

Torture on Dalit Women in India: Case of “Double Jeopardy”

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Abstract

The paper attempts to explain the aspects of torture that characterises the lives of Dalit women in India from an intersectional standpoint. It looks into the background of the caste system and elucidates the notion of systematic discrimination perpetrated on them in the backdrop of the ‘double jeopardy thesis’. It further gives an exhaustive account of the laws against such discrimination and their efficacy in praxis that reveals a pattern of impunity. Overall this paper helps unpack the invisibility of the plight of Dalit women and proposes that an intersectional analysis becomes imperative in understanding the multi-fold torture faced by them.

Keywords: Caste, Dalit women, Gender, Intersectionality, Torture.

Introduction

The definition of “torture” remains exceedingly varied, as many acts, conducts or events may be viewed as torture in certain circumstances while they may not be viewed as such in others. Since the paper deploys the notion of “torture” as a conceptual tool to understand and analyse the nature of violence and discrimination experienced by Dalit women, it would be pertinent to confer about the term in a broader sense.

The internationally agreed legal definition of torture as under Article 1 of the United Nations Convention against Torture and Other Cruel, Inhumane Treatment or Punishment reads, “ the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions¹.” Nevertheless, the conception remains increasingly relative and dynamic, and is most often associated with the notion of powerlessness, discrimination and

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¹UNGA Res 39/46 (10 December 1984) UN Doc A/RES/39/46.

violence, and can arise when people are isolated, insecure and defenceless in the face of certain risks.

In India, the phenomenon of discrimination and violence needs to be understood as deeply rooted in the caste system, which entails the stratification and hierarchical ordering of people into various groups termed as ‘castes’. Whereby the hierarchically lower groups bear perpetual torture on the pretext of their social ordering. The lowest in the hierarchy, traditionally referred to as ‘untouchables’ are now collectively known as Dalits. This paper, therefore, uses the framework of torture to address Dalit women’s experiences of discrimination, violence and humiliation. The precarity of Dalit women becomes evident from the fact they live under deplorable conditions with little or no access to basic health care, education and sanitation facilities as are singularly positioned at the bottom of the caste hierarchy. Further, their socio-economic vulnerability and lack of political voice increase their exposure to potentially violent situations while simultaneously reducing their ability to escape.

The reason why this paper essentially highlights the plight of Dalit women when the Dalit people as a whole are so clearly discriminated against is for the fact that torture inflicted upon Dalit women find its way through different allies simultaneously, that do not fit neatly within categories. Hence leads to the non-recognition of multiple oppression suffered by them as a synthesised experience, which works together in producing systematic torture. This intersectional experience thus makes it imperative to understand the analysis of gender and caste oppression against the backdrop of the notion of “torture”.

Caste-system and Women in India

What is caste?

Caste in simple terms is a form of social stratification wherein people are graded as superior and inferior based on their occupation. There are thousands of castes (or sub-castes) all hierarchically ranked and linked in complex ways that stretch across regions. Although caste as a phenomenon is inherently associated with the Indian social apparatus. It has existed throughout history and even the most ancient civilisations of Africa, Greece, Rome and China endorsed some form of the caste system.² However, what distinguishes India’s history of caste from other countries is that it is sanctioned by religion, as a corollary the process of

²Mary C Grey, *A Cry for Dignity: Religion, Violence and the Struggle of Dalit Women in India* (Routledge, 2014) 6.

industrialisation, development and democratisation could not contribute much in redressing this endemic.³

The word Dalit comes from the Hindi word *dalan*, meaning oppressed or broken. Mary C. Grey in her work *A Cry for Dignity: Religion, Violence and the Struggle of Dalit Women in India* elucidates that the word 'Dalit' means 'broken' or 'crushed', like Dal- a universally popular dish made from lentils-where lentils are crushed to produce the sauce, likewise the Dalits see themselves as broken people, deliberately crushed by the caste system.⁴ Alternatively, they are also known as the Schedule Castes, a term used for the first time by the British in the Government of India Act 1935 and referred to them as 'depressed classes'. However, a major contention surges while pronouncing Dalits as Schedule castes because significant community members do not identify with the term and argue that an increased emphasis on the term will rather give rise to a sense of alienation which might elevate animosity between the so-called lower and upper castes.

Gangadhar Pantawane, a Dalit writer from Maharashtra defines Dalit as a notion of change and revolution.⁵ He vocalised that Dalit is not a caste but a symbol of revolution as they believe in humanism than any sacred text of divine origin that makes them slaves to other castes. It is in *Rigveda*⁶, we find the archaic references to the divine origin of the caste system. It illuminates that each part of human society was formed out of the body of the creator god, the Brahma. As reads a hymn of the Rigveda, "The *Brahman* (priests) was his mouth, of his arms was the *Rajanya* (*Kshatriya* or warriors). His thighs became the *Vishya* (merchants), from his feet the *Sudra* (serving castes) was produced."⁷ It refers to the *chaturvarnya system* (the division of society along the lines of the four *varnas*⁸) as eternal and therefore, unassailable.⁹

Jyotiba Phule, a social activist, thinker and writer, and a pioneer anti-caste reformer from Maharashtra, who established the first school of *shudratishudra* (Dalit) girls in 1848, did not relate his opposition to the caste only to the *varna system* (caste system) but to everything within the Hindu system.¹⁰ He emphasised that the proclamation of the organic essence of the

³ Valerie Mason-John, *Broken Voices: Untouchable Women Speak Out* (India Research Press, 2008) 1.

⁴ Grey (n 2) 1.

⁵ Gangadhar Pantawane, *Evolving a New Identity: The Development of the Dalit Culture* (ed), *Untouchable! Voices of Dalit Liberation Movement* (Zed Books Ltd 1986) 79.

⁶ One of the four sacred canonical texts.

⁷ Ralph T.H. Griffith, *The Hymns of the Rigveda* (2nd edn [reprinted]) 603.

⁸ A Sanskrit word with several meanings including type, order, colour, or class, used to refer to social classes in Hindu texts like the Manusmriti.

⁹ *Ibidi*.

¹⁰ G P Deshpande, *Selected Writings of Jotirao Phule* (LeftWord Books 2002).

caste system is nothing but an attempt to cajole people into believing it as a sacrosanct feature of Hinduism and to further rationalise their dominance and perpetuate violence. He referred to this pernicious social order as a corollary of Brahmanism. As such, Hindu religion or Hinduism is the edifice of the *brahman* superiority and their divine origin. ¹¹

Caste and Women

The ideological framework of Brahminism is equally tantalising for women as it produces a form of institutionalised inequality that relegates them as passive spectators. Dr B.R Ambedkar, an astute of anti-caste struggle in India defined caste as an endogamous unit. ¹² He affirmed that caste as an enclosed unit display multiple characteristics but when rightly understood - prohibition of intermarriage flare as an essence of Caste. ¹³ It can be interpreted in a way that endogamy serves as the mainspring to the social organisation through which caste is reproduced. A total restriction on marrying outside of one's caste leaves no room to breathe out of the punitive system that reasserts its brahman dominance.

As a consequence of endogamy, marriage becomes a defining feature of caste that ritualises female sexuality in hierarchical ordering. In her book *Gendering Caste through a Feminist Lens*, Uma Chakravarti ably explores the relationship between caste and marriage. She points out that in a historical context endogamy has not often been a feature of primitive societies. Thus, its invincibility in certain societies was purely to preserve the separation and boundedness of a group through general reproduction. In India, it was done to concentrate the social and economic privileges within a particular group, namely the upper castes to maintain the qualitative attribute of *jati* (caste). ¹⁴

The idea of preserving the purity of lineage weighs heavily on women as the very notion of marriage relates to birth and descent. Thus, the centrality of marriage to the structure of power makes women docile to their male counterparts, locating them at the bottom of the institutionalised framework of caste that is deeply entrenched in inequality. Therefore, reaffirming Dr Ambedkar's acumen rightfully true that the caste system is "an ascending scale of reverence and a descending scale of contempt"¹⁵.

¹¹ ibidi

¹² B R Ambedkar, *Writings and Speeches* (Vol. 1. Education Department, Government of Maharashtra 1979) 3-22.

¹³ ibidi

¹⁴ Uma Chakravarti, *Gendering Caste Through a Feminist Lens* (Stree Publications 2003)

¹⁵ Ambedkar (n12)

The Double Jeopardy Thesis and Dalit women

The dual and systematic discrimination of casteism and sexism is a pervasive feature of the social organisation in India. The status of Dalit women, therefore, can be understood through the intersectionality approach, which is not an abstract but a descriptive notion of the multiple oppressions experienced in a society. Kimberle Crenshaw, a Black legal scholar in her famous and insightful essay *Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Anti-discrimination Doctrine, Feminist Theory and Anti-Race Politics.*, coined the term 'intersectionality'¹⁶. She argues that the widely used approach of the race-sex analogy, which draws parallels between the systems and experiences of domination for blacks and women, has done little to explicitly state the experiences of Black women different from that of Black men or White women. It has rather presumed it to be synonymous with either racial or sex-based oppression.

Crenshaw asserts that Black women are discriminated against in more than one way and those patterns of discrimination rarely fit neatly into categories. She explicates it using an analogy referring to a traffic intersection that reads "Consider an analogy to traffic in an intersection, coming and going in all four directions. 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 an intersection, her injury could result from sex discrimination or race discrimination. . . . But it is not always easy to reconstruct an accident: Sometimes the skid marks and the injuries simply indicate that they occurred simultaneously, frustrating efforts to determine which driver caused the harm."¹⁷

Her demonstration of such parallels clearly echoes that manifold oppressions are not each suffered separately, rather as a synthesised experience. She further sought to highlight that the obfuscation of the profound substantive differences often leads to a deficient analysis of oppression experienced by a community in particular. An American race, class and gender theorist, Patricia Collins also emphasises on the importance of the concept 'intersectionality' to understand how 'oppressions work together in producing injustice'.¹⁸

¹⁶ Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics* (1989) 1 University of Chicago Legal Forum 139.

¹⁷Ibidi.

¹⁸ Patricia Hill Collins, 'Intersectionality's Definitional Dilemmas' (2015) 41 *The Annual Review of Sociology* 1-20.

In a similar vein, while comprehending the discriminatory episodes of Dalit women in India, one finds it to be synonymous with Black women's experiences. Correspondingly, the ordeal of overlapping experiences of discrimination permeates the lives of Dalit women, who often are the victims of double-discrimination or 'double jeopardy'. They are oppressed as women and are relegated to the bottom of the social hierarchy for their identity as Dalit. Therefore, the notion of '*Brahmanical patriarchy*' and 'Dalit patriarchy' could be crucial in understanding this 'double jeopardy thesis'.

Brahmanical Patriarchy

Caste relations in Indian society are sustained through the classical literature of the Hindu religion that eternalises the purity-pollution aspect. These literature (*Vedas*) are a mouthpiece of the upper castes, put forth as a systematic exposition to deftly appropriate its sacrosanctity. Such prerogative demonstrations not only vindicate caste as legitimate but also establishes patriarchy as an institution. Greda Lerner in her one notable work of 1986 *The Creation of Patriarchy*, explores the relationship between patriarchy and other structures within a historical context. She argues that 'images, metaphors and myths' lead to the widespread existence of patriarchal and misogynistic practices, and it is not due to the biological or psychological differences between male and female bodies rather has historical explanations.¹⁹ On the lines of it, we can understand that patriarchy in Indian Hindu society was a ramification of such historical processes, which were ideologically constructed within the Brahmanical texts.

Brahmanical patriarchy as a phrase was coined by Uma Chakravarti, does not refer to patriarchy within the Brahman Castes.²⁰ Rather to a particular form of patriarchy organised on the basis of caste prescribed in the Brahmanical texts. It links caste hierarchy and gender inequality in ways that valorise notions of chaste wives and sacrificial mothers to stymie women's behaviour to preserve boundaries of caste. The control over women's sexuality was approbated as a tool of endogamy through the dehumanising practices of *sati* (enforced widowhood) and girl marriage (child marriage). Women's only claim to social being premised upon a self-willed subordination that amounted to a surrender to self. This institutionalised control within marriage resulted in the denial of social and economic resources to women, which subsequently led to the affliction of torture and gross violations of their liberty.

¹⁹ Greda Lerner, *The Creation of Patriarchy* (OUP 1986).

²⁰ Chakravarti (n 14).

Uma Chakravarti argues that maintaining necessary distance and control over lower castes was as crucial as differential forms of control over women's bodies.²¹ The most sacred of Hindu texts, *Manusmriti*²² make abhorrent references to women and their heterosexuality as essentially sinful. According to Manu woman's insatiable sexual desire must be instructed through her dependence on her husband, for the preservation of family and the lineage. Thus, informing woman to only follow the path of *pativarta* (virtue) and *Stridharma* (perform her duties).

However, the authorisation of this certain kind of feminine behaviour is a complex affair as it is not independent of the attributes of the caste system. The differential aspect renders specific social relations across castes. Kumkum Sangari, suggests that one should think of these intricacies through the notion of 'multiple patriarchies'.²³ The emphasis on women's sexual purity alongside the social hierarchies establishes an institution whereby, upper-caste men can have unrestricted access to lower castes women howbeit, the opposite is not true for lower castes men. She points out that this is done not merely to uphold the caste system but to further appropriate the social and economic vulnerabilities of the lower castes.

In a similar vein, Kumkum Roy demonstrates how caste and gender stratification develop as an inter-linked process through the control over production and reproduction parallel to the purity and pollution aspect, established by upper-caste-ruling men to legitimise the Brahmanical notion of patriarchy.²⁴ It is often affirmed that upper caste women thoroughly subordinated, more than any other group as their lives remain severely guarded and monitored by their male kin as part of their upper-caste privilege. That lower caste women in such a system have more leeway, as are less secluded and are often engaged in labour outside of their homes, also in some cases have the freedom to remarry²⁵ is a rather superficial and a romanticised picture. As scant attention is given to the fact that Dalit women are overtly exploited (both sexually and economically) by upper caste men and are frequently in a position where they are paid far less wages than their male folks and spend more than they earn as are under constant prey of some money-lender. Their social vulnerability further endures a range of sexual

²¹ ibidi

²² An ancient legal and constitutional text of Hinduism.

²³ Kumkum Sangari, 'Politics of Diversity: Religious Communities and Multiple Patriarchies' (1995) EPW.

²⁴ Kumkum Roy, Goddess in Rigveda: An Enquiry (ed), *Invoking Goddess: Gender Politics in Indian Religion* (Shakti Books 2002).

²⁵ Rama Mehta, *Inside the Haveli* (Penguin, 1994).

Here a young couple fall in love at the University of Bombay (Mumbai).

The young bride is brought home to a haveli in the ancient city of Udaipur, where she is forced to live in purdah – extreme seclusion - and scarcely ever leaves the family household.

harassment by both upper and lower caste men. The latter is reflective of another form of patriarchy that contributes to Dalit women's double jeopardy.

Dalit Patriarchy

A renowned Dalit activist and author, Kancha Ilaiah, in his book *Why I am not a Hindu!* made an assertion that the social organisation within the lower castes group entails greater equality between men and women. He emphasises that notion of purity and lineage is only a feature of the upper castes, created by the upper castes.²⁶ Accordingly, relationships between Dalit men and women are determined by their labouring roles, in which both men and women are equally integrated. Therefore, affirming that patriarchy as an institution find little space in the Dalit social apparatus, as it is a consequence of only Brahmanical ordering to which they stand in protest.

Feminists speak highly unappreciative of this stance, for they point out that this is far from reality and conceals the real picture of Dalit women's precarity. That the institutionalisation of patriarchy has become a deep-seated problem of Indian society. This has many expressions and different levels of severity, which render Dalit women as 'The Dalits of the Dalits' or 'The least among the Dalit' or 'Thrice Dalits' as pronounced by Ruth Manorama²⁷, a prominent Dalit woman activist. The specificity of their discrimination is more damaging than that of Dalit men. Manorama on the lines of Kimbrelle Crenshaw's analogy of intersectionality points out that Dalit women stand at the crossroads and thus, suffer a synthesised experience of multiple oppressions. They are discriminated against for being a Dalit by both upper castes men and women and are also oppressed for being a female both by upper castes and lower castes men. Under the impression of Dalit patriarchy, they bear discrimination and torture in their household within family and marriage. Their husbands who already suffer the endemic of caste discrimination adopt substance abuse as an escape, and often beat their wives out of anger and humiliation. Due to persistent chronic poverty, they are forced into drudgery occupations of manual scavenging, cleaners and even forced prostitution. Further, the ignorance of their male counterparts besides the endemic of poverty is reflective of their grim health indicators

A noted Indian sociologist and social anthropologist, M.N Srinivas, identified that '*sanskritisation*' as a process emulates these norms that are naturalised while seeking upward

²⁶ Kancha Ilaiah, *Why I am not a Hindu! A Sudra Critique of Hindutva Philosophy, Culture and Political Economy* (Samya 1996).

²⁷ Ruth Manorama, 'Acceptance Speech' (The Right Livelihood Foundation 31st December 2006) <<https://www.rightlivelihoodaward.org/speech/acceptance-speech-ruth-manorama/>> accessed on 28th April 2021.

mobility (the experience of moving into a more privileged socioeconomic position).²⁸ The middle and lower castes often adhere to these practices as part of associating themselves with the notion of meritocracy and equality. Feminists point out that the desire to seek upward mobility has meant the downward percolation of upper caste ideals of femininity, as such the differential roles and responsibilities of upper and lower castes women are now getting blurred.²⁹ Dalit women as per the superficial notion of *Brahmanical* patriarchy enjoyed more freedom than upper-caste women, such as some form of liberty to marry outside of caste, to remarry and to work outside of household-cores, were now restricted because of the process of ‘*sanskritisation*’.

Therefore, Vimal Thorat’s accusation stands true that Dalit women are disadvantaged of all, they are doubly disadvantaged for being a female and for being Dalit, with the poorest education, health and welfare indicators alongside daily struggles of sheer survival.³⁰

Torture on Dalit women: Law and practice

The widely accepted definition of torture by the UN refers to it as an “act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person...for any reason based on discrimination of any kind..” In a similar vein, it becomes imperative to highlight the plight of Dalit women, which is exacerbated by the double jeopardy suffered by them, as theorised in the sections above.³¹ Their doubly discriminated position makes them vulnerable to potentially exploitative situation making ‘torture’ a tool to inflict intentional physical and mental suffering for transgressing caste-hierarchies.

It is pointed out that in India one in twenty-five people suffer some form of caste-based discrimination based on their work or bloodline.³² The overall situation of the Dalits (Schedule Castes) in the country remains grim, which adds to the augment of women who are persistently subjected to the worst forms of exclusion, stigma and torture based on their caste identity. According to the recent data by National Crime Records Bureau (2019), that crime against Dalits have risen 37% over the last decade, at least 10 Dalit women are raped each day and their vulnerability to rape and torture has increased 44% in past ten years.

²⁸ M N Srinivas, ‘A Note on Sanskritisation and Westernisation’ (1956) 15(4) *The Far Eastern Quarterly* 481-496.

²⁹ Anupama Rao, *The Caste Question: Dalits and the Politics of Modern India* (University of California Press 2009).

³⁰ Vimal Thorat, ‘Dalit Women Today’ *Communalism Combat* (May 2001).

³¹ UNGA (n1).

³² John (n 3).

These grave acts of torture are indeed against the natural law and the human spirit. However, India's past and the present is no meagre of such gruesome practices, the ban on which became a reality only with astute efforts and acumen of anti-caste social revolutionaries like Jyotiba Phule and the chief architect of the Indian Constitution, Dr Bhimrao Ramji Ambedkar.

Caste, Untouchability, Women and Indian Law

The untamed endeavours of anti-caste social reformers in the early nineteenth century led for the first time the passing of The Caste Disabilities Removal Act XXI of 1850, to end caste-based disabilities faced by people from the lower castes. Reformists like Jyotiba Phule, Savitri Bai Phule and Periyar E.V. Ramasamy incessantly worked to uplift all the vulnerable sections of the society from the scourge of systematic and structural caste-based discrimination. It was the reverberation of their efforts that the colonial power rouse to sense to delegitimise caste-based disabilities under the 1850 Act. Later, on the basis of the 1931 census that the British government had conducted, the Government of India Act 1935 was promulgated, the reservation for 'depressed classes' was incorporated in this act, which came into force in 1937. The 'depressed classes' later came to be known as the 'Schedule Castes'. Following which in 1938, Madars Removal of Disabilities Act 1938 (Madars Act of XXI 1938) came into operation. Between the years 1943 to 1950 around seventeen such laws were enacted at provincial levels. However, it was only after the enactment of the Indian constitution and the significant contribution put in by Dr Ambedkar as the vanguard of Dalit rights, that such laws were introduced at a national level. On 26th January 1950, the Indian Constitution came into force which proclaimed India as a sovereign secular socialist democracy committed to secure all its citizens' liberty, equality and fraternity. This unequivocal necessity reflected in the preamble culminated in the promulgation of the Untouchability (Offences) Act, 1955. It abolished untouchability under Article-17 of the constitution which was a part of the fundamental rights of Indian citizens. This act was subsequently amended in 1976 and renamed as Protection of Civil Rights Act, 1955 (PCR Act), it was majorly done to make the provisions more stringent and to add an array of practices that could be deemed as discriminatory. In 1989 yet another crucial law, The Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 was passed, which came into force in 1990 and the rule for the same came into effect in 1995.

Besides the caste specific laws, legislation prohibiting certain misconducts that affect people in general and Dalits, in particular, were also put in place. These laws included, The

Employment of Manual scavengers and Construction of Dry Latrines (Prohibition) Act 1993, which made manual scavenging a cognisable criminal offence by imprisonment up to one year and a fine of Rs.2000 subject to increase Rs.100 each day for continuing violations. The Immoral Traffic (Prevention) Act, 1956 (ITPA) was introduced for the prevention of trafficking and commercial sexual exploitation. The Child Labour (Prohibition and Regulation) Act, 1986 to prohibit the engagement of children in certain employments and regulate the conditions of working. Protection of Children from Sexual Offences Act, 2012 for preventing children from sexual abuse and other such laws.

In addition to these laws, the Indian constitution provides for certain fundamental rights under Article 14, 15(1), 16(1) and 16(2) which reads- “State shall not deny to any person equality before the law”, “State shall not discriminate against any citizen on the grounds of religion, race, caste, gender, sex or place of birth, or any of them”, “State shall provide equal opportunity to every citizen in matters relating to employment” and “prohibition of gender discrimination in matters of employment” respectively. Article 15(3) state that the state is free to make any special provision for women and children.

Further, Part IV of the constitution lists Directive Principles of the State Policy which under Article 39, Section a, b and c provides that the state shall, in particular, direct its policy towards that all citizen, men and women, have the right to an adequate means of livelihood, ensure equal pay for equal work to men and women, and the state shall secure the health workers, men and women and that children are not abused, and are not forced to entre vocations due to economic necessity that unsuited for their age and strength.

Penal and criminal codes

A variety of legal protections are afforded to women through the amendments to India Penal Code and Criminal Procedure Code. For instance, the Indian Penal Code under Section 376 states that the crime of rape, when committed by a private actor, is punishable by a minimum of seven to ten years and a maximum of life imprisonment. The subsection (2) of 376 reads, that the rape is punishable by ‘rigorous imprisonment’ for a term of ten years to life if it is committed by a police officer against a woman in his custody (or in the custody of a police officer subordinate to him), or on the premises of police station a station house.

Other such laws include that if a woman is searched upon arrest, it must be done by the female officer with ‘strict regard to decency and modesty’. That a police officer has no power to compel women or children below the age of fifteen to appear in the police station to obtain

information, instead should visit informants residence. Another crucial protection states that when searching a place occupied by a woman who sought to be arrested, she must be sent notice before entering that she has the liberty to withdraw.

Convention on the Elimination of All Forms of Racial Discrimination 1963

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965 as substantiated by India, under its Article -1 states that discrimination based on descent falls under the ambit of 'racial discrimination'. Hence, applies to matters of caste discrimination also. Article 5(a) and (b) of the Convention reads that victim should receive equal treatment before the organs administrating justice and must receive protection against violence respectively. Article 2, para 2 of the CERD obligates state parties to take measures for prevention and enjoyment of human rights and Article 4 state shall not discriminate against the victim and condemn any sort of propaganda based on superiority of the class or race.³³

Convention on the Elimination of All Forms of Discrimination against Women, 1979

India has ratified that Convention on the elimination of discrimination against women, which states under Article 2, that parties to the convention are required to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination. To refrain from engaging in any act or practise of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation and to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.³⁴

In addition to these national and international laws, there are several commissions at national and state levels, like National Human Rights Commission and State Human Rights Commissions. Special commission for Schedule Castes, Schedule Tribes and Women, to monitor the working and implementation of the special laws. However, in cases of violence and torture against Dalits, Dalit women more specifically continue to haste giving rise to ignominy, yet are reflected upon evasively by those in power which reveals a pattern of impunity provided by the state to the perpetrators inflicting torture.

³³ UNGA Res 2106/xx (21 December 1965) UN Doc A/RES/39/46.

³⁴ UNGA Res 34/180 (18 December 1979) UN Doc A/RES/34/180.

Aspects of torture characterising Dalit women's life

The lives of Dalit women are characterised by an affliction of perpetual torture both physical and mental that make way through vexed channels of social organisation wherein they stand at the crossroads of caste-gender hierarchies, which leads to an interplay of overlapping aspects of torture.

Caste-based atrocities

Dalit women often fall victim to caste-based torture used as a tool to inflict political lessons, crush dissent and labour movements within Dalit communities. Data suggest that multidimensional poverty is 65.8% for Schedule Castes while the general poverty level is 33.3%.³⁵ Women in these communities for the most part endure widespread poverty and form a majority of the landless labourers. They work on the agricultural farms of upper castes men. These settings of work are marked by perpetual and exploitative experiences of torture on account of their caste.

The Khairlanji massacre of 2006, till date, remains one of the most adverse cases of caste-based atrocities in India. Surekha Bhotmange, a forty-year-old Dalit woman of the Khairlanji village in Maharashtra had committed several crimes- she was a woman and an educated Dalit who worked resolutely towards changing her family's circumstances. Surekha belonged to the Mahar caste and along with her husband had bought a small plot of land in the areas surrounded by the farms of upper castes men. This diminutive act of buying a land raised furore amongst the majority of the upper castes villagers, who sought to teach Bhotmange's a lesson by brutally torturing and killing, Surekha and her three children.³⁶

In a more recent case of a village in the Hathras district of Uttar Pradesh, a 19-year-old Dalit woman was gang-raped by upper castes men in September 2020, and a month later succumbed to her injuries in a hospital in Delhi.³⁷

A report by the Human Rights Watch 1999, highlight some gruesome cases of caste-based torture in the late 20th century. In 1997, in Laxmanpur-Bathe, Bihar, Dalit women were raped, mutilated and massacred by the Ranvir Sena (a group led by upper-caste men). In the same

³⁵ Asia Dalit Rights Forum, *Progress towards Inclusive Sustainable Development in India A study of Dalits and Adivasis in 2030 Agenda* (2017).

³⁶ 'Khairlanji: The Crime and Punishment' *The Hindu* (India, August 2010, Updated November 2016).

³⁷Rohini Dahiya, 'The Hathras Case, Caste Discrimination in India and International Law' (*Modern Diplomacy* 1st May 2021) <<https://moderndiplomacy.eu/2021/05/01/the-hathras-case-caste-discrimination-in-india-and-international-law/>> Accessed 12th May 2021.

year, in a horrid case of violence in the southern district of Tamil Nadu, M. Meena a twelve-year-old Dalit girl was raped by a twenty-one-year-old upper-caste man. The girl was continually blamed for Dalit identity and subsequently prevented from receiving justice through the legal course of action.³⁸

Over these years, the situation has become even grim. Recent data by National Crime Records Bureau on the crime against Dalit women in 2019, makes evident the severity of the perpetual torture suffered by them pertaining to their Dalit identity.

Crime against Dalit women	
Crime	2019
Rape IPC 376	3514
Attempt to Rape IPC 376, 511	1252
Outrage modesty IPC 354	3471
Sexual Harassment IPC 354A	687
Assault with intention to disrobe IPC 354B	269
Voyeurism IPC 354C	18
Stalking IPC 354D	198
Insult to modesty IPC 509	147
Kidnap and abduction for marriage IPC 366	363
Total	9,919

Source: NCRB 2019

Scourge of manual scavenging

Dalits in general and Dalit women, in particular, suffer a violation of their basic human rights as are forced into the drudgery of manual scavenging. The International Dalit Solidarity Network in one of its recent reports reveal that after twenty-eight years to law against Manual scavenging India still has more than 1.2 million manual scavengers.³⁹ Yet, the government has no official database citing the same. Owing to this non-veracity on the part of the state and to the imposition of the ‘occupation’ based hierarchical caste system, the lives of Dalit women are tantalised.

Data suggest that 95% to 98% of those shackled by this practice are women.⁴⁰ They are pushed into menial and decadent work of cleaning dry latrines, carrying loads of excrement in baskets, cleaning sewage, discarding placenta post-delivery and work for India-railways, which has the

³⁸ Human Rights Watch, *Broken People: Caste Violence Against India's "Untouchables"* (1999).

³⁹ ‘Manual Scavenging’ (Dalit Solidarity Network) < <https://idsn.org/key-issues/manual-scavenging/> > Accessed on 12th May 2021.

⁴⁰ *ibidi*

largest number of dry latrines and employees umpteen manual scavengers and is the world's biggest open toilets without any safe or hygienic methods of cleaning.

Along with the caste effects, the job of manual scavenging comes with its gendered effects too. Women engaged in the practice face multiple forms of discrimination burdened with the responsibilities of taking care of the family and providing financial help altogether. They become vulnerable due to their gender and their Dalit. They have families involved in this work for centuries, which they term as *jagir*, a family asset on which the coming generations has to hold on, especially women. Further, in accordance with the Feudal caste and gender-based customs, women who clean toilets in the private households generally 'inherit' the practice after they get married, termed as the *jajmani system*, for which they have little choice as it serves as the only source of livelihood to them because they come from the poorest and most marginalised communities, where food and financial security raises a serious concern.

Victims of human trafficking

Dalit women consist of the majority of the sex workers in India, who are deceitfully and forcefully trafficked into prostitution. Their socio-economic vulnerabilities make young girls and women fall prey to pimps who cajole them for providing respectable work in cities.

The caste and gendered relations thrive on the work that these women do. Their availability is appropriated as economic gains by men involved in the running of the racket of prostitution and are physically exploited by those who serve as their customers. The discourse of sexual purity and caste hierarchy is also deftly realised through this practice. As more than 90% of women trafficked into prostitution come from lower castes.

The internalisation of the casteist spur through cultural traditions that involve commodification and sexual exploitation more significantly contribute to the plight of these women. In the historical context under the '*devdasi system*' young girls from lower castes were made to serve as *devdasis* in the Hindu Temples to meet the physical desires of upper-castes men.⁴¹ The tradition of *Lavani* dance, a form of erotic entertainment performed by lower castes women for the upper castes male patrons, serves as another case in point. These performances and songs present Dalit women as submissive subjects and therefore legitimising upper castes men sexual access to lower castes women by portraying them as a display of insatiable sexual desires. In present times, the representation of issues of caste and women in films and media makes

⁴¹Ankur Shingal, 'The Devdasi System: Temple Prostitution in India' (2015) 22(1) UCLA Women's Law Journal.

apparent the internalisation of the casteist and misogynistic cultural traditions. For instance, in mainstream Indian cinema, the forceful sexual submission of a Dalit woman by an upper-caste man is construed as heroic. The creators involved in such pieces are generally upper-castes men and women, and play a major role in sustaining the caste hierarchies and exploitation of lower caste women through culture and art.⁴²

Institutional practices of torture and social vulnerability

Institutional practices of humiliation and torture is one of the many caste-based atrocities endured by Dalit men and women who attempt to break through the caste hierarchies to claim dignity and equal respect.

The suicide case of Payal Tadvi is a case in point. She was a medical-post graduate student who was mentally tortured and discriminated against by three upper castes doctors, forced to push herself to death in May 2020. Thus, any attempt to valorously stand against caste discrimination often weighs heavily on Dalits, more particularly women. Such incidents not only reflect the apathetic and callous attitude of the state and its institutions towards a community. But also adds to complex negotiation and internalisation of the vulnerability of Dalits as inevitable and inescapable.⁴³

This embedded character of torture is even worse for those in rural areas. For instance, The 73rd amendment to the Indian Constitution provides 33% reservation to women in local bodies and equal representation of Dalit women. This policy as a tool for political empowerment of women rather presents intricate caste and gender dynamics, whereby in the first stance lower castes women are prevented from claiming their space in the local government institution and even if they do, they are constantly bestrode by upper caste men and women.

Therefore, their caste location in the social apparatus make them susceptible to various forms of physical and mental torture, wherein they have a minimum claim to ‘social safeguarding’.

Patterns of impunity to the perpetrator

The cases of caste-based torture on Dalit women not only contravenes and puts into question the efficacy of the existing laws but also reveal the patterns of impunity by the state to the perpetrators of violence.

⁴² Abhinaya Ramesh, ‘Dalit Women, Vulnerabilities and Feminist Consciousness’ (2020) 12 EPW 31-38.

⁴³ *Ibidi*.

The recent case of Hathras gang rape in Uttar Pradesh is one of such adversities that divulges a perilous side of the Indian social apparatus and insidious efforts of impunity by the police and the government. For instance, the police did not take cognisance of rape for eight days after the incident and was reluctant to help when the victim was taken to the police station in the first place. The family was also exhorted by the district magistrate to change their statement. Further, the police allegedly cremated the victim without the involvement of her family members. The case was also wrought by state-sponsored propaganda as the police adamantly declined to accept if the rape was committed simply based on the fact that the forensic report revealed the absence of semen in the body of the deceased. This was approbated despite the fact that forensic evidence can only be found up to 96 hours after the incident and that sample for the case was collected after eleven days. Thus, such impunity to 'upper caste men' by the state violates India obligations under national as well as international law.⁴⁴

The failure of prosecution against such reprehensible crimes begins from the denial of the lodge at an FIR in almost all the cases involving caste-based violence. In the Khairlanji massacre case of 2006, Surekha Bhotmange reached the police station who paid no heed to her requests for complaint. A few months later, one of her relatives was attacked and left for dead. This fever-pitched her agony and she filed another complaint. The police this time registered her case and made some arrests, however, the accused were realised a few hours after their arrest. On the same, that is the 29th of September 2006, more than fifty villagers both upper castes men and women. They raided Surekha, her daughter Priyanka and her two sons out of their house, order the sons to rape their mother and sister, failing to do so genitals of the boys were mutilated and were lynched to death. Surekha and Priyanka were gang rape in the bright daylight in front of the villagers that succumbed them to death.⁴⁵

Following this massacre, Surekha was accused of having an extramarital affair with her relative that upset the villagers whilst the killers of the Dalit woman and her family roamed free. After mass protests by Dalits lower court took up the case and pronounced the judgement that the crime was committed purely out of the desire for 'revenge' and the judge also explicitly stated that no rape was committed and therefore, adamantly rejected to invoke SC/ST atrocities act.

⁴⁴Dahiya (n 37).

⁴⁵*The Hindu* (n 36).

This is a rather not so uncommon practice in India. In more than 80% of the cases either the police or the court airbrush the angle of caste aside and continue to unequivocally espouse caste prejudice.

A study by Human Rights Watch on Dalits in India highlights that women face daunting obstacles in lodging an FIR and the situation becomes grave if you are a poor woman living from a rural area and a Dalit by caste. The report illustrated two cases of rape to demonstrate how perpetrators enjoy impunity against such punitive actions.⁴⁶

Bhanwari Devi case is a striking example of caste and gender bias in the Indian administrative and legal system. Bhanwari Devi in the year 1985 joined the Rajasthan Government's Women's Development Programme, (WDP), called Sathin, as a grassroots worker. In September 1992 Bhanwari was brutally gang-raped in the presence of her husband as in April the same year she reported a case to WDP against an upper-caste man in the village who attempted to child marry her one-year-old daughter. On moving to police state she was remarked with innuendo that she was too old and ugly to draw attention for someone to rape her. The court acquitted the accused reasoning that 'an upper-castes could not have defiled himself by raping a lower-caste.'⁴⁷

The report also points out the famous Suman Rani custodial rape case of 1989, wherein the highest court of appeal, the Supreme Court of India failed to charge the accused police officers with a ten-year sentence on the account of the victim's questionable character. The court stated that as testified by the medical officer that the victim was used to frequent intercourse and since the girl did not report the committed crime within five days of the incident and that the version of the victim was not worthy of acceptance, therefore reduced the sentence to half number of years.⁴⁸

The situation today is no different from that of decades ago, as the recent data by the National Crime Records Bureau explicitly elucidates so.

⁴⁶Human Rights Watch (n 38).

⁴⁷Ibidi.

⁴⁸Ibidi.

Court Disposal of Crime against Scheduled Caste(s) - 2019					
Crime	Cases Convicted Out of Cases from Previous Year	Cases Convicted Out of Cases during the Year	Cases Convicted	Cases Discharged	Cases Acquitted
Rape IPC 376	313	26	339	100	613
Attempt to Rape IPC 376, 511	9	1	10	6	9
Outrage modesty IPC 354	260	36	296	99	612
Sexual Harassment IPC 354A	72	4	76	19	195
Assault with intention to disrobe IPC 354B	7	1	8	4	19
Voyeurism IPC 354C	0	0	0	0	2
Stalking IPC 354D	10	0	10	4	31
Insult to modesty IPC 509	4	0	4	0	22
Kidnap and abduction for marriage IPC 366	38	3	41	13	31

Source: NCRB 2019.

Intersectional analysis

Torture on Dalits in general and Dalit women, in particular, continue to spur despite special laws and institutional mechanisms. The data presented in the section above clearly demonstrate that caste discrimination and consequent torture arising from it has risen over the year. The lives of Dalit women are under constant fear of potential torture that could be inflicted on them through multiple channels simultaneously. Therefore, I propose in this section that law and policy framework as a tool against caste-based torture in India must entail an intersectional analysis.

Intersectionality in law

While the existing laws recognise the differences, it struggles to encapsulate the manifestations of those differences as lived experiences. There are laws that explicate prohibition against discrimination, however, the lacuna in its implementation exists because discrimination can be aggravated in more than one form simultaneously, which renders an individual or a community particular at the margins. As discussed in one of the sections above that Kimberle Crenshaw, an American legal scholar, coined the term ‘intersectionality’ to highlight the non-comprehensive anti-discrimination laws in the United States. Through her analogy of traffic intersection, she illuminates that discrimination can be perpetrated simultaneously through multiple channels of oppression that might not fit into categories. Similarly, Dalit women in India are discriminated against in more than one ways. While describing various aspects of torture that characterises Dalit women’s lives, one might observe that torture both physical and mental is inflicted upon them at the same time through multiple overlapping experiences.

Hence, for a law to suffice prevention of discrimination, requires the eradication of the systematic socio-economic inequalities perpetuated by casteism and patriarchy. Since structural inequalities and discrimination remain profoundly embedded in social structures and behaviours. The law must substantively redress these conditions that lie in the constitution. It must reflect on discrimination and torture through an intersectional approach that looks beyond the superficial patterns of torture- either just as caste-based or gender-based, towards a synthesised experience and, imagine and draw frameworks that are responsive to the complexities of the society. As the ability of the law to do justice depends on its understanding of the society to which it speaks and responds.

Women’s Movement and Dalit Movement

Scholars and activists advocating intersectional analysis affirm that the experiences of those at the crossroads of marginalised identities have not only been neglected by the state but also by the social movements. With regards to Indian social movements, Dr Vimal Thorat claims that Dalit women have left behind by both Women’s Movement and the Dalit Movements. The intersectional analysis not just requires the law and policy frameworks to be more inclusive, but also seek to change the way social movements have long perceived discrimination.⁴⁹

⁴⁹ Thorat (n 30).

The women's movement in India proposed a category of 'woman' conceived as oppressed by the experiences of womanhood. This analysis ignored all other patterns of oppression vexed in caste, race and class relations. Also, these women representing a collective struggle for equal rights were a coterie who had the privilege of receiving education, which clearly was not the case for Dalit women who majorly lived in rural areas and were denied access to basic rights to education. Tension with the Women's movement as a whole is that it might pronounce as speaking for everyone but it gives the least importance to 'difference' as a factor.

The major phase of social movements activism in the post-independence periods was during the early 1970s. Women's call for gender equality was at the forefront of these movements, which led to the establishment of numerous feminist organisations, *Samanta Manch* (Equality Forum), *Stree Sangharsh Samiti* (Women's Struggle Committee), *Stree Mukti Sanghathan* (Women's Freedom Organisation), *Feminist Collective Network*, *The Forum against Oppression of Women*, *Progressive Organisation for Women*, *Salehi and Manushi*. However, none of them took into cognisance that the stigma attached to caste made Dalit women suffer in a uniquely distinctive way. The primary concerns of these organisation included domestic violence, dowry, rape with no reference to multi-facet torture suffered by those intersectional marginalised. These feminist movements put less effort into caste-class analysis while ruminating on the notion of gender inequality. It was only through the formation of the *National Federation for Dalit Women* in 1995 that 'Dalit feminist stand point' brought to light that, Dalit women are not a homogenous entity in themselves, therefore feminist movements must consider individual testimonies of marginalised women's experiences within the larger social structure.⁵⁰

These affirmations also presented an equal critique to Dalit Movements, to which Dalit feminist point out, that these movements though made space for Dalit women in articulating their voices, they less often demonstrated these interests as specific to Dalit women. Both as social and political movements Dalit women has never been the face of such exposition. Perhaps, a threat to Dalit male leadership could serve as an explanation for this phenomenon.

⁵⁰Amrita Basu, 'Gender and Politics' (ed) *Oxford Companion to Politics in India* (1st edn 2010).

Conclusion

The moment in time demands a comprehensive intersectional analysis of law and policy framework which as an alternative explanation to the notion of torture and discrimination understand the constitutive nature of different structures of power and norms and address better cases of aggravated marginalization of Dalit women in India. However, the intersectional outlook would long stand on the margins if the state and the civil society continued to view discrimination and torture through the lens of an exclusive approach, which albeit understand differences but fail to take into consideration its multifaceted nature constructed through vexed power relations in the society.

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