage revealed by the framework? That is, what does intersectional disadvantage look like? Before turning to the example of Dalit women to answer this question, a word about caste in India may be helpful.

Caste, like race, is a social construction that signifies an entrenched form of segregation and hierarchy. The caste system divides all Hindus into four principal 'varnas' or caste—Brahmin (priests) at the very top, followed by Kshatriya (warriors), Vaishya (merchants and farmers), and Shudra (menials). Each caste is further divided into several sub-castes. Those outside of the fourfold caste system are known as outcastes or 'Untouchables' or the 'Scheduled Castes' per the Constitution of India, or—as a matter of assertive pride and resistance—'Dalits', which means those who have been broken or suppressed.

Although seemingly based on division of occupational labour, caste is determined by heredity not choice, and thus is designated upon birth. There is no possibility of change or conversion from one caste into another. In fact, even conversion to other religions means that caste travels into those religions such that Dalits

<sup>100</sup> See, for a discussion on the 'travels' of intersectionality, Helma Lutz, Maria Teresa Herrera Vivar, and Linda Supik (eds), *Framing Intersectionality: Debates on a Multi-Faceted Concept in Gender Studies* (Ashgate 2011) (hereafter Lutz et al, *Framing Intersectionality*).



become Christian or Muslim Dalits upon conversion. The one exception to this is Buddhism which is meant to provide a wider berth for equality upon conversion. Nevertheless, by and large, caste as an ascription appears irreversible. This irreversibility is ensured by endogamy, or the practice of marrying within caste. Endogamy maintains the 'purity' of castes and thus supports and reinforces its hereditary character.<sup>101</sup>

The caste system locks people not only into ascriptive caste identities but also into an interminable cycle of disadvantages associated with the caste hierarchy. Being outside the caste system, Dalits have suffered the worst consequences of it in terms of a lower social status, reduced cultural capital, a lack of economic security, diminished political power, and heightened aggression and violence.<sup>102</sup> Dalit women have suffered this broad-based casteism along with patriarchal domination. They are thus considered 'Dalits amongst the Dalits', whose position is worsened by multiple and intersecting forms of oppression relating to caste, gender, and class.<sup>103</sup>

This section highlights the intersectional thinking in the Dalit feminist discourse. Section 3.1 explores the intersectional roots of Dalit feminism in India. It shows how other categories like caste, religion, creed, nation, and region have shaped women's gendered identity in India. The mediation of sex or gender by other identity categories cements an inherently intersectional understanding of these categories in the Indian context. The section traces the development of post-colonial Dalit feminism against this background and in response to their exclusion from the mainstream upper-caste, middle-class ('Brahminical') feminism, and the patriarchal, anti-caste movement.

Section 3.2 argues that even as there are obvious differences in context and an absence of the term 'intersectionality' in the Dalit feminist discourse, the shared language and explanations of the respective positions of disadvantage of Black women and Dalit women reveal their common conceptual foundations. Both were

<sup>101</sup> See, for a detailed account of caste, Nripendra K Dutt, *Origin and Growth of Caste in India* (vol 1, The Book Company 1931).

<sup>102</sup> There are of course notable exceptions to this, especially in relation to the rise of Dalit political parties like the Bahujan Samaj Party in the Indian state of Uttar Pradesh. For an analysis, see Radha Sarkar and Amar Sarkar, 'Dalit Politics in India: Recognition without Redistribution' (2016) 51 *Economic and Political Weekly* 14; Vivek Kumar, 'From Social Reform to Political Mobilisation: Changing Trajectory of Dalit Assertion in Uttar Pradesh' (2003) 53 *Social Action* 115.

<sup>103</sup> The term 'Dalit women' is used rather loosely, and hence inclusively. The position of women who are Dalit Christians and Dalit Muslims (or tribal and nomad women who remain at the fringes of the Dalit identity) cannot be squarely defined with reference to caste, gender, and class, without analysing the implications of religion (or tribe) separately. However, if we follow Galanter's associational view of caste, the composition of caste is characterised by a complex set of features including but not limited to religious features. 'Dalit' identity may then be extremely complex from within, such that the position of Dalit women can be studied taking their caste identity as simultaneously defined by multiple intersections and as intersecting with other identities. See Marc Galanter, 'The Religious Aspects of Caste: A Legal View' in DE Smith (ed), *South Asian Politics and Religion* (PUP 1966).

concerned with mapping the uniqueness of their positions *as* Dalit women and Black women, as well as what they shared *with* Dalit men and upper-caste women, and Black men and white women. They too use the dynamic of sameness and difference based on identity categories considered as a whole, to reveal broader patterns of group disadvantage with the aim of challenging and transforming such patterns. Though only one of them went on to develop intersectionality as *intersectionality*, their respective positions, rooted in their specific contexts, transcend contextual limitations, and confirm the global avail and normative fortitude of intersectionality-like thinking; and the usefulness of extending intersectionality as a framework developed in the context of Black feminism for understanding intersectional disadvantage and discrimination in diverse settings.

The overall takeaway is that marginalized discourses, whether of women or others, located anywhere in the world have or can resonate with intersectionality when they try to see patterns of group disadvantage associated with multiple identities as a whole. So, the present juxtaposition of Dalit feminism with Black feminism is not simply an attempt to illustrate an application of intersectionality, or even to show partnerships between postcolonial/Third World feminisms on the one hand and First World discourses on the other; it is also about the intersectional perspective of always looking for detailing, rather than simply the deployment of the locution. More importantly, it is about digging into accounts that provide a basis for pursuing intersectionality or discrimination law at all—of explicating the meaning of what we say when we say that individuals and groups suffered intersectional discrimination. Thus, in the end, this is an epistemic exercise which in turn supports an ontological or experiential one of understanding intersectional disadvantage with the purpose of relieving the lives that are suffering from such disadvantage.

### 3.1 Dalit Feminism

The roots of Black feminism's intersectional thinking lie in challenging the exclusionary tendencies in the feminist as well as the civil rights movement. Black feminists thus argued against an essentialist understanding of women and women's experiences as solely defined by sex or gender and in isolation of women's other identities of race, class, sexuality, disability, age etc. Similarly, they contested the monolithic category of Blacks inhabited by Black males, whose interests defined and trumped the interests of Black women in the civil rights movement.

In contrast, the intersectional thinking of Dalit feminists was inspired by a different legacy. For example, although they too had to confront the mainstream Brahminical feminism conceived mainly for upper-caste middle-class women, they had to do so against a backdrop of over-inclusive rather than exclusive rendering of sex and gender, populated by other categories of nationalism, community,

religion, caste, class, region, and sexuality.<sup>104</sup> Thus, before charting the trajectory of Dalit feminism as a response to the mainstream feminist and anti-caste movements, it is useful to briefly understand the background in which it developed—one which Anupama Rao describes as being saturated with the discourse of gender in everyday life.<sup>105</sup>

Women's identity in India has been the chief architectural motif in the construction of other identity categories like caste, nation, region, class, sexuality, and religion.<sup>106</sup> Caste serves as the classic case for understanding this process of production and reproduction of other identities *via* sex or gender. Caste, which operates through endogamy, is based on a strict regulation of women's sexuality. Patriarchy controls the sexuality of Brahmin or upper-caste women by regulating it with notions of purity and chastity, and thereby prohibiting marriage outside caste, while conceiving of Dalit women as loose and promiscuous, and thus using their bodies as sites of sexual exploitation. Both upper-caste and lower-caste women serve as the gateways of the caste system, through which they are in turn subordinated and oppressed.<sup>107</sup>

Thus, women in India have not just been affected by their exclusion but also by their appropriated inclusion. While Western feminism had to be alerted that the 'insistence upon a subject for feminism obscures the "social and discursive production of identities"',<sup>108</sup> Indian feminists began with a diametrically opposite challenge—that of delineating the gendered identity of women by analysing women's central role in the social and discursive production of identities. Similarly, while Western feminism was criticized for relegating differences between women to the 'embarrassed et cetera',<sup>109</sup> Indian feminists had to struggle with discerning the category of women at all, from the confines of the 'unembarrassed et cetera' like caste, nation, region, class, and religion. As Nivedita Menon remarks: 'Women's movements in the global South thus never started with the idea of some subtract Woman that they later needed to complicate with more and more layers. This identity of Woman was from the start located within Nation and within communities of different sorts.'<sup>110</sup>

<sup>104</sup> Irene Gedalof, *Against Purity: Rethinking Identity with Indian and Western Feminisms* (Taylor and Francis 1999) 183, 201.

<sup>105</sup> Anupama Rao (ed), *Gender and Caste: Issues in Contemporary Indian Feminism* (Kali for Women 2005) 20 (hereafter Rao, *Gender and Caste*).

<sup>106</sup> See, for another example, the relationship between gender and religion which frames Muslim women's subordination in India: Flavia Agnes, 'From Shah Bano to Kausar Bano: Contextualizing the "Muslim Woman" Within a Communalized Polity' in Ania Loomba and Ritty A Lukose (eds), *South Asian Feminisms: Contemporary Interventions* (DUP 2012).

<sup>107</sup> Vidyut Bhagwat, 'Dalit Women in India: Issues and Perspectives—Some Critical Reflections' in PG Jogdand (ed), *Dalit Women in India: Issues and Perspectives* (GPH 1995) (hereafter Bhagwat, 'Dalit Women in India').

<sup>108</sup> Iris M Young, 'Gender as Seriality: Thinking about Women as a Social Collective' (1994) 19 *Signs* 713, 715–16.

<sup>109</sup> Judith Butler, *Gender Trouble* (Routledge 1990) 143.

<sup>110</sup> Nivedita Menon, 'Is Feminism about "Women"? A Critical View on Intersectionality from India' (2015) 50(17) *Economic and Political Weekly* 37, 38 (hereafter Menon, 'Is Feminism about "Women"?').

Just as Dalit feminism set out to articulate their subjective position of subordination due to their gender, caste, and class, the mainstream or Brahminical feminism too had to work with a gendered identity of women in relation to their religious, caste, and class identities. This was because both upper-caste women and Dalit women were oppressed by 'casteist patriarchies'.<sup>111</sup> Caste identity thus became central to the understanding of gender and patriarchy for both mainstream feminists and Dalit feminists. This seemingly 'intersectional' analysis of gender, though, was limited to understanding one's *own* position of disadvantage rather than the engagement with the disadvantage of *others*. It meant that although Brahminical feminists appreciated their own caste oppression (for example, in terms of strict regulation of their sexuality and choice in marriage), they did not appreciate the difference between their position and the oppression of Dalit women (for example, the sexual exploitation of Dalit women by both upper-caste and Dalit men). Even if gender and caste impacted all women, they impacted women in qualitatively different ways. The exploration and articulation of this qualitative difference gave rise to the postcolonial discourse defined by multiple and competing feminisms, rather than a plural but unified sisterhood. Supriya Akerkar captures this pithily:

Indeed the different fragmented contexts of struggle suggest to us that there can be no 'one' feminism in the 'Indian' context or one way of understanding or locating women's oppression. This means that the context itself suggests a need for a plural expression of feminism around women's multiple oppressions, viz, class, caste, ethnicity, gender, sexual preference, etc. In some ways, the diverse responses to the women's oppression and existence of diverse groups reflect this plural reality of women's oppression. However, it appears that these different perceptions have not led to a celebration of the plural practice of feminism.<sup>112</sup>

Dalit feminism came to the fore against this background. Beginning in the 1970s and gaining momentum in the 1980s and 1990s, it emerged as a response to the exclusions of mainstream feminist and anti-caste movements. The postcolonial mainstream or Brahminical feminism had systematically ignored the plight of Dalit women. Just as white women were burdened by the 'pedestal' and its implications, such as lack of employment opportunities, dependency, and undervalued household work, so too, upper-caste middle-class women considered themselves burdened by their image as '[t]he good woman, the chaste married wife/mother, empowered by a spiritual strength'.<sup>113</sup> They espoused causes that related to their

<sup>111</sup> Tarabai Shinde, 'A Comparison between Women and Men: An Essay to Show Who's Really Wicked and Immoral, Women or Men?' in Rosalind O'Hanlon, *A Comparison between Women and Men: Tarabai Shinde and the Critique of Gender Relations in Colonial India* (OUP 1994).

<sup>112</sup> Supriya Akerkar, 'Theory and Practice of Women's Movement in India: A Discourse Analysis' (1996) 30(17) *Economic and Political Weekly* 2, 13–14.

<sup>113</sup> Samita Sen, 'Motherhood and Mothercraft: Gender and Nationalism in Bengal' (1993) 5(2) *Gender and History* 231, 232.

'status' vis-à-vis men, especially in relation to marriage, including concerns over consent, dowry, divorce, widowhood, inheritance, and domestic violence. These did not resonate with Dalit women who had a long history of internal critique and reform within Dalits and vis-à-vis Dalit men. By the end of colonial rule in 1947, Dalits had already popularized consent and choice in marriage, resisted dowry, and espoused marriage without priests and widow remarriage. Similarly, in the private sphere, though Dalit women were responsible for running the household just as upper-caste women were, they were neither pedestaled in their homes nor did they subscribe to *pata puja* or worshipping at the feet of their husbands. While they were domestically abused, they often retaliated against their husbands and families. At the same time, they had always occupied the public sphere since they had had to move out of their homes whether for accessing water from village wells, fetching logs for fire, or earning meagre wages for menial jobs. Yet, their employment was confined to degrading jobs meant only for 'Untouchables', like manual scavenging and cleaning of corpses, still receiving fewer wages than Dalit men for the same job. Coupled with their traditional duties of housekeeping, Dalit women considered themselves more 'overworked' than their male counterparts and upper-caste Hindu women.<sup>114</sup> They were ill-treated as the domestic servants of upper-caste women and sexually exploited by upper-caste men. Brahminical feminists had not just contributed to and in fact obscured this caste oppression, they had romanticized and overdetermined Dalit women's position: marriage reform was seen as a sign of equality, sexual exploitation was couched as sexual freedom, brave retaliation against sexual abuse was counted as evidence of power, and participation in precarious forms of employment was dubbed as an exercise of personal autonomy. Disregarded as lower-caste and misunderstood as more equal, Dalit women failed to make it into mainstream feminism in India.<sup>115</sup>

Nowhere is this more apparent than in the case of sexual assault and violence against Dalit women. The seminal case of Bhanwari Devi is instructive.<sup>116</sup> Bhanwari Devi was a grassroots worker employed as part of the Women's Development Project by the state of Rajasthan. She worked to convince local villagers to reject child marriage and had tried to frustrate the wedding of a nine-month-old girl in a powerful upper-caste Gurjar family in her village. In retaliation, she was gang raped by the upper-caste Gurjar men who penalized her for pursuing the cause against child marriage in their family. The District Judge who heard her rape complaint dismissed it on the basis that upper-caste men could not possibly have raped her, a Dalit woman. The issue flared up and was pursued by Indian feminists in the form of the demand for protection of women against sexual harassment at the

<sup>114</sup> Gail Omvedt, 'The Downtrodden among the Downtrodden: An Interview with a Dalit Agricultural Labourer' in Rao, *Gender and Caste* (n 105).

<sup>115</sup> See, for a longer analysis, Gabriel Dietrich, 'Dalit Movement and Women's Movements' in Rao, *Gender and Caste* (n 105) (hereafter Dietrich, 'Dalit Movement').

<sup>116</sup> *Vishaka v State of Rajasthan* (1997) 6 Supreme Court Cases 241 (Supreme Court of India).

workplace. They expedited their cause through public interest litigation in the Supreme Court of India. The Court began addressing the petition, which finally resulted in the Supreme Court Sexual Harassment in Workplace Guidelines in 1977 and Sexual Harassment of Women at Workplace Act in 2013 in these terms:

The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of social worker in a village of Rajasthan. That incident is the subject matter of a separate criminal action and *no further mention of it, by us, is necessary*. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate . . .<sup>117</sup>

The characterization of the petition stemming from Bhanwari Devi's gang rape as merely a case of sexual harassment (not then a crime), rather than rape (a crime under the Indian Penal Code) perpetrated on the basis of caste, signified the oversights of mainstream feminists and judges alike. Couching Bhanwari Devi's gang rape as a broader issue of 'gender equality', not only hijacks a case which really belonged to Dalit women but also fails to fulfil the feminist promise of realizing gender justice for all women in fact. Furthermore, neither the Supreme Court Guidelines nor the succeeding Act of 2013 addressed the situation of Dalit women like Bhanwari Devi, targeted not just as women but specifically as Dalit women. Without directly addressing the nature of intersectional harm involved in sexual assault and harassment against Dalit women, cases like Bhanwari Devi's continue to be mischaracterized (e.g. sexual assault such as rape devolving into sexual harassment defined as unwelcome sexual contact) and overlooked (as cases of both caste oppression and sexual discrimination at the same time). The feminist undertaking of Bhanwari Devi's case marks the persistent sidelining of caste as a gender issue.

This sidelining is mirrored in the anti-caste movement. The Dalit liberation movement began in the early 1900s. Since its inception, Dalit women were active participants along with Dalit men.<sup>118</sup> But while early protagonists like Bhimrao Ambedkar, Jyotirao Govindrao Phule, and Periyar EV Ramaswami were conscious of Dalit women and their presence in the anti-caste movement, Dalit women's exploitation was never centre stage in their anti-caste struggles. For example, though Ambedkar included and encouraged Dalit women to participate in Dalit liberation, his appreciation of Dalit women's concrete reality was often imagined only from the perspective of caste rather than patriarchy. This is noticeable in his grandest anti-caste essay, *Annihilation of Caste* (1936), where he exhibits his intersectional thinking as he remarks: 'Religion, social status, and property are all sources of power and authority which one man has to control the liberty of another.'<sup>119</sup>

<sup>117</sup> Ibid (emphasis supplied).

<sup>118</sup> Meenakshi Moon and Urmila Pawar have excavated this prolific, though largely overlooked, history of women's participation in the Ambedkarite movement. Meenakshi Moon and Urmila Pawar, *Amihini Itihaas Ghadawila: Ambedkari Chatatitil Streeyancha Sahabhag* (Stree 1989).

<sup>119</sup> BR Ambedkar, *Annihilation of Caste* (Verso 2016) 230.

Gender or patriarchy though, was not independently considered a source of power or authority that controlled Dalits especially Dalit women. Observations on patriarchy, where made, were too generalist ('traditional supremacy of man over woman') to be meaningful in explicating the Dalit women's position. The Dalit movement and its leaders were thus too preoccupied with caste to articulate the specific ways in which general and broad-based forms of oppression including patriarchy, poverty, and casteism impacted Dalit women in particular. The assumption was that Dalit women's struggles were the same as those of Dalit men and hence simply caste based; the annihilation of caste would automatically defeat patriarchy and classism.

The tendency to subsume the issues of Dalit women within broader caste struggles cemented itself in the post-Ambedkar years. While Dalit women shared all forms of caste oppression with Dalit men, they also suffered distinct forms of sexism at the hands of upper-caste men and Dalit men, which were both similar to and different from the sexism suffered by non-Dalit women. As Bhanwari Devi's case showed, rape and sexual abuse were specifically targeted at Dalit women as a form of patriarchal and caste domination over them, as well as caste domination over Dalit men as a tool for disciplining them or teaching them a lesson by exploiting their wives and daughters. Access to Dalit women was not deemed inconsistent with the practice of untouchability or other forms of caste-based segregation. At the same time, Dalit women suffered from wife battering and desertion by Dalit men. Although they shared their poverty with Dalit men, they were often poorer—eating last and hence the least in the household, earning far less than Dalit men for equal work, and seldom having land or material resources of their own. Dalit women were also passed over for leadership positions in Dalit organizations like Dalit Panthers, which gained a wide base in the 1970s. Barred from participation, their issues were left unrepresented in the Dalit struggle, which was rendered chiefly male in its postcolonial incarnation. Dalit women were thus left 'doubly deserted' by both the women's and the anti-caste movement.<sup>120</sup>

The exclusion from the contours of both feminist and Dalit movements became key to the articulation of the Dalit women's position. Dalit feminism thus emerged as a response to the 'masculinization of dalithood and a savarnisation of womanhood'<sup>121</sup> ('savarna' meaning upper or high caste). In highlighting that Dalit women could not be collapsed into the unqualified category of 'women' in the women's movement or 'Dalit' in the caste movement, Dalit feminism sought to create an

<sup>120</sup> Dietrich, 'Dalit Movement' (n 115) 58.

<sup>121</sup> Sharmila Rege, 'Dalit Women Talk Differently: A Critique of "Difference" and Towards a Dalit Feminist Standpoint Position' (1998) 33(44) *Economic and Political Weekly* 39, 42 (hereafter Rege, 'Dalit Women Talk Differently').

alternate paradigm that more accurately represented and explained the realities of Dalit women. It was a plea neither for inclusion nor for representation but to re-examine the very core of these discourses—of how to conceptualize caste and gender subordination. Gopal Guru flagged the need for Dalit women to talk ‘differently’ in one of the first essays highlighting the reality of Dalit women’s oppression, based on the ‘external’ (Brahminical forces regulating the issues of women) and ‘internal’ factors (the patriarchal domination within the Dalit movement).<sup>122</sup> Sharmila Rege further substantiated the salience of the Dalit feminist discourse by advancing the ‘Dalit Feminist Standpoint’, which:

emphasises individual experiences within socially constructed groups and focusses on the hierarchical, multiple, changing structural power relations of caste, class and ethnicity which construct such groups . . . the subject/agent of dalit women’s standpoint is multiple, heterogeneous and even contradictory, i.e., the category of ‘dalit woman’ is not homogenous. Such a recognition underlines the fact that the subject of dalit feminist’s liberators knowledge must also be the subject of every other liberators project and thus requires a sharp focus on the processes by which gender, race, class, caste, and sexuality all construct each other. Thus, the dalit feminist standpoint itself is open to liberatory interrogations and revisions. The dalit feminist standpoint which emerges from the practices and struggles of dalit women may originate in the works of the dalit feminist intellectuals, but it cannot flourish if it is isolated from the experiences and ideas of other groups and must educate itself about the histories, preferred social relations, the utopias and the struggles of the marginalised. A transformation from ‘their cause’ to ‘our cause’ is feasible for the subjectivities can be transformed. By this we do not argue that non-dalit feminists can ‘speak as’ or ‘for the’ dalit women but they can ‘reinvent’ themselves as dalit feminists.<sup>123</sup>

Rege’s exposition deserves unpacking. First, Rege, like Guru, was speaking of culling out differences *between* individual experiences but *within* disadvantaged groups, thus highlighting the need to speak to both individual differences as well as shared group disadvantage. Rege thus characterized the Dalit feminist standpoint as concerned with ‘historically locating how all our identities are not equally powerful, and about reviewing how in different historical practices similarities between women have been ignored in an effort to underline caste-class identities or at other times differences ignored for “the feminist cause”’.<sup>124</sup> Uma Chakravarti too

<sup>122</sup> Gopal Guru, ‘Dalit Women Talk Differently’ in Rao, *Gender and Caste* (n 105) 80–81.

<sup>123</sup> Sharmila Rege, ‘A Dalit Feminist Standpoint’ in Rao, *Gender and Caste* (n 105) 99.

<sup>124</sup> Sharmila Rege, “Real Feminism” and Dalit Women: Scripts of Denial and Accusation’ (2000) 35(6) *Economic and Political Weekly* 492, 493 (hereafter Rege, ‘Real Feminism’).



recognized this in proclaiming that ‘Dalit women experience[d] patriarchal oppressions in unique as well as in shared ways.’<sup>125</sup> These contradictions of sameness and difference led Dalit women to articulate their distinct position of disadvantage defined not simply in reference to caste, gender, or class alone, but in terms of the intersection of casteism, patriarchy, and poverty at the same time. But, secondly, the purpose was not simply to articulate these similarities and differences but to articulate, in Rege’s terms, ‘the hierarchical, multiple, changing structural power relations’ or, so to say, the patterns of group disadvantage. The Dalit feminist standpoint was thus an analysis of relationships of power which rendered Dalit women, ‘Dalits among Dalits’ or ‘downdrotten amongst downdrotten’, being ‘thrice alienated’ on the basis of caste, class, and gender.

Thirdly, such a ‘multiple, heterogeneous and even contradictory’ exposition of the Dalit women’s position rendered all Dalit women’s experiences, and indeed all Dalit and female experiences, as non-normative and hence inclusive. Rege argued against privileging any standpoint as limiting the emancipatory potential of that movement and indeed of their epistemological standpoint.<sup>126</sup> She thus opened the doors of Dalit feminism to a broader struggle for emancipation of all dispossessed individuals and groups. She emphasized the transformative goal of movements to look outwards, to reinvent rather than reject modes of engaging with identity politics. Finally, the Dalit feminist standpoint, as Rege describes, was one marked by both theory and praxis—both in touch with one another and flourishing in tandem. Dalit feminism, like Black feminism, was thus not merely, not even predominantly, a scholarly space. It was, and has continued to be, an activist space inhabited by Dalit women’s organizations and advocates, leading the social movement against Dalit women’s oppression. The work of the National Federation of Dalit Women formed in 1995 bears testimony to the strong coexistence and mutual reinforcement of theory and praxis.<sup>127</sup>

The similarities between intersectionality developed by Black feminists and the intersectional thinking of Dalit feminists may be apparent in the common language and explanations of both the discourses. What conclusions can we draw from this coincidence? Where does this leave us in terms of using intersectionality as a framework developed in one context, as a frame of reference for another? What does an example of a thick account of intersectional disadvantage, as in the case of Dalit women, show anyway? And how does this feed into the aim of using intersectionality for defining and redressing the category of intersectional discrimination in discrimination law? The next section reflects upon this.

<sup>125</sup> Uma Chakravarti, *Gendering Caste: Through a Feminist Lens* (Stree 2003) 88 (hereafter Chakravarti, *Gendering Caste*).

<sup>126</sup> Rege, ‘Dalit Women Talk Differently’ (n 121) 44.

<sup>127</sup> Kalpana Kannabiran, ‘A Cartography of Resistance: The National Federation of Dalit Women’ in Nira Yuval-Davis, Kalpana Kannabiran, and Ulrike Vieten (eds), *The Situated Politics of Belonging* (Sage 2006) 54–71 (hereafter Kannabiran, ‘A Cartography of Resistance’).

### 3.2 Dalit Feminism, Black Feminism, and Intersectionality

The roots of Dalit feminist intersectional thinking are indigenous and self-made. Their struggles reflect their own circumstances, and consequently the theorizations borne out of the Dalit feminist movement are informed by that praxis rather than universal theories of any kind. In fact, like Black feminism, Dalit feminism is inspired by its longstanding genealogy of thought; including, as the previous section highlighted, the politics of engaging with multiple identities that can be traced as far back as the early twentieth century. There is, as Subramaniam notes, ‘no single point in time or place [that] marked “start” for the contemporary *dalit* women’s movement.’<sup>128</sup> Given that the surge in both Dalit feminism and Black feminism coincided in time, from the 1980s onwards, there was no possibility initially of borrowing from one another. The locution of intersectionality and transcontinental dialogue thus remained absent in the formative moments of Dalit feminism.

This has of course changed now. Cross-referencing and conversations between Dalit feminists and Black feminists are mutual, if not equal. Indian feminists have used Black feminist literature on intersectionality as a theory and a methodological tool for illuminating or clarifying their own intersectional subjectivities.<sup>129</sup> For example, Rege cites ‘[f]eminists of colour [who] developed the powerful resource of “intersectionality” of structures of domination’, including hooks, Collins, and Anzaldúa, in her work.<sup>130</sup> In a recent exchange between Nivedita Menon and Mary E John on the usefulness of intersectionality theory in India, John ruminates: ‘Dalit feminists have also frequently found inspiration in the history of black women, which makes me wonder whether some dimension of the intersectionality problem might speak to them. It would surely be odd to reject this out of hand.’<sup>131</sup> In fact, out of hand rejections of intersectionality have been rare.<sup>132</sup> The locution and the theory have found their way into spaces, often beyond Dalit feminism, which benefit from them.<sup>133</sup> For example, in her work *Tools of Justice*, Kalpana Kannabiran presents a contextualized account of intersectionality in Indian

<sup>128</sup> Mangala Subramaniam, *The Power of Women’s Organizing: Gender, Caste and Class in India* (Lexington Books 2006) 59 (emphasis in original).

<sup>129</sup> Dalit feminism and indeed feminism in India has explored intersectionality and Black feminism in far more detail in comparison. See the dedicated vol 48 issue 18 of *Economic Political Weekly* in 2013 on intersectionality; Purvi Mehta, ‘Dalit Feminism at Home and in the World’ in Barbara Molony and Jennifer Nelson (eds), *Women’s Activism and ‘Second Wave’ Feminism: Transnational Histories* (Bloomsbury 2017).

<sup>130</sup> Rege, ‘Real Feminism’ (n 124) 495.

<sup>131</sup> Mary E John, ‘Intersectionality Rejection or Critical Dialogue?’ (2015) 33(1) *Economic and Political Weekly* 72, 76.

<sup>132</sup> The notable one being Menon, ‘Is Feminism about ‘Women?’’ (n 110).

<sup>133</sup> See especially the proceedings of Jagori Conference, ‘A Brief Report Intersectionality: Knowing and Doing’ (17 August 2015) <<http://www.jagori.org/sites/default/files/publication/panel%20discussion%20on%20intersectionalities%2017th%20august%202015%20-%20report.pdf>> accessed 28 March 2019.

constitutional law in relation to caste, religion, disability, sexuality, and indigenous and tribal peoples.<sup>134</sup>

Similarly, Bilge and Collins acknowledge Black feminism's shared but independent trajectory of intersectionality with Dalit feminism. They refer to Kannabiran's powerful exposition of the Dalit women's political position 'shaped by multiple and interrelated systems of oppression: religiously sanctioned casteism, patriarchy, capitalism, state, and religion'.<sup>135</sup> They use Kannabiran's analysis and the example of Dalit feminism to show how intersectional thinking has pervaded identity-based resistance and struggles beyond the context of Black feminism in the US.

The invocation of the Dalit feminism-Black feminism analogy has been both measured and attentive. Neither discourse adopts the other wholesale, uncritically or out of context; and both engage with the other more than just as passing references. The engagement thus bears out several things. First and foremost, it shows the limited value of engaging with identity politics, social movements, and discourses along a single categorial axis alone. Secondly, it shows in great depth from the perspective of Black feminism and Dalit feminism why intersectional thinking along multiple axes matters—to capture the qualitatively distinct nature of disadvantage associated with multiple identity categories. Thirdly, it shows the conceptual convergences in thinking about intersectional disadvantage and discrimination across diverse contexts. It is these convergences that reveal the value in applying the intersectional framework to different subjects and sites. It is useful to collate them here.

Both Dalit and Black feminists broke away from their respective mainstream feminist movements upon realizing that an unqualified category of women or Blacks or Dalits did not adequately explain and address the position of those women who were also Black or Dalit. In fact, their mutual discord with caste and race movements on the one hand, and Brahminical and white feminisms on the other, is captured in their comparable slogans: 'All Men are Black, All Women are White' and 'All Dalits are male and all women savarna [upper-caste]'. They then developed this with the central insight that women's subordination cannot exclusively be explained in reference to gender, and that other identities like race and caste create both shared and unique experiences amongst women. Their common demand was for reconceptualizing identity theory, social movements, and interventions, including law, from the standpoint of the most disadvantaged, namely those who suffered intersectional discrimination. Thus, like Black feminists, Dalit feminists demanded an epistemological shift across disciplines and an ontological space

<sup>134</sup> Kalpana Kannabiran, *Tools of Justice: Non-Discrimination and the Indian Constitution* (Routledge 2012).

<sup>135</sup> Collins and Bilge, *Intersectionality* (n 60) 130 (citing Kannabiran, 'A Cartography of Resistance' (n 127)).

to reassert their multiple but whole identities and experiences. Their demands coincide, in that feminists and Dalit (or race) scholars are asked not to speak *as* or *for* Dalit (or Black) women but to 'reinvent themselves as dalit feminists'<sup>136</sup> or to bring Black women from 'margin to centre'.<sup>137</sup>

In this sense, both Dalit and Black feminist intersectional positions are transformative at heart; they are not about the aggregate of individuals or certain groups, and explicating their subjective positions, but about the eventual 'contingent transformation of collective subject positions', an emancipated standpoint which was 'not a given but one to be achieved'.<sup>138</sup> Dalit feminists share with Black feminists their larger goal of creating a paradigm for fighting oppression on behalf of every oppressed group and demanding Dalit women's emancipation for the 'emancipation of entire womanhood'.<sup>139</sup> As Vidyut Bhagwat writes:

The core of dalit consciousness is made of protest against exploitation and oppression. In short, the term dalit stands for change and revolution. *By using the term Dalit women we are trying to say that if women from dalit castes and of dalit consciousness create a space for themselves for fearless expression i.e. if they become subjects or agents or self, they will provide a new leadership to Indian society, in general and to feminist and dalit movements in particular.*<sup>140</sup>

Even when, as Bhagwat characterizes, Dalit feminism adopts a caste and gender framing, it is but a shorthand for a structured analysis of intersections beyond caste and gender, and including sexualities, religion, disability, and especially class and poverty. It is important to underscore that just as Dalit feminism arose as a response to the exclusions of mainstream feminist and Dalit movements, it was equally a response to the thriving Marxist and eco-feminist discourse, which had excluded caste and gender analyses. In this, both the anti-caste movement as well as Dalit feminists had criticized the Left's blindness to caste, seeing it merely as a 'superstructure' like religion and thus leaving it unexamined. In fact, the Left's standpoint was that once class relations were assailed, caste could automatically be surpassed.<sup>141</sup> The argument appeared as exclusive as those of feminist and Dalit movements for excluding caste and gender specific detailing respectively. Dalit feminists thus made class the cornerstone of their analysis going beyond Dalit women who constituted the educated elite working in universities and in white-collar jobs, and towards interrogating, for example, the 'material realities of the lives of the rural Dalit

<sup>136</sup> Rege, 'Dalit Women Talk Differently' (n 121) 45.

<sup>137</sup> hooks, *Feminist Theory* (n 36).

<sup>138</sup> Rege, 'Real Feminism' (n 123) 495.

<sup>139</sup> Surendra Jondhale, 'Theoretical Underpinnings of Emancipation of Dalit Women' in PG Jogdand (ed), *Dalit Women in India: Issues and Perspectives* (GPH 1995) 107.

<sup>140</sup> Bhagwat, 'Dalit Women in India' (n 107) 2 (emphasis in original).

<sup>141</sup> For a detailed explanation of this point, see Chhaya Datar, 'Non-Brahmin Renderings of Feminism in Maharashtra: Is it a More Emancipatory Force?' (1999) 34(1) *Economic and Political Weekly* 2964.

women.<sup>142</sup> The material reality of women's disadvantage was thus as foundational to Dalit feminism as it was for Black feminism; perhaps in the same way that, often, its muted presence in the list of identity categories was reflective of its foundational salience in the analysis of power structures rather than its exclusion.

It is hard to consolidate and compare the entire discourses of Black feminism and Dalit feminism, or any other which has developed or applied intersectional thinking. But even their brief iterations show what work they perform in understanding the complexity of intersectional discrimination. The formative roots of intersectionality in Black feminism and intersectionality-like thinking in Dalit feminism show how intersectionality is pursued concretely and on the ground, in relation to the specific forms of disadvantage it seeks to uncover. This specificity provides epistemic depth to the intersectional framework which, as I argued, is about sameness and difference in patterns of group disadvantage considered simultaneously and as a whole and in their context for the purposes of transforming them.

The lesson from this illustration is also that intersectionality as a trope is unimportant so long as one appreciates the intersectional framework. The framework, of course, is a rather complex one composed of several interconnected strands. The lived realities of discrimination suffered by groups like Black women and Dalit women, which feed the framework, are even more complex. Dilemmas, exhaustion, and fatigue are inevitable in traversing intersectional frames. This chapter has tried to simplify the complexities, address some of the dilemmas, and provide an illustration for accessing intersectionality in a systematic way. So, this is how this chapter and intersectionality come to inform the project of successfully claiming intersectional discrimination: by appreciating the complexity of this category of discrimination via a crystallized framework. What Black feminism and Dalit feminism do is to enrich that framework with a thick account of what intersectional discrimination with respect to specific groups looks like. Thus, this chapter has provided a template for extending the framework of intersectionality to understand intersectional discrimination yielded by the patterns of group disadvantage associated with multiple identity categories like race, caste, nationality, language, religion, sex, gender, sexual orientation, disability, age etc., in disparate contexts and with respect to diverse groups, like fat Black men, Muslim men, Muslim women, disabled people identifying as LGBTQ etc.

## Conclusion

One may ask whether this thick account of intersectionality—its defences and its presence/relevance in contexts like Dalit feminism—strays from the legal project

<sup>142</sup> Chakravarti, *Gendering Caste* (n 125) chs 1–2.

of this book, which is concerned, in the remaining part, with comparative discrimination law. The reason for this detailed account is perhaps exactly to render such a question meaningless: to show that it is in no other way that discrimination law can address the complexity of discrimination in reality than actually diving deep into understanding it. Intersectionality theory and praxis give us a firm grasp on the qualitative nature of disadvantage suffered by intersectional subjects. It is useful to sum up the main points made in the course of making this argument.

Intersectionality rejects the understanding of discrimination as a function of a single categorial axis and emphasizes the need to recognize discrimination resulting from the intersections of multiple axes of race, caste, religion, sex, gender, disability, age, sexual orientation etc. It seeks to reconceptualize the way we understand such intersectional discrimination to present a more accurate vision of the prevailing social inequalities that correspond with people's lived realities. By filling in this epistemological gap, intersectionality aims to transcend and ultimately transform these patterns of group disadvantage. This is the core of intersectionality, which hopes to be reflected in the category of intersectional discrimination and redressed in discrimination law. The full version of the claim appears thus: *intersectionality illuminates the dynamic of sameness and difference in patterns of group disadvantage based on multiple identities understood as a whole, and in their full and relevant context, with the purpose of redressing and transforming them.*

For each case of intersectionality, the explanation of what sameness and difference in patterns of group disadvantage looks like will be highly specific to the identities in question and the context in which they emerge. These explanations will be framed by supporting works of sociology, anthropology, psychology, political science, economics, law etc., which provide evidence of the qualitative nature of intersectional disadvantage. Intersectionality then fulfils a limited but significant role in providing the conceptual framework for distilling the explanations of group disadvantage experienced by persons with multiple identities or membership in disadvantaged groups. This contribution can be neither overemphasized nor understated. After all, intersectionality 'even in its theoretical voice [is] about the practical implications of its arguments'.<sup>143</sup> Thus, intersectionality, as Crenshaw herself stressed, is what it *does*, not what it *is*.<sup>144</sup> And that is all that matters. So, the question we must now ask is, how do we *do* intersectionality in discrimination law? The next two chapters turn to this.

<sup>143</sup> Hancock, *An Intellectual History* (n 24) 71.

<sup>144</sup> Kimberlé W Crenshaw, 'Postscript' in Lutz et al, *Framing Intersectionality* (n 100); Cho, Crenshaw, and McCall, 'Toward a Field of Intersectionality Studies' (n 13) 795.