

Caste, Gender & Crime

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INTRODUCTION

The Caste System in India is one of the oldest forms of social stratification. It divides Hindus into four categories- Brahmins (priests and teachers), Kshatriyas (rulers and warriors), Vaishyas (merchants and moneylenders), and Shudras (people who did menial jobs). With the passage of time, Shudras were further divided into two categories. The ones who did the most menial jobs such as manual scavenging, were called the 'Ati-Shudras'. The system separated the upper castes and lower castes in all ways possible. The lower castes lived in separate areas and even drank water from separate wells. The Ati-Shudras were deemed untouchable and their touch or presence was considered "polluting". Even though the system is believed to be around 3000 years old and is illegal, the society still reeks of it. It not just showers the upper castes with privileges but also takes away basic rights of the lower castes like entering temples. For a country that boasts of its constitutional philosophies like justice and equality, it has been failing 70% of its population. As per National Crime Records Bureau (NCRB), crimes against Scheduled Castes and Scheduled Tribes rose by 7% and 26% respectively from 2018 to 2019.

If seen through the lens of patriarchy, women suffer. But if seen through the lens of caste and patriarchy, women who belong to the lower castes suffer the most. 20.4% of the total crimes registered under Schedule Castes and Scheduled Tribes (Prevention of Atrocities), 1989 were crimes related to women. The status of women in the Indian society and their caste contribute as the main reasons for brutal sex crimes. A caste crime is significantly more violent because it is inflicted with the intention to teach a 'lesson' and to insult them. Of the total offences registered solely under the SC/ST Act in 2017 with Dalits as victims, 55% were related to intentionally "Insult or Intimidate with Intent to Humiliate." These women have been paraded naked, forced to eat human defecation, gang raped or raped just because their male relatives were on a run. These crimes showcase a worrying level of discrimination and the severe Brahmanical patriarchy that is in place in India.

As per NCRB reports in February 2020, Uttar Pradesh remained the top state for violent crimes such as rape and murder against Dalits. The state witnessed an increase of 47% from 2014 to 2018 in crimes against Dalits. It is followed by Gujarat, with an increase of 15%, and Madhya Pradesh, with an increase of 14%.

Through this paper, the researchers will attempt to study the intersectionality of caste, gender and crime primarily focusing on cases involving brutal sex crimes against Dalit women, response by the administration and media, and current laws in place, thereby, concluding with potential solutions.

CASES

1. Hathras Gang Rape and Murder Case (September, 2020)

A 19-year-old Dalit girl was raped on September 14, 2020 in the village of Bhoolgarhi in Hathras, Uttar Pradesh. The victim and her mother were working in the fields that were owned by upper caste farmers on the same morning. The young woman went missing and was found by the mother beaten and tortured, with her tongue cut off as she bit it when the accused tried to strangle her. The victim was taken by her mother and brother to file an FIR at Chandpa police station. There was a delay in filing the same. She was taken to a primary health centre from where she was referred to the Aligarh's JN Medical College and Hospital. Even though the hospital in Aligarh is a two-hour drive from the clinic in Hathras, she was not admitted till the evening. The victim named four attackers- Luvkush, Ravi, Sandeep, and Ramu and accused them of sexual assault. She was taken to the Safdarjung Hospital, Delhi instead of AIIMS, where the AMU doctors originally referred her. The victim sustained extreme neck, spinal cord and deep vaginal injuries. She suffered from quadriplegia, i.e., complete paralysis of the four limbs due to injury. The young woman died at the Safdarjung Hospital on the morning of September 29. On death, UP Police took illegal custody of the body and refused to hand it over to the family. The body was burnt in a hurry without the family's consent or presence, thereby destroying evidence in a capital case. This is also a violation of the Fundamental Right of Life, which includes the right to have decent last rites.

2. Khairlanji Massacre (September, 2006)

Khairlanji is a village in the Bhandara district of Maharashtra. The Scheduled Caste families live under the dominance of the Hindus. There were five members in the Bhotmange family: Bhaiyalal (the family head), aged 55, his wife, Surekha, aged 50, their two sons- Sudhir, aged 21 and Roshan, aged 14 and a daughter, Priyanka, aged 17. The conflict arose when the villagers demanded a road to be constructed through Bhaiyalal's land. The family was resisting this and seeking legal support. They received Siddhart Gajbiye's support. He was beaten up by people in Khairlanji. Surekha and Priyanka were witnesses and a formal case was registered. 12 out of 15 accused were arrested and released on bail on the same day. Later, a mob attacked the Bhotmange family. Priyanka and Surekha were dragged by the mob and brutally gangraped. Sudhir and Roshan were beaten up and were allegedly asked to rape their sister. Upon refusal, their genitals were mutilated. The victims were paraded naked, murdered, and dumped in a canal near the village. The villagers during the massacre remained silent and the few who did get involved were overpowered. Superintendent of Police of Adhalgaon paid a visit two days after the incident took place.

The court gave a verdict two years later in September, 2008. Eight people were held guilty of murder and three were acquitted. Bhaiyalal Bhotmange, the lone survivor of the 2006 massacre died in 2017 suffering from a heart attack.

The two cases, even though fourteen years apart, highlight the same issue: the use of sexual dominance by the upper castes. The accused alone are not to be blamed. The administration and silent spectators are equally at blame- whether it was the doctors at Aligarh's JN Medical College and Hospital who did not inform the victim's family about the severity of her condition, or the silent villagers. It is also important to note that most caste based sexual violence involves gangrapes. Rapes are driven by power, anger, and sexuality. In the case of caste atrocities, it is anger of the men of the whole upper caste community and their urge to bring shame to these families. During the Khairlanji massacre, abusing both women and men of the family was seen as a double victory. The parading of their bodies was to showcase the power the upper castes held.

A caste based crime is never just between the rapist(s) and the victim. It is between people of two castes and the need of the upper caste to demonstrate caste supremacy. The perpetrators of these crimes in most cases enjoy social support.

THROUGH THE LEGAL LENS

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been the principal legal instrument to progress the movement for empowering the Dalits.

In case of caste-based gender violence, two sections of the Prevention of Atrocities Act are applicable. Section 3 (1) (ix) of the Act elucidates that anyone who is not a member of Scheduled Caste/Tribe assaults a woman who belongs to Scheduled Caste/Tribe with an intent to dishonour or outrage her modesty would face imprisonment which may extend to five years, with fine. The mention of 'outrage her modesty' is important as the orthodox society views a Dalit woman as someone who does not have honour.

Further, Section 3 (1) (xi) of the Act elaborates that a person who does not belong to the Scheduled Caste/Tribe, uses his position of dominance to exploit her sexually, then the above-mentioned provisions are applicable. However, the word 'sexual exploitation' is not defined in the Act and therefore interpreted in accordance to its dictionary meaning.

Section (32) (v) of the Act provides for enhancement of punishment that is a criminal offence under IPC. It is applicable when crime is committed against a Dalit person, but there is no specific provision in the Act that deals with the committed crime. In such cases, Section (32) (v) of the ACT is invoked along with relevant provisions of the Indian Penal Code (IPC). By doing so, the punishment given under IPC increases with the application of Section (32) (v) of the Act.

Under Section 376 of the Indian Penal Code, raping a woman attracts imprisonment that may extend to ten years or life. However, if the woman in concern belongs to Scheduled Castes/Tribes, greater punishment is attracted by applying Section (32) (v) of the Act. However, the prosecution has to prove that the offender had previous knowledge of the caste of women and the incident of rape took place on the grounds of her caste. In the State of Chhattisgarh v. Chaitu alias Chaitram, an FIR was filed under Section 376 of the Indian Penal Code with Section (32) (v) of the Prevention of Atrocities Act. However, the prosecutor failed to prove that the accused had prior knowledge of the woman's caste leading to his acquittal. Therefore, the burden of proof in such cases lies on the shoulder of the prosecutor. Shabby and botched-up investigations coupled with police inaction and inefficiency weaken the prosecutor's case.

The POA Amendment Act has listed offences that are classified as atrocity under the Act. The amendment has included offences like touching a SC/ST woman without her consent, using words which are sexual in nature, and dedication of an SC/ST woman as devadasi to a temple or similar practices.

Though Prevention of Atrocities Act has stringent provisions, the conviction rate under the law continues to remain low. Costly litigation is another factor that keeps Dalit women away from pursuing the case. However, rule number 11 of the Prevention of Atrocities Act provides for expenses for travelling, daily maintenance to victims, their dependents, and witnesses. However, many victims do not receive the compensation.

On March 20, 2018, Supreme Court, showing concern over misuse of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities), 1989, ruled that no immediate arrest of a citizen or public servant will be made. In the same year, K.T.S Tulsi asked about the poor rate of conviction with respect to crimes committed against Dalits in Rajya Sabha. Minister of State Hansraj Ahir replied that the delay may be attributed to delay in lodging FIR, witnesses and complainants turning hostile, lack of proper scrutiny by the Prosecutors, and lack of proper presentation of the case (Rajya Sabha questions, 2018).

THE RESPONSE

The first instant reaction that was prominently seen across social media platforms is an appeal to not make Hathras rape case- a caste issue. This immediate denial of the caste angle highlights the privileged denial of the historic institution of oppression. According to the National Crime Report Bureau data, India witnessed 10 rape cases against Dalit women daily in 2019.

In the Hathras rape case, the police did not immediately file an FIR though they had the knowledge of the violence, assault, and rape. This is not a random statistical anomaly. In the report by the National Coalition for strengthening Prevention of Atrocities Act (POA Act)

which analyzed 20 years of the act, it was observed that FIR under POA Act is not easily registered. Non registration of FIR is the first obstacle towards legal recourse and justice. The same report highlighted that the perpetrators are likely to be released on bail while it is likely that the victim will receive lesser monetary compensation than deserved (20 Years Prevention of Atrocities Act, 2010). In similar cases, the police prefer to file a Non-cognizable report instead of an FIR. After receiving widespread condemnation against the rape case, the UP government filed 19 FIRs against unknown people for hatching an international conspiracy against the government.

Police did not arrange for immediate medical help. The crime took place on September 14th at 9.30 a.m. The victim was admitted at Aligarh Muslim University's JN Medical College and Hospital at 4.10 p.m. Aligarh Hospital and the UP Police kept the family of the victim in dark about the severity of her condition. She was shifted to the Intensive Care Unit after a delay of six days. It was then that the family was informed about the damages sustained by the spinal cord of the victim. The family was pressurised by the Aligarh Hospital and UP Police to shift the patient to AIIMS after fourteen days, where the victim died. Even the samples were not collected immediately, but eleven days after the assault. The spermatozoa can be identified only upto 72 hours after the assault. Additional evidence like clothing items can be collected upto 96 hours. There was a similar delay in collecting forensic evidence as well.

The family of the Hathras case are lobbying for the case to be pushed out of Uttar Pradesh as they are citing threat, intimidation, and lack of trust. Unfortunately, this is not the first time where a Dalit family has been threatened to withdraw a rape case. In 2013, when a 16-year-old Dalit girl was raped by the son of Sarpanch, her father was intimidated by the upper caste men. They threatened that if the case was not withdrawn, all the Dalit houses would be torched (Trivedi, 2013).

In *State of Chhattisgarh v. Chaitu alias Chaitram*, the judgement used derogatory term '*abhiyukt ne prarthiya ko choddh diya*' to indicate sexual intercourse instead of the term, '*laingik sambhog*' as provided by the Indian Penal Code. The usage of crude language reflects the insensitive attitude of the judiciary. Sensitized police, investigation agencies, and judiciary are needed to tackle issues and ensure justice.

The media needs to play an exemplary role in the case of caste based crimes. The upper castes constantly attempt to downplay the atrocities and suppress the evidence and news. In the Khairlanji case, the State Administration tried to portray the gangrape and murder as "a Naxalite effort" in order to deceive the entire population. The UP Police publicly denied rape in the 2020 Hathras case. The role of the media is to highlight the campaign and push immediate action against perpetrators.

In such harsh cases, it is not difficult to imagine that the families would be compensated for their loss by giving them some amount of money. However, that is not the case. Around two weeks after the Nirbhaya rape case, then Uttar Pradesh Chief Minister, Akhilesh Yadav

visited the family members. A bank draft of Rs. 20 lakh was given and the CM spent around thirty minutes with the family. On the other hand, the entire village of Bhoolgarhi was cordoned off. The family of the Hathras gangrape and murder victim was confined to their house with continuous surveillance. They were not allowed to interact with the media or political leaders. Section 144 was imposed and leaders who tried to visit the family were arrested. In 2006, Bhaiyalal Bhotmange was not paid a penny even after his whole family was assaulted and murdered.

In all such cases, no criminal action is taken against the government officials who destroy/hide the evidence and violate multiple fundamental rights of the family members.

The conviction rate for caste related crimes has been falling consistently for the past three years. It is the ratio of total cases and number of convictions. The ratio stood at 18.1% in 2019, 19.3% in 2018, and 30.7% in 2017. In fact, conviction rates for lesser serious crimes, like theft, were more than rape. The said rate in Sikkim, Karnataka, Andhra Pradesh, Gujarat and Madhya Pradesh is less than 10%. Low convictions further intimidates the victims. According to 2006 NCRB reports, in 40.2% of the cases, women didn't seek legal remedies because of the fear of the upper castes.

Another noteworthy trend is the increase in pendency rates. It suggests that the number of new cases are increasing at a higher rate and old cases are not being disposed of. The rate was 86.5% in 2017, 88% in 2018, and 88.9% in 2019. As per 2016 NCRB reports, cases pending police investigation for marginalised groups rose by 99% in case of Schedule Castes and 55% in case of Schedule Tribes.

POTENTIAL SOLUTIONS

The roots of caste-based gender violence can be found in the caste system and patriarchal nature of our society. Though no one law can wipe away these endemic problems, some steps can help reduce the number of caste-based gender violence.

Costly litigation makes access to legal recourse difficult. However, according to the provisions of Legal Services Authorities Act, women and members of Schedule Caste and Tribe are eligible for free legal aid. There should be awareness campaigns to disseminate information about the same. Legal literacy campaigns about zero FIR, private arrests, should be initiated.

With the help of historical analysis, potential zones of caste-based gender violence should be identified and precautions should be taken. According to the Prevention of Atrocities Act, there is a provision of nodal officers for coordination. However, there is no accountability or data in the public domain about the same. There should be increased transparency about the working of the nodal officers. Victims of caste-based gender violence should be given special counselling and rehabilitation facilities if she faces social ostracization.

Though the country has achieved a better literacy rate, the caste system refuses to leave the Indian psyche. In order to bring awareness, we need to include lessons in caste sensitization in classrooms along the lines of racial sensitization lessons given in the USA. Along with Gender Studies, universities should seek to introduce Caste Studies as well. Changes in education are small steps towards an inclusive society.

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