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Embracing Intersectionality: A Paradigm Shift in Understanding Victim Perspective

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Abstract

India is considered one of the leading countries in gender-based violence. Over the years, the country has improved and has made significant changes in rules and regulations. Patil Jamal Vali vs State of Andhra Pradesh 2021, the case involves the gruesome rape of a visually impaired Dalit girl and the judgment which made a significant change in this realm. In this case, the Supreme Court, for the first time, recognised and emphasised the concept of "intersectionality", the amalgamation of victim's vulnerability, such as gender, race, sex, and disability. The article focuses on the facts, issues and judgement along with its implications and feminist jurisprudence. It highlights its significance in understanding the concept of intersectional vulnerability of victims in the Indian Context. The judgement acknowledges the difficulties faced by disabled people and sets out certain guidelines for disabled persons for equitable access to the justice system.

Keywords: *Caste, Disability, Intersectionality, Sex*

1.0 Introduction

India ranks one of the lowest countries regarding women's safety according to the 2023 Women Peace and Security Index (Georgetown Institute for Women, Peace and Security & Peace Research Institute Oslo, 2023), India secured 128th position out of 177 countries. According to the NCRB database, 31,677 cases of rape were registered in the year 2021. Unfortunately, there is no specific data related to sexual violence against disabled women. According to various studies, women with a disability have been at two to four times higher risk of being a victim of sexual abuse and violence than abled body women. On the other hand, the Dalit community historically has always been at the bottom of the hierarchy of the Indian caste system and often exploited and faced with sexual violence; this puts them in a vulnerable position, especially with gender-based violence, and women suffer the most.

The intertwining of both the component gender and disability somehow compartmentalizes them into more vulnerable positions in society and often disables victimization. The present case (Supreme Court Cases, 2021) is one of the landmarks where the judgment acknowledges the intersectionality of vulnerabilities of a victim, such as race, gender, disability, and caste. The court broadens the social and legal context and leads us to understand a crime through multiple multi-directions and not through a single focal point. The Supreme of India's Division bench, consisting of **Chief Justice Dr Dhananjaya Y Chandrachud and Justice MR Shah**, decided the case**.**

2.0 Conceptualization

The term and the concept of **intersectionality** were first introduced by Prof. Kimberly Crenshaw in her paper "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti-discrimination Doctrine

Feminist Theory and Antiracist Politics" (Crenshaw, 1989) where she talked about the intersection of various social factors such as race, gender, and class and how the interconnection of these factors contributes to the commitment to crime. Prof Kimberly talked through the lens of African American women and how race and gender are both factors relevant regarding the violence and abuse suffered by black women in society. Intersectionality is a broader and multi-directional approach to understanding the victim's vulnerability. Looking through a single focal point or single axis model which is a traditional way would be unjust. According to the Professor. Crenshaw: -

"Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars travelling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination". (Crenshaw, 1989)

The crime didn't happen just because the victim belonged to a certain class or race but the combination of both or more social factors. Its intersectionality is like understanding and analysing every colour of brush stroke that has been used in a colourful painting to understand the art in depth. It helps us to understand the inequalities at the same level and how discrimination arises from the "simultaneous" interaction of these components rather than ranking them or compartmentalising them.

3.0 Facts of the Case

The victim is a 19-year-old of age girl (PW2 in this case), visually impaired, residing with her family in Gajulpalli village, Andhra Pradesh. Her mother (PW1) is illiterate and a rustic woman, and PW2's brothers are coolie workers. The accused, in this case, belonged to the same village as the victim and was a manual worker who works a coolie with the victim's brother; he's well acquainted with the family for the last two years and has made frequent visits to the house where PW2 lived. On 31st March 2011, at around 9 am when PW1, the mother of the victim, was doing her household chores near the public tap near the house and the brothers were cutting firewood in nearby proximity, the accused approached PW1 in search for her sons, PW1 told him to wait for a while and told him about her son's whereabouts, somewhere after 30 mins the PW1 and neighbours heard the screaming of PW2, PW1 hurriedly rushed into the house and called her husband and son for help. They found the door was locked from the inside of the house, upon alarming accused opened the tired to run away but was caught in the action upon entering the house, PW1, the mother found her daughter PW2 on the floor without any clothes on her, she was bleeding from her vagina and her apparels where torn off, PW4 the cousin of PW2 called the police officer at around 10 am, the accused was handed over by the villagers to the circle inspector and the PW2 was admitted to the local Government hospital, the written complaint was done by PW1 and the accused was charged with section 376(1) IPC and 3(2)v SC/ST ACT.

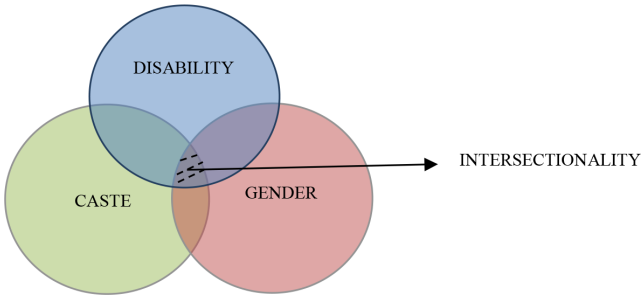


Figure 1. Demonstration of Intersectionality via. Venn Diagram.

The Additional District and Sessions Judge found the accused guilty of both the charges and granted him life imprisonment and later the High Court of Andhra Pradesh upheld the Sessions Court Judgment.

The judgement focuses on various other aspects which serve a very important role in understanding a crime in the Indian Context and subjects related to the crime itself. Some of the topics which this judgement focuses on are crucial to the current social scenario. The judges took a broader approach in this case. It can be called the genesis of intersectionality with references to the Indian Context. The judgement also focuses on the rights and the position of Disabled people and witnesses' testimony.

4.0 Theoretical Explanation

The theories associated with the case context include the Freudian theory, Rational choice theory and Routine activity theory. Sigmond Freud, also known as the father of psychoanalysis, applied the theory by examining the psychological motivations behind criminal behaviours through his concepts of the id, ego, and superego. Freud

posited that the id represents primal instincts and desires, which can lead to impulsive and aggressive actions when unchecked. (Hagan, 2017) In this context, the perpetrator's actions may stem from a lack of impulse control driven by base instincts. The brutal nature of the crime indicates a lack of impulse control; the offender acted solely on the base of instincts without considering the victim's humanity.

In another neo-classical theory, the Rational Choice Theory given by Cornish and Clarke in the year 1986, criminal behaviour is viewed as a rational decision where offenders weigh the potential benefits against the risks of apprehension and punishment. In this case, the perpetrators likely engaged in a cost-benefit analysis before committing their actions, considering factors such as the perceived rewards of their crime (e.g., financial gain, power) versus the likelihood of being caught and facing legal consequences. (Hagan, 2017) In this case, the victim was visually impaired, and she belonged to the Dalit community. The offender perceived her as a low-risk target. The familiarity between the accused and the victim's family could have further reduced his perceived risk, which ultimately led him to believe he could commit the crime without facing significant consequences. Also, the circumstances surrounding the crime provided an opportunity for the offender as the victim was home alone, and her mother was engaged nearby, creating a situation where he could act without immediate witnesses or intervention.

This situation can also be looked at through the lens of the Routine Activity theory developed by Cohen and Felson in 1979, which focuses on three key elements: motivated offenders, suitable targets, and the absence of capable guardians. In this case, the victim is visually impaired, and she belongs to the Dalit community, which makes her a suitable target. On the day of the incident, the victim was alone without any family member nearby who would have provided protection. The absence of guardianship allowed the offender to commit the crime.

5.0 Reason for the Judgement

The court's determination in this matter is consistent with the fundamental principle of **ex post facto law.** With the conditions of the victim, there is no doubt the victim is deeply suffering and had suffered in the hands of the accused given their socio-economic background and the disability leads her to a more vulnerable situation. The accused might have mere knowledge regarding the caste of the victim. They would have been presumed by the court under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 but the offence was committed in the year 2011 before the amendment of the act of 1989, under which the prosecutrix failed to prove that the crime was committed on the ground that she belongs to a Scheduled Caste within the meaning of section 3(2)(v) of the SC and ST Act. The Supreme Court of India set aside the conviction and sentence imposed on the appellant for an offence under Section 3(2)(v) of the SC and ST Act. The court, looking at the gravity of the offence, affirmed the Session's court decision on conviction under section 376(1) of the Indian Penal Code conviction imprisonment for life, Rs.1000/- fine and default imprisonment of six months.

6.0 Analysis of the Judgment

6.1 Introduction to the Concept of Intersectionality

Women with disabilities in countries like India face disproportionately higher rates of sexual harassment and violence as compared to able-bodied women. The most unfortunate part of it is that women with disabilities encounter endless barriers to report abuse, including communication challenges, and are unaware of their rights. Furthermore, marginalized groups, such as those from scheduled castes and tribes, experience heightened risks due to socio-economic factors. The need to integrate intersectionality in India has arisen; even today, Indian feminism is such that it places its emphasis on achieving issues important to women of the upper caste only whilst ignoring the voices and suffering of women from the Dalit and Adivasi communities. There are attempts to raise 'women' issues in a much more scientific, systematic and comprehensive manner, considering the 'why' and the 'how' of women's subjugation, violence and oppression concerning several other factors of caste, class, and gender among several other forms of identity. Such legal advances as the Supreme Court's recognition of intersectionality concerning Scheduled Caste and scheduled tribe women also show that these discussions are gaining ground within the Indian legal system. This change aims to ensure that in the case of individuals who

sit in these intersections, laws are made that consider the various aspects of discrimination that they suffer along with these intersections. The development of intersectionality as a lens to understand and respond to violence against women and other forms of gender-based violence and advocating for policies that are fit to the unique challenges that all women in India face. The judgement is one of the significant developments in the arena of Indian Victimological jurisprudence as it analyses the victim's vulnerability from various dimensions, which ultimately leads her to such a grave situation.

6.2 Credibility of Disabled Witness

The judgement emphasises the credibility of the witness as witness credibility should not be considered any less in the case where the person is disabled. In this case, the PW2, visually impaired, gave the oral testimony and didn't need any kind of assistance where is said that she recognized the accused through his voice. The credibility of disability witness should be treated the same as any other witness, and disability doesn't make any less and should be treated on the same footing as an abled witness. The court also stressed the fact that it is unjust to devalue the testimony of the witnesses on the grounds of disability or how the correct legal procedure has not been followed. The court also draws attention towards the vulnerability of being an easy target for violence and domestic abuse due to both gender and disability. Women with disability suffer four times more violence than abled body women. According to the report "Invisible Victims of Sexual Violence Access to Justice for Women and Girls with Disabilities in India" ("Invisible Victims of Sexual Violence," 2023), the victims often face several difficulties regarding reporting any domestic violence or abuse, difficulty in communication with the police officers due to the lack of support or mediator for communication, various challenges face by them during the judicial process in demand for justice, rehabilitation and compensation.

6.3 Guidelines Provided in the Case

The Supreme Court of India in this case, set out a few guidelines (Supreme Court Cases, 2021) to achieve a justice system more disabled-friendly -

6.3.1 Judicial Training

The National and state-level judiciary academies should incorporate proper training for the judges to understand the challenges faced by survivors of abuse, with a special focus on the provisions related to the protection of survivors and proper evaluation of the credibility of testimonies.

6.3.2 Legal Professional Training

The Public Prosecutor and legal counsel should undergo proper training in understanding the challenges faced by them and for better representation.

6.3.3 Curriculum Development

The Bar Council of India should consider introducing this topic in the LLB curriculum for a better understanding of the complexities of the abuse faced by the vulnerable sections.

6.3.4 Appointment for Special Services

The court directed the special appointments of translators and interpreters for better representation, communication and accommodation for the ease of people with special needs. The database regarding the translators, interpreters and legal aid should be kept in the police station for better access by the victims.

6.3.5 Disaggregation of Disability as Data Variable about Gender-Based Violence

The National Crimes Record Bureau (NCRB) was encouraged to consider disability as a data variable to understand the extent of violence faced by them.

6.3.6 Police Training

Special training should be given to the police, which is considered to be the first line of the criminal justice system, for the sensitization of the matter regarding handling the cases of disabled women concerning sexual violence and abuse with context regarding-

- Facilitation of registration complaint
- Ensuring access to medical care
- Providing necessary accommodation
- Connecting survivor with a suitable legal representative

6.3.7 Awareness Campaign

A campaign should be conducted to educate women and girls with disabilities about their rights. This will help them to recognise and report violations.

6.4 Analysing the International and Domestic Laws Concerning Disability Rights

India has always been active in the acknowledgement of the rights of disabled people in India and has been ratified under the Convention on the Rights of Persons with Disabilities (CRPD), which aims to protect the basic human rights of disabled persons. Some of the prominent goals of the CRPD are to protect the dignity of disabled people, ensure full incorporation of the people in society and protect the fundamental rights of the person. The CRDP was adopted by the UN General Assembly on the 13th of December 2006 and came into force in 2008. Article 13 of the convention compels the state to provide access to the justice system, which includes providing necessary accommodations concerning their needs for their active participation, be it direct or indirect, in every stage of the legal proceeding.

The Rights of Persons with Disabilities Act, 2016 (Parliament of India, 2016) was introduced to confirm the convention, replacing The Persons with Disabilities Act 1995 (Parliament of India, 1996) to address the gaps in legalisation. The new act is a well-oriented approach which includes issues like participation, representation, social rights and many more.

The black letter law ensures that there is no distinction made between an abled-body individual and a disabled individual, with the recent amendment in criminal law. The Bhartiya Sakshya Adhiniyam 2023 sections 124 and 125 of the act deals with witnesses. Section 124 of the act says that;

"All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind."

Section 125 of the act specifically deals with witnesses unable to communicate.

"A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court and evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed."

The competence of witnesses is determined by mental competency rather than any other factors of caste, race or disability.

About the Constitution of India, though there is no direct Article addressing the rights of disabled people Article 14 and Article 21, which deal with the right to equality and the right to and protection of life and liberty, respectively, can be availed by any disabled person.

Over the years, we have seen numerous notable Judicial decisions play an active role which helps in strengthening the right of disabled people to align with CRPD, recently in the case of *Suchita Srivastava v. Chandigarh Administration*, where the court emphasised the consent of mentally disabled women. Also, in the case of the *National Federation of Blind v. Union Public Service Commission and Ors* it was that "To permit the visually handicapped (blind and partially-blind) eligible candidates to compete and write the civil services examination in Braille-script or with the help of a Scribe". Recently, the Supreme Court of India established the Supreme Court Committee on Accessibility, which will audit the accessibility of the judicial system by individuals with disability.

6.5 Applying an Intersectional Perspective to Analyse Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989

Currently, after the amendment of the act, whoever is not a member of schedule caste or schedule tribe-

"Commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine"

The amendment decreased the threshold regarding the fact that the crime was committed based on caste only as it was the contention before rather than mere knowledge being adequate for conviction.

With the amendment Section, the prosecution does not require the obligation that the offence was derived

because of the victim's caste identity. In addition to this insertion of clause (c) under section 8 which states-

"The accused was having personal knowledge of the victim or his family; the Court shall presume that the accused was aware of the caste or tribal identity of the victim unless the contrary is proved." if the accused is well known by the victim in such case the court "shall presume" that the accused know the same.

Before the amendment (the timeframe in which when the Patan case took place)

The section before this was "Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member shall be punishable with imprisonment for life and with fine" (Parliament of India, 1989).

The court stated that the phrase "on the ground" can be interpreted as "for the reason" or "based on". Predominantly, the approach toward the section has remained inclined towards the single-axis model. The pattern that has been followed by the previous judgements regarding the interpretation of "on the ground" was quite restrictive, and it was interpreted as "only". Should the crime be committed only on the contention of the victim's caste? The Supreme Court doubted the approach and acknowledged the failure to understand the realities. (Supreme Court Cases, 2021) Also, denying the protection under section 3(2) v of the Sc/St Act on the basis that the crime was not solely committed on the victim's caste overlooks how these overlapping social inequalities affect the victim. A proper interpretation of section 3(2)v of the act could have upheld the conviction as long as caste identity is considered one of the factors of the commission of the crime.

7.0 Conclusion

The case underlines the importance of understanding the complexities of oppression faced by the victim through the lens of intersectionality. Even though the case found the accused guilty under section 376(1) only and not under 3(2)v of the Sc/St Act due to the lack of evidence that the victim had been raped on the fact of caste only. The court extensively examined the concept of intersectionality and emphasised it to avoid narrowing down interpretation and to consider the social realities.

The concept of the intersectionality perspective helps to under the oppressions and the interlinkages of these factors and the vulnerability arising out of them. Ultimately, the intersectionality concept helps us understand the circumstances of the victim in a better way. This broader approach is very much needed in the evolving modern society. Through this judgement, the Supreme Court sets a precedent in the acknowledgement of oppression arising out of muti-socio factors. The judgement also draws attention towards equitable, accessible justice about disabled people as having the same footing as an abled body person. The judgement has a significant implication for society in promoting inclusivity in the society, justice, understanding the complexities of identities and addressing the vulnerabilities faced by individuals belonging to marginalized societies.

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