



INTERSECTIONAL FEMINISM: APPLICATION OF THE PoA ACT IN CASES OF SEXUAL ASSAULT AGAINST WOMEN

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ABSTRACT

Feminism, though developed in the West, found itself ‘feel at home’ in India, a country whose roots are still deep and strong in patriarchy. The Indian educated upper class has been an active proponent of the feminist movement and their experiences have been widely cited by the media. However, the experiences of the SC/ST women and their plight have taken a backseat, being curtailed from popular discussion and has not received the attention it deserved. To make feminism more inclusive, the idea of intersectionality took birth. This idea attempts to recognize the overlapping positions of vulnerability faced by women. In the Indian context, caste, along with gender overlaps and makes SC/ST women vulnerable to immense violence and abuse.

I. Introduction

“There is no thing as a single-issue struggle because we do not live single-issue lives”¹

The above quote is by Audre Lorde, who was an American writer with multiple identities, a woman of colour and also a lesbian. She often found herself as part of a group that is defined as deviant, inferior or simply wrong. It was her identity as a black and lesbian woman that exacerbated the challenges she faced as a woman.²

This is the core issue intersectional feminism aims to address, the multiplicity of discrimination against the identities that threaten to increase vulnerability. In order to understand why the topic holds immense relevance in contemporary times, we need to understand that the world today, despite being postmodern and mostly democratic, is infected with elements of bigotry. For the Indian subcontinent, caste, gender, colour, sexual preference and religion play an important role in deciding how a person is treated in society.

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¹ A feminist revolution demands climate justice, *available at:* <https://www.opendemocracy.net/en/5050/feminist-revolution-climate-justice/> (last visited on July 18, 2023).

² Audre Lorde, *Sister Outsider* 114 (Crossing Press 1984).

In order to understand how gender and caste work, we need to understand that gender is a social construct³ and the treatment meted out to the different genders is based on their position in the society. The society has been ignorant of the diverse gender pool and has primarily acknowledged the existence of the male and female gender as the only two genders. However, this mindset is on an evolving journey. Among men and women, the society has unequally placed men on a pedestal, treating women as inferior citizens, depriving them of any autonomy on themselves. Women throughout the world have been victims of blatant discrimination, both by individuals in society as well as by governments. They had to struggle to achieve basic rights such as the right to vote, which came after a long struggle for the American women.⁴ This century long suppression gave rise to the feminist movement. Despite the vibrant movements, violence against women is still a reality and women still face discrimination in every aspect of life.⁵ Sexism refers to the inherent bias through which people are judged only by virtue of them belonging to a particular sex. It is a manifestation of historically unequal power relations between women and men, which leads to discrimination and prevents the full advancement of women in society.⁶ While discrimination based on gender created enough developmental gaps, to add to this came the double vulnerability of certain groups. The phenomenon of intersectionality recognizes that a person's multiple identities are not isolated and hence the discrimination they face based on these multiple identities is not a byproduct of an isolated identity.

This paper will study intersectional feminism in the Indian context, particularly focusing on sexual assault faced by women belonging to specific caste groups, the Scheduled Castes (SC) and the Scheduled Tribes (ST) and the application of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989⁷. It would also explore judgments pronounced by courts in rape and sexual assault cases against SC and ST women and how far the law recognises the 'caste' element in such cases.

³ Gender and Health, *available at*: https://www.who.int/health-topics/gender#tab=tab_1 (last visited on July 22, 2023).

⁴ Women's Suffrage, *available at*: <https://www.history.com/topics/womens-history/the-fight-for-womens-suffrage> (last modified on February 23, 2023).

⁵ Feminism and Women's Rights Movements, *available at*: <https://www.coe.int/en/web/gender-matters/feminism-and-women-s-rights-movements> (last visited on July 22, 7:57 PM).

⁶ Recommendation of CM/REC (2019)1 of the Committee of Ministers to member States on preventing and combating sexism (Committee of Ministers, European Council, 2019).

⁷ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (Act 33 of 1989), s. 3.

Objectives

The objectives of this research are:

- i. To understand intersectional feminism
- ii. To analyze the application of intersectional feminism in the Indian context
- iii. To understand the impact of caste in aggravating the sexual violence faced by SC/ST women
- iv. To look at the role of Courts in recognizing intersectionality and recognizing the dual evil faced by SC/ST women

Methodology

In order to understand intersectionality in the Indian context, secondary research has been carried out by studying various research papers, articles, and online blogs. Further, case laws have been analysed to learn the extent to which the provisions of the Prevention of Atrocities Act 1989⁸ have been successful. The paper takes a step by step approach, from the birth of feminism to the arrival of the concept of intersectionality and further its application in India. The study limits itself at the intersection of caste and gender to evaluate the experiences of SC/ST women and the application of the PoA Act.⁹

II. Concept of Feminism

Feminist movements and demands for equal rights for women have been in existence even before the term ‘feminism’ started to be used in common parlance. British activists used to call themselves “Women’s Righters” or “A Woman’s Rights Woman” and the issues addressed by them were named as “Woman Question” or “Woman Problem” or the “Condition of Woman Question”. The focus of feminism then was on public organized activity instead of private and interpersonal issues (Mitchell).¹⁰ Feminism refers to the theory that women should have political, economic and social rights equal to those of men. (Webster)

⁸ *Supra* note 7.

⁹ *Ibid*,

¹⁰ Mitchell, S. (2015), *Feminism*, The Encyclopedia of Victorian Literature, D.F. Felluga (Ed.).

Intersectional feminism

Intersectional feminism is a term coined by American law professor Kimberley Crenshaw in the year 1989. She defined intersectional feminism as, “a prism for seeing the way in which various forms of inequality often operate together and exacerbate each other.”¹¹ (Kimberley Crenshaw, 1989) To understand Crenshaw’s definition of intersectionality, it is important to understand the mechanics of a prism. When white light hits the surface of the prism, it refracts to reveal the seven colours of the rainbow. The white light is the discrimination faced by women, by virtue of their gender, however, this discrimination is not an isolated event. The colours of the rainbow that appear stand for the multiple identities that become an additional cause for the discrimination faced by women. These identities are often hidden within white light and go unnoticed as a factor adding to the vulnerability of specific groups of women. It is these multiple identities within the common identity of being a woman that function to make some women more vulnerable than the other. Intersectional feminism¹² recognizes that barriers that exist to gender equality change and vary depending on the woman’s other identities, such as colour, ethnicity, race, class, religion, caste etc. For example, the extent of discrimination and harassment faced by a white woman at work would differ from the discrimination and harassment faced by a black woman at the same workplace due to her additional identity of being black. Hence, intersectional feminism centres on the voices of those facing oppression due to their overlapping and concurrent identities. (Intersectional feminism: what it means and why it matters right now, 2021)¹³

III. Intersectional feminism in the Indian context

The much-glorified diversity of India has often come to us at the cost of discrimination paid by various groups of people. Intersectional feminism sets perfect in the Indian sub-continent because of the multiple identities of people here and the discrimination they often face because of these. Scheduled Caste and Scheduled Tribe women have often been at a disadvantage and are at a more vulnerable position to face sexual assault as compared to upper-caste women. This can be

¹¹ Kimberley Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”, 1989 *UCLF* 13 (1989).

¹² Intersectional feminism, *available at* <https://www.dictionary.com/browse/intersectional-feminism> (last visited on 22 July, 2021).

¹³ Intersectional feminism: what it means and why it matters right now, *available at* <https://www.unwomen.org/en/news/stories/2020/6/explainer-intersectional-feminism-what-it-means-and-why-it-matters> (last visited on 23 July, 2023).

made clear by understanding the patriarchal idea where asserting power meant having control over one's property and women. And whoever had to demean the honour of his opponent, attacked the women of the opponent's household. Often to assert their power and dominance, upper-caste men have sexually assaulted SC and ST women. This is how caste functions as an element making SC and ST women more vulnerable because of their vulnerable identities.

Equal treatment of unequal violence

Violence faced by Dalit women is normalised and remains invisible in public discussions.¹⁴ Feminist movements and discussions are often found to be dominated by upper-caste women with high social standing. The lived experiences of SC and ST women comprise oppression based on gender, caste and class. These women have become victims of casteism, patriarchy and poverty at the same time. They are oppressed by men not just from their community but by upper-caste men as well. These women then become a part of a marginalised group, within a marginalised group. Their voices remain unheard in the mainstream media.

In order to address and penalise this issue of sexual assault faced by SC and ST women because of their caste identity, the country takes shed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989¹⁵. The application of the same will be studied next.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act¹⁶ was enacted in the year 1989 in order to prevent the commission of atrocities against people belonging to the Scheduled Castes and Scheduled Tribes. It also aimed to create Special Courts for the trial of such offences, as well as for the relief and rehabilitation of victims of these crimes.

According to Section 3 (1) (w) (i) and (ii)¹⁷ of the amended Act, any person who is not a part of the Scheduled Caste or Scheduled Tribe shall be punishable with imprisonment for at least six months and which can extend up to five years and with a fine, if:

¹⁴ Not Just Rape...The 'Commentary' On Hathras Rape Case & The Lack Of A Caste-Sensitive Lens, *available at* <https://feminisminindia.com/2020/10/01/hathras-rape-case-up-thakur-caste-based-violence/> (last visited on 22 July, 2023).

¹⁵ *Supra* note 7.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

- i. Intentionally sexually touches a woman belonging to such communities without obtaining her consent or
- ii. Uses sexual words, acts or gestures towards her, knowing that she belongs to the SC or ST community

Section 3 (2) (v)¹⁸ of the PoA Act states that any person not belonging to the SC or ST community shall be punishable with life imprisonment and fine, if:

- i. Commits an offence under the Indian Penal Code, 1860¹⁹ which is punishable with imprisonment for ten years or more.
- ii. Against a person or property with the knowledge that such person belongs to the SC or ST community or the property belongs to such person.

Application of the PoA Act in cases before the 2016 amendment

Ashrafi v. State of Uttar Pradesh (2017)

In this case²⁰, the Court did not convict the accused under Section 3 (2) (v) of the PoA Act²¹ and held that the evidence in the case did not prove that the accused committed the offence and raped the minor girl on the ground that she belonged to the Scheduled Caste community. Here, the provision was interpreted as the offence should have been committed “only” on the ground that she was a member of the SC community.

Dinesh Alias Buddha v. State of Rajasthan (2006)

In this case²², an eight-year-old girl was sexually ravished by the accused who was found guilty under Section 376 (2)²³ of the IPC and Section 3 (2) (v) of the PoA²⁴ Act by the trial court. However, the Rajasthan High Court set aside the conviction under the PoA Act stating that there

¹⁸ *Ibid.*

¹⁹ Indian Penal Code, 1860 (Act 45 of 1860).

²⁰ *Ashrafi vs. State of Uttar Pradesh*, (2018) 1 SCC 742 : 2017 SCC OnLine SC 1432 : (2018) 1 SCC (Cri) 489 at page 745.

²¹ *Supra* note 7.

²² *Dinesh v. State of Rajasthan*, (2006) 3 SCC 771.

²³ Indian Penal Code, 1860 (Act 45 of 1860), s. 376.

²⁴ *Supra* note 7.

was no evidence that the crime was committed because the girl belonged to the Scheduled Caste community.

Issue of the burden of proof

In the above judgments, the court held that due to lack of evidence, conviction under Section 3 (2) (v) of the PoA Act²⁵ was not possible. But the question that arises here is that what kind of evidence would be admissible to prove that the sexual assault was committed on account of the victim's caste. One of the ways that this can be proved is that the mere knowledge that the victim belonged to the SC or ST community would constitute sufficient evidence to convict under the Act. This criterion has been recognised in the amended PoA Act²⁶. While it is recognised that proving the caste factor in cases of sexual assault is difficult, will it make a generalisation that the knowledge of the victim's caste amounts to the reason for rape? These are important questions that the judiciary will have to address in the course of time while pronouncing judgments in such cases. In order to prove the existence of caste as a reason for rape, should the sexual assault make it very explicit that caste was an active factor like in the case of *Bhanwari Devi (1992)*²⁷ where the victim tried to stop a child marriage in an upper-caste family and the upper-caste men enraged by her interference and to re-establish their power raped Bhanwari Devi and physically assaulted her husband.²⁸

Also, what role do the police play in collecting evidence in such cases, and how can the investigation be conducted in order to find out the impact of the caste factor in the commission of the crime?

The Parliamentary Standing Committee Report²⁹ on Atrocities and Crime against Women and Children also recognised that the high acquittal rate in cases of sexual assault plays a role in motivating and boosting the confidence of the dominant and powerful communities to continue oppressing.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Bhanwari Devi v. State of Rajasthan*, (2011) 15 SCC 493.

²⁸ Isha Sharma, "Bhanwari Devi Rape Case: A Brief Reflection", 4 *SSR* 22 (2018).

²⁹ Parliament of India, 230th Report on Atrocities And Crimes Against Women And Children (Department-Related Parliamentary Standing Committee on Home Affairs, 2021).

Judicial recognition of intersectionality

While interpreting Section 3 (2) (v) of the SC and ST (Prevention of Atrocities) Act in the case of *Patan Jamal Vali v. State of Andhra Pradesh (2021)*³⁰, the Supreme Court by expanding the scope of the provisions created a landmark judgment. The accused, Patan Jamal Vali filed an appeal in the case he was tried under Section 376 (1)³¹ of the IPC and Section 3 (2) (v)³² of the Prevention of Atrocities Act for committing rape on the victim who was a twenty-year-old girl, blind by birth. On the basis of evidence, the court, in this case, set aside the conviction under Section 3 (2) (v)³³ of the PoA Act but upheld the conviction under Section 376 (1)³⁴ of the IPC. However, the court also held that Section 3 (2) (v)³⁵ would not exclusively apply “only” in situations where the caste of the victim is the sole criteria for committing sexual assault against her. The bench declared that the provision would apply in all such cases where the woman’s caste is one of the grounds for the commission of the crime. The court noted that the 2016 amendment which replaced the words “on the ground of” with “knowing that such person is a part of the SC or ST community” will further work in decreasing the threshold of proving that the crime was committed because of the caste identity of the woman. The court also laid the principle that in case the accused was known to the victim’s family, it would be reasonable to assume that he was also aware of her caste.

The court in this judgment acknowledged the idea of intersectionality by stating that while incidents of rape and sexual assault are traumatising for all women in the society, the experience of women belonging to the Scheduled Caste or Scheduled Tribe community or a woman with a disability is a result of their overlapping identities and the different relationships of power. In cases where the identity of a woman intersects with her caste, class, religion, disability, sexual orientation, she might become a victim on account of her additional identities. The court noted that it is important to use an intersectional lens to understand how the multiple sources of oppression operate together to subordinate the women. This judgment is a landmark as it will initiate a new

³⁰ 2021 SCC OnLine SC 387.

³¹ *Supra* note 20.

³² *Supra* note 7.

³³ *Ibid.*

³⁴ *Supra* note 20.

³⁵ *Supra* note 7.

conversation around intersectionality in the Indian context and its application in Indian courtrooms.

IV. Conclusion

“When I see something that looks racist, I ask, ‘Where is the patriarchy in this?’ When I see something sexist, I ask ‘Where is the heterosexism in this?’ When I see something that looks homophobic, I ask ‘Where are the class interests in this?’³⁶

- Mary Matsuda

When Kavin Malar³⁷, a poet and journalist was trying to get her poem Vanpunar (Violent) based on real-life experiences of sexual assault of Dalit women published, she was asked if the last line saying, “there are no more Cheri (Dalit) women left for you to violate” could be edited and the word ‘Dalit’ be omitted, making it general to violence faced by women. She recognised that even though keeping this line would not affect the publisher, it portrayed the reluctance of mainstream media towards Dalit voices.

The concept of intersectional feminism has often been critiqued on the ground that intersectionality would create many new identity categories which could lead to friction. However, the aim of the concept is to recognise the multiple identities to break the hierarchical structure itself. While the concept originated in America, activists and more recently, the Court has recognised the application of intersectionality in the Indian context. By doing so, it has given rise to a new movement peculiar to India. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, though recognises and punishes, caste-based violence against women, its application in the past has been limited to courts setting aside orders under the provision.

Hopefully, the new amendment which recognises knowledge of the woman’s caste as a criterion for conviction, as well as the court’s interpretation of intersectional feminism and its application in India will work to bring a change in the rate of conviction under the PoA Act. It is time that we recognise that ignorance of the existence of caste is a privilege of those who are not affected by its ravages. As long as the country does not ensure effective implementation of the SC

³⁶ Anandita Pan, *Mapping Dalit Feminism 5* (SAGE Publications 2020).

³⁷ Kannalmozhi Kabilan, “The missing ideal of intersectionality”, *The New Indian Express*, Dec. 15, 2020.

and ST Act, India will continue to become a witness of brutal cases like the Hathras gang rape³⁸ (2020).

³⁸ *Satyama Dubey v. Union of India*, (2020) 10 SCC 694.