

# Recognising caste-based violence against women

By repeatedly setting aside convictions under the PoA Act, courts bolster allegations that the law is misused



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The horror of the gang rape of a 19-year-old Dalit woman in Hathras in 2020 is still fresh in our minds. Activists, academics and lawyers argued that the sexual violence took place on account of the woman's gender and caste and that the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (PoA Act) must be invoked.

On the heels of the Hathras crime came a new judgment of the Supreme Court (*Patan Jamal Vali v. State of Andhra Pradesh*) addressing the intersectionality of caste, gender and disability. In this case, the victim of sexual assault was a blind 22-year-old Dalit woman. The trial court and the High Court had convicted the accused for rape under Section 376 of the Indian Penal Code (IPC), and under Section 3(2)(v) of the PoA Act, and sentenced him to life imprisonment. The Supreme Court, in its judgment delivered by Justice D.Y. Chandrachud and Justice M.R. Shah, confirmed the conviction and the punishment for rape under the IPC but set aside the conviction under the PoA Act. On the one hand, this judgment is a huge step forward as the court used the opportunity to bring recognition to intersectional discrimination faced by women on the grounds of sex, caste and disability. However, by setting aside the conviction under the PoA Act, it is like many other previous judgments of the Supreme Court.

## The intersectional approach

Let us focus on the positive aspects first. The Supreme Court, in a first, elaborated on the need for an intersectional approach, to take into account the multiple marginalities that the victim faced. It relied on well-known intersectional theorists such as Kimberlé Crenshaw who first coined the term 'intersectionality' and on the statement of the Combahee River Collective which addressed the intersectional discrimination faced by black women in the U.S. Using these sources, the court recognised that when the identity of a wo-



man intersects with her caste, class, religion, disability and sexual orientation, she may face violence and discrimination due to two or more grounds. It said we need to understand how multiple sources of oppression operated cumulatively to produce a specific experience of subordination for the blind Dalit woman. Placing special emphasis on making the criminal justice system more responsive to women with disabilities facing sexual assault, the court also laid down directions to train judges, the police and prosecutors to be sensitised in such cases.

But despite using an intersectional lens, the court set aside conviction under the PoA Act. The PoA Act was enacted to address atrocities against persons from SC and ST communities and was amended in 2015 to specifically recognise more atrocities against Dalit and Adivasi women including sexual assault, sexual harassment and Devadasi dedication. Section 3(2)(v) states that if any person not being an SC/ST member commits any offence under the IPC punishable with imprisonment of 10 years or more against a person on the ground that such a person is from an SC/ST community, he shall be punishable with imprisonment for life and with fine. This was amended in 2015, to change the phrase "on the ground that such person is a member of SC/ST" to "knowing that such person is a member of SC/ST".

In cases of sexual violence against Dalit and Adivasi women, courts have almost consistently set aside convictions under the PoA Act. In 2006 in *Ramdas and Others v. State of Maharashtra*, where a Dalit minor girl was raped, the Supreme Court set aside the conviction under the PoA Act stating that the mere fact that the victim happened to be a woman who was member of an SC com-

munity would not attract the PoA Act. In *Dinesh Alias Buddha v. State of Rajasthan* (2006), the Supreme Court held: "It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste." In *Asharfi v. State of Uttar Pradesh* (2017), the court held that the evidence and materials on record did not show that the appellant had committed rape on the ground that the victim was member of an SC community. In 2019, in *Khuman Singh v. State of Madhya Pradesh*, a case of murder, again the court held that the fact that the deceased was a member of an SC community was not disputed but there was no evidence to show that the offence was committed only on that ground; conviction under the PoA Act was set aside. There are several precedents insisting on an unrealistic burden of proof. This issue needs to be referred to a larger bench to take a different view.

## Burden of proof

In all these judgments, the court held that there was no evidence to show that the accused committed sexual assault on the ground that the victim was member of an SC/ST community. One is tempted to ask: what kind of evidence would that be? How would the prosecution prove in any given case that the accused had sexually assaulted the victim because she was Dalit/ Adivasi? The only evidence that can be led is that the victim was from an SC/ST community and that the accused was aware of that. When a woman is from a marginalised caste and is disabled, she faces discrimination due to her sex, caste/tribe and disability, all of which render her vulnerable to sexual violence. This is what intersectionality theory requires us to recognise.

In the *Patan Jamal Vali* case, the

court using the intersectional lens recognises that evidence of discrimination or violence on a specific ground may be absent or difficult to prove. It agreed with the finding of the sessions judge that the prosecution's case would not fail merely because the victim's mother did not mention in her statement to the police that the offence was committed against her daughter because she was from an SC community. It also confirmed that it would be reasonable to presume that the accused knew the victim's caste as he was known to the victim's family. Despite such a nuanced understanding, the court held that there was no separate evidence led by the prosecution to show that the accused committed the offence on the basis of the victim's caste. It is unfortunate that intersectionality, which seeks to recognise the multiple grounds of marginalisation faced by women, was used by the court to state that it becomes difficult to establish whether it was caste, gender or disability that led to the commission of the offence.

Why would this matter, one might ask, if the punishment of life imprisonment was upheld? It matters because the repeated setting aside of convictions under the PoA Act bolsters the allegations that the law is misused and amounts to the erasure of caste-based violence faced by women. Further, as stated in the recent Parliamentary Standing Committee Report on Atrocities and Crimes against Women and Children, the "high acquittal rate motivates and boosts the confidence of dominant and powerful communities for continued perpetration". This judgment was a missed opportunity for the court to use intersectionality to uphold the conviction under the PoA Act or refer the matter to a larger bench if needed. We need to stop hiding behind smokescreens of hyper-technicality of evidence and recognise caste-based violence against women when it stares us in the face. Else, our caste discrimination laws will be rendered toothless. If intersectionality theory mattered in this case, it should have influenced an interpretation of the PoA Act that reflects the lived experiences of women facing sexual violence.

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