

**RECOGNISING INTERSECTIONALITY AND ABILITY OF DISABLED PERSONS TO
TESTIFY: *PATAN JAMAL VALI v. STATE OF A.P.***

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Bench: D.Y. Chandrachud and M.R. Shah, JJ. (Authored by D.Y. Chandrachud, J.)

I. Introduction

FOR WOMEN, all over the world, the threat of violence is all pervasive and can easily be equated to powerlessness and lack of control. While a heinous offence like rape, induces trauma in women of all kinds of social, economic and political backgrounds, some women are, however, more vulnerable than others in such situations where there might be overlapping conditions that add to the trauma. Such conditions of added oppression and discrimination is what Kimberly Crenshaw refers to as ‘intersectionality.’¹

The judgement in question, is relevant because the Supreme Court of India utilizes the facts of this case as a ‘launching point’ to explore the disturbing trends of violence and oppression faced by disabled women all over the country and sets the tone for how structural realities shall be

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¹ Kimberly Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics” 4 *University of Chicago Legal Forum*, 140 (1989).

addressed by courts in India where the judge shall look at situations from an intersectional lens, so that in cases where there are multiple grounds of oppression a judge should be able to deal with such cases with a greater sensitivity. A unilateral direction towards violence and oppression might not be beneficial for all and the vulnerabilities faced by one person over the other is to be recognized.

What is also pertinent to note, is the progressive mindset with which the court has approached the given set of facts and circumstances, wherein the bench did not look at the disability of a person as a weakness. The court here makes note of the visual impairment of the victim to highlight the vulnerability of the women and how the accused would consider her to be a 'soft target' and more susceptible to violence.

The case at hand is a criminal appeal from a judgement of the High Court of Andhra Pradesh, about the rape of a visually challenged girl belonging to the scheduled caste, wherein the accused was convicted for the offences punishable u/s 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989² (the 1989 Act) and also u/s 376(1) of the Indian Penal Code, 1860 (IPC)³.

Facts:

The accused (appellant) worked along with the brothers of the victim as a coolie. The accused was thus well acquainted with the victim's family. The victim is a girl of nineteen years of age and is blind by birth. On the fateful day the accused ensured that the victim was alone in the house. The accused entered the house, bolted the door and forcibly ravished the victim against her will and consent. The mother of the victim along with her husband and sons rushed to the house on hearing the cries of the victim. The door was opened by the accused. The victim's mother entered the house and found her daughter lying naked on the ground, bleeding from her genitals. The clothes of the victim were torn and stained with blood. The accused was apprehended by the villagers and brothers of the victim and was handed over to the police.

² Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989).

³ Indian Penal Code, 1860 (Act 45 of 1860).

Decision of the Court:

The appellant was convicted u/s 376(1) of the IPC and the conviction u/s 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989, was set aside. The victim belonging to the Scheduled Caste is not a factor extraneous to the sentencing u/s 376(1) of the IPC, however, a separate offence u/s 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the 1989 Act) is not made out.

II. Phenomenon of intersectionality

The traditional way⁴ to view discrimination is to look at the factors of discrimination such as race, caste, sex etc. as independent and discreet units. Such an approach begs for formal equality. The Supreme Court in the present *Patan* case⁵ stated that:

Single axis models of oppression are a consequence of how historically movements aiming for legal protection of marginalized populations developed. Most political liberation struggles have been focused on a sole characteristic like anti-caste movements, movements by persons with disabilities, feminism and queer liberation. Many such movements have not been able to adequately address intra-group diversity leading to a situation where the needs of the relatively privileged within the group have received more than a fair share of spotlight. When these liberation struggles were adopted in law, the law also developed into mutually exclusive terrains of different statutes addressing different marginalities failing to take into account the intersectional nature of oppression.

The intersectional approach to discrimination rejects this traditional single axis model. The concept of ‘intersectionality’ operates on the identity of a person. This concept has a realistic outlook because a person’s identity is seen as multifaceted. The various characteristics of identity such as caste, sex, race, sexuality, etc., are the various facets of the identity of a person. An individual is thus seen realistically as embracing a multidimensional identity. Intersectionality,

⁴ Also called Single axis models of oppression.

⁵ *Patan Jamal Vali v. The State of Andhra Pradesh* 2021 SCC OnLine SC 343 (*Patan case*), para 19.

unlike the traditional essentialist approach⁶, does not perceive discrimination as a result of only one characteristic (race, sex, etc.) of identity. “Integrity”, therefore, is an essential element of intersectionality.⁷ Here ‘integrity’ means that various identities or characteristics of identity of a person should not be seen as discrete factors. These identities should not be viewed as operating independently in a society. Therefore, a disabled woman cannot be seen as facing oppression either on the basis of her disability or her gender.

In other words, the identity of a person is formed of different layers of personal characteristics such as race, gender, religion, sexuality, disability, ethnicity, caste etc. The experience of each individual, therefore, cannot be painted with the same brush. These layers of characteristics do not interact singly with the society. The identity of an individual is formed by interaction or ‘intersection’ of these layers. An individual’s experience (of oppression) can therefore be magnified because of such intersections of an individual’s identity. Hence, when oppression operates in an intersectional fashion, it becomes difficult to identify, in a disjunctive fashion, which characteristic of the identity was the basis of oppression because often multiple layers of identity operate simultaneously.⁸

The ‘cumulative effect’ of marginalized identities on the daily life of the person should be considered. Every person should thus be treated as s/he is, i.e., as ‘indivisible wholes.’⁹ This is illustrated by scholar Shreya Atrey by citing the words of Patricia Monture-Angus, a Mohawk woman from Canada:¹⁰

Actually, if I am the object of some form of discrimination, it is very difficult for me to separate what happens to me because of my gender and what happens to me

⁶ In Hillary Potter, “Intersectional Criminology: Interrogating Identity and Power in Criminological Research and Theory” 21 *Critical Criminology* 305 (2013) it was cited that “Collins (2000) defined essentialism as the ‘belief that individuals or groups have inherent, unchanging characteristics rooted in biology or a self-contained culture that explain their status’”. Hillary Potter explains that “this symbol [intersectionality] came to mean that all women’s (varied) experiences and struggles were important to consider in the universal fight for gender justice.” Potter elaborates that “anti-essentialism asserts, as explained by feminists, that there is not a singular shared experience among all women.”

⁷ ~~*Ibid* Hillary Potter, “Intersectional Criminology: Interrogating Identity and Power in Criminological Research and Theory” 21 *Critical Criminology* 305 (2013).~~

⁸ *Supra* note 6, para 50.

⁹ Arushi Garg, “Law and Gender in the Literature” 18 *International Journal of Constitutional Law* 637 (2020).

¹⁰ *Ibid*.

because of my race and culture. My world is not experienced in a linear and compartmentalized way.

Intersectionality suggests¹¹ that where the victim's experience is compared so as to establish that the impugned conduct was discriminatory, all possible permutations must be drawn upon to holistically understand the intersectional discrimination faced by the victim. Scholars working on intersectional discrimination elaborate on this point and illustrate that in social life a Black woman seeks redress for intersectional discrimination based on race and gender. So according to Atrey, "to understand her experience we should compare it not only to that of White men, but also to that of Black men and White women."

The Supreme Court applied the intersectionality principle which acknowledges that "identities are socially constructed, fluid, and dynamic, and power—or the lack thereof—is situated differentially throughout the many social identities."¹²

III. Credibility of disabled persons' testimony

The Supreme Court opined that not giving full legal weight to the testimony of the prosecutrix would be unfair. Just because an individual interacts with the world in a manner different from the general people, is not ground enough to treat the testimony of the disabled prosecutrix as inferior. The apex court referring to the judgements such as *Mange Ram v. State of Haryana*¹³ realized that there have been various instances where the testimony of the prosecutrix who is disabled has not been given full legal weight and has not been treated at an equal footing. However, the Supreme Court taking a forward-thinking perspective about disability realized that disability is not the same as incapacity and that it should not be looked at as helplessness. Disability does not render a person unable to carry on their normal course of life just because the person has a different way of interaction with the world as compared to able-bodied people.

Statutory provisions to the aid of disabled witnesses

¹¹ *Id.*, at 10.

¹² *Supra* note 7.

¹³ (1979) 4 SCC 349.

The law of criminal procedure¹⁴ and evidence allows every person to depose before the Court. The law does not discriminate between able-bodied and a disabled person. Section 118 of the Indian Evidence Act, 1872¹⁵ (Evidence Act) expresses this principle in the following words:

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.

Explanation – A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them. (emphasis supplied)

The provision lays down that every person is competent to testify if s/he is capable of understanding the questions put by the Court. When a person understands the questions put forth by the Court, it is immaterial whether that person is a person of tender years, bodily infirm, or of extreme old age or belongs to any other category/class of persons of “the same kind” – this phrase accommodates disabled persons as well. This assertion is confirmed by the Explanation appended to the provision, which declares a lunatic as a competent witness if s/he is capable of the abovementioned comprehension. Additionally, the subsequent provision (section 119) of the Evidence Act specifically deals with disabled persons of a particular category, namely, those who cannot communicate verbally. Section 119 of the Evidence Act is worded as follows:

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, evidence so given shall be *deemed to be oral evidence*:

¹⁴ The Code of Criminal Procedure, 1973 (Act 2 of 1974), ss.277, 282.

¹⁵ Indian Evidence Act, 1872 (Act 1 of 1872).

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 video graphed. (Emphasis supplied).

The provision shows that testimony of a disabled person cannot *ipso facto* be discredited. The law allows such a disabled witness to communicate in any other manner in which the testimony could become comprehensible by the Court. Such testimony is deemed to be an oral evidence.

Fortunately, in the *Patan* case, the prosecutrix (victim) was capable of testifying orally. The prosecutrix was blind and could identify the accused by the sound of his voice. The apex court admitted the testimony considering the fact that the accused used to regularly visit the house of the prosecutrix. The testimony was also corroborated on two counts: i) The statement of the accused under section 313 of the Code of Criminal Procedure, 1973¹⁶ (CrPC) wherein he admitted that he used to visit the victim's house, and that ii) the accused was apprehended immediately from the scene of crime. The Court thereon addressed the judicial trend wherein the testimony of a disabled witness is not given due consideration and is always looked upon with doubt. The Court observed:¹⁷

There have been instances where the testimony of a disabled prosecutrix has not been considered seriously and treated at an equal footing as that of their able-bodied counterparts....We are of the considered view that presumptions of such nature which construe disability as an incapacity to participate in the legal process reflect not only an inadequate understanding of how disability operates but may also result in a miscarriage of justice through a devaluation of crucial testimonies given by persons with disabilities. *The legal personhood of persons with disabilities cannot be premised on societal stereotypes* of their supposed "inferiority", which is an affront to their dignity and a negation of the principle of equality. (emphasis supplied)

¹⁶ The Code of Criminal Procedure, 1973 (Act 2 of 1974).

¹⁷ *Patan case*, para 43.

Obligation of State to protect disabled persons

Obligation under the international instruments

The three central Human Rights Instruments: The Universal Declaration of Human Rights (1948)¹⁸, The International Covenant for Civil and Political Rights (1966)¹⁹ and the International Covenant for Economic, Social and Cultural Rights (1966)²⁰ do not contain any provision regarding disability *per se*.

However, a number of soft laws at the international level, contain provisions regarding disability including the General Assembly Designations of the International Year of the Disabled in 1981²¹ and the International Decade of Disabled Persons (1981-1982)²². In order to encourage the development of national programmes which are directed at achieving equality for disabled persons, the General Assembly has also adopted a world programme of action for the disabled persons²³ (WPA). The soft laws however, are not binding and the impact so far, has been very limited. This set out a need for a binding international framework for the promotion and protection of the persons with disability and eventually the United Nations Convention on Rights of Persons with Disabilities, 2007 (CRPD), was passed which is historic and also path breaking since it provides protection of rights of the disabled and also “embraces the social-human rights model that focuses on capability and inclusion: on lifting the environmental and attitudinal barriers that prevent persons with disabilities from full inclusion and equal participation in all aspects of community life”.²⁴

Under the Convention on the Rights of Persons with Disabilities, 2006 (CRPD)²⁵ the State is obliged under article 13 of the Convention to provide access to the justice delivery system and

¹⁸ The Universal Declaration of Human Rights (1948).

¹⁹ The International Covenant on Civil and Political Rights (1966).

²⁰ The International Covenant on Economic, Social and Cultural Rights (1966).

²¹ UN General Assembly, International Year of Disabled Persons A/RES/36/77 (December 8, 1981).

²² UN General Assembly, *Implementation of the World Programme of Action Concerning Disabled Persons* A/RES/37/53 (December 3, 1982).

²³ UN General Assembly, *Declaration on the Rights of Mentally Retarded Persons* A/8429 (December 20, 1971).

²⁴ Jayna Kothari, “The UN Convention on Rights of Persons with Disabilities: An Engine for Law Reform in India”, 45(18) *Economic and Political Weekly* 66 (2010).

²⁵ The Convention on the Rights of Persons with Disabilities (2007).

facilitate “direct or indirect” participation as witness or otherwise in all stages of the proceedings. The State also has to ensure that disabled persons enjoy legal capacity in all areas of life at par with able-bodied persons.²⁶ Pertinently, the Convention also affirms that disabled persons also face “multiple or aggravated forms of discrimination” because of their different social identities.²⁷ The CRPD also recognizes that women or girls with disabilities are more prone to violence and maltreatment.²⁸

Another valuable contribution of the Convention is by virtue of article 5(3) which says that “in order to promote equality and eliminate discrimination, state parties shall take all appropriate steps to ensure that reasonable accommodation is provided.” Article 10 of the Convention talks about Right to Life and article 12 is concerned with equal recognition before the law.

In India, The Persons with Disabilities Act, 1995²⁹ (PWD Act) enacted in the year 1995, is noteworthy since it was the first time that the social and economic rights of the persons with disability were recognised for the first time. After the coming into force of the CRPD, a substantial amendment in the PWD Act was heavily demanded in India since the Act was more of a social welfare legislation and focused less on equality of the disabled persons.

The Right of Persons with Disabilities Act, 2016³⁰ (the new Act) was passed to keep in line with the Conventions, replacing the earlier legislation (the PWD Act). The new Act defines ‘persons with disability’ as someone with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his/her full and effective participation in society equally with others³¹ which finds its genesis in article 1 of the CRPD. The new Act divides the ‘persons with disabilities’ category into three categories: firstly, ‘persons with disability’ defined

²⁶ *Id.*, art. 12.

²⁷ *Id.*, preamble, cl. (p), the State parties should be concerned “about the difficult conditions faced by persons with disabilities who are subject to **multiple or aggravated forms of discrimination** on the basis of race, color, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status...” (Emphasis supplied).

²⁸ *Id.*, preamble, cl.(q) provide that State parties should recognize “that **women and girls with disabilities** are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation...” (Emphasis supplied).

²⁹ The Persons with Disabilities Act, 1995 (Act 1 of 1996).

³⁰ The Right of Persons with Disabilities Act, 2016 (Act 49 of 2016).

³¹ *Id.*, s. 2(s).

under section 2(s) of the Act, secondly, ‘persons with benchmark disabilities’³² *i.e.*, persons who are more than 40% disabled and thirdly, ‘persons with disabilities having high support needs’³³ where there is a need for the appropriate government to undertake special measures to ensure their dignity.

Constitutional directives

In the Constitution of India, article 14 talks about right to equality and article 15 is also a manifestation of the same as it enshrines specific dimensions and lays down certain grounds regarding discrimination. Even though the Constitution lacks a specific provision for the disabled in the fundamental rights, article 21 which guarantees life and liberty to *all persons* is available to the disabled persons as well.

The State shall constantly endeavour and strive to secure social order and justice-social, economic and political by virtue of article 38 of the Constitution. The provisions also extend to the disabled persons and not providing such justice to the disabled would be negligence on the part of the state. Article 41 also states that the state shall take steps to make effective provisions for securing the right to work, to education and to public assistance. Article 47 talks about public health. The welfare of the disabled finds its place under this article of the Constitution.

A significant role in this regard is played by the judiciary in India. Since India has ratified the CRPD, the Supreme Court in this regard has played a proactive role to provide for the rights of the disabled persons. The binding application of the CRPD has been observed in the case of *Suchita Srivastava v. Chandigarh Administration*³⁴ “which was a case with respect to the right of a mentally retarded woman to give consent for termination of her pregnancy, the Supreme Court observed that India has ratified the Convention on the Rights of Persons with Disabilities (CRPD) on October 1, 2007 and thus, the contents of the same are binding on our legal

³² *Id.*, s. 2(r).

³³ *Id.*, s. 2(t).

³⁴ AIR 2010 SC 235.

system”.³⁵ Thereafter, in the case of *Javed Abidi v. Union of India*³⁶ the court highlighted the responsibility of the state to provide medical care, education, training, employment and rehabilitation of disabled persons.

India is obligated under national as well as International Human Rights laws to protect the rights of the disabled persons. The Supreme Court in this case also referred to various changes that have been previously been made with regards to women with disability, looking at the report by Human Rights Watch, titled, ‘Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India’³⁷, which highlighted the vulnerability that disabled persons have to face, with their increased reliance on society which also renders such women more susceptible to sexual violence, since they can easily be viewed as soft targets. Justice J.S. Verma committee which was set up after the horrific Nirbhaya Rape Case, had also suggested changes in the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 (CrPC)³⁸ Guidance was also taken from the Union Ministry of Health and Family Welfare which also noted the challenges faced by survivors with disabilities and how their complaints are not taken seriously by the authorities and that their increased reliance on their family members and also the society heightens the challenge that is faced by them.

Guidelines by the Court

The Supreme Court has utilized the facts of this case to address the structural realities of this country and have used it as a medium to recommend to various stakeholders involved in the criminal justice process to deal with matters of such intersectional nature with a larger amount of sensitivity and also with greater seriousness. The Court laid down for the National and the State Judicial Academies to provide special training to judges to better deal with case involving sexual abuse survivors. The Police also shall be provided sensitization training on a regular basis where matters concerning sexual violence against women with disabilities are posed before them. The

³⁵ Megha Nagpal, “Minimising Vulnerability of Persons with Disabilities through Legislative Responses in Criminal Procedure in India” 6(1) *Nirma University Law Journal* 55 (2017).

³⁶ 2 (1991) 1 SCC 467.

³⁷ Human Rights Watch, “Invisible Victims of Sexual Violence : Access to Justice for Women and Girls with Disabilities in India”, available at: <https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities> (last visited on July 22, 2021).

³⁸ The Code of Criminal Procedure, 1973 (Act 2 of 1974), cl.(a) and (b) of proviso 2 to s.154(1), proviso 1 and 2 to s.164(5A)(a), proviso 1 and 2 to s.54A.

police are to facilitate such victims in registering complaints and also ensure proper medical and legal assistance, for the purpose of which trained special educators and interpreters must be appointed. Police stations are to maintain a database of such educators, interpreters and legal aid providers and the National Crime Record Bureau to consider the possibility of maintaining a database, separately, of gender-based violence, of which, disability shall be a separate variable. For larger sensitivity on the matter, the Supreme Court recommended the Bar Council of India to introduce special courses in the LL.B. Curriculum for students to sensitize with matters concerning violence of intersectional nature. Lastly, the Court laid down that awareness raising campaigns must be conducted so that women and girls with disabilities are aware of their rights.

IV. Section 3(2)(v), SC/ST Act- “*on the ground*” v. “*only on the ground*”

Interpretation of SC/ST Act through intersectional lens

*Scenario ‘after’ the Amendment Act of 2015*³⁹

The amended section 3(2)(v) currently states:

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, years or more against a person or property (v) 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 Scheduled Tribe or such property belongs to such member] shall be punishable with imprisonment for life and with fine. (Emphasis supplied)

This amendment has decreased the threshold of proving that a crime was committed on the basis of the caste identity to a threshold where mere knowledge is sufficient to sustain a conviction.⁴⁰ The prosecution need not discharge the relatively heavy burden of proving that the offence was committed because of the caste identity of the victim. The fact that the accused had knowledge

³⁹ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act 1 of 2016)

⁴⁰ *Patan case*, para 59.

of the victim's caste, is in itself sufficient for conviction under the above provision. This provision is supported by amending section 8 of the 1989 Act. The newly inserted clause (c) of section 8 reads as follows:

8. Presumption as to offences. - In a prosecution for an offence under this Chapter, if it is proved that...

(c) 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. (Emphasis supplied)

The clause (c) to section 8 provides that if the accused was acquainted with the victim or his family, the court *shall presume* that the accused was aware of the caste or tribal identity of the victim unless proved otherwise.⁴¹ The legal fiction created by this new provision would cover within its wide ambit the neighbours and other acquaintances who might not necessarily commit crime on the consideration of caste identity as one of the factors. This provision can operate beyond its legitimate application. For example, suppose there exists a long-standing rivalry between the accused and the victim because of certain land disputes. The accused may attack the victim in response to the feeling of vengeance and, perhaps, the caste identity of the victim was never thought of by the accused. In such a case, the accused is indeed out of the ambit of the Act of 1989. But the net of legal fiction under section 8(c) is wide enough to cover cases of such nature as well. However, it is stated for the sake of clarity that in the *Patan* case, since the offence was committed prior to the Amendment Act of 2015, the amended provisions were not applicable.

Scenario 'prior' to the Amendment Act of 2015 (applicable to the Patan case)

i.. Relevant statutory provisions

Section 3(2)(v) of the SC & ST Act, prior to its amendment, read:

⁴¹ *Ibid.*

(2) 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 (emphasis supplied)

The Court opined that the expression “on the ground” means “for the reason” or “on the basis of”. The above provision is an example of a statute recognizing only a single axis model of oppression. Such single axis models require a person “to prove a discrete experience of oppression suffered on account of a given social characteristic.”⁴²

The judicial trend, until now, as regards section 3(2)(v) of the Act⁴³ was that a single axis model of interpretation was adopted. As per this model the offence under the above provision is said to be committed when caste of the victim is the sole ground for commission of the offence. The Supreme Court highlighted this trend by citing its earlier judgments⁴⁴ wherein the words “on the ground of” were judicially qualified by the word ‘only’. Therefore, the offence should have been committed “**only** on the ground that the victim was a member of the Scheduled Caste.”⁴⁵ The Supreme Court in the present case doubted the correctness of this restrictive interpretation. Such a view, the court opined, fails to consider the social realities. For instance, for a disabled woman belonging to a scheduled class, the oppression should not be viewed by compartmentalizing the identities of the woman.

In other words, the various identities should cumulatively be taken into consideration. Such an intersectional approach is necessary because "social inequalities function in a cumulative fashion." It was thus rightly observed that due to such intersectional nature of oppression, it becomes difficult to establish what led to the commission of offence -whether it was the victim's gender, caste or disability.⁴⁶ The court also clarified that the use of the ‘intersectional’ approach while interpreting the provisions of the 1989 Act does not replace the conventional legal

⁴² *Patan Case*, para 50.

⁴³ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989) s.3(2) (v).

⁴⁴ *Asharfi v. State of Uttar Pradesh* 2018 1 SCC 742 and *Khuman Singh v. State of M.P.* 2019 SCC OnLine SC 1104.

⁴⁵ *Patan Case*, para 55.

⁴⁶ *Id.*, para 58.

requirement of existence of a causal link between the harm (offence) and the ground on which harm is done. And the court added that such an approach recognize that how a person was treated or impacted was a result of interaction of multiple grounds or identities. Therefore, a true reading of section 3(2)(v) would entail that conviction under this provision can be sustained as long as caste identity is one of the grounds for the occurrence of the offence.

ii. Application of provisions to the facts of the case

The offence was committed in the year 2011 *i.e.*, prior to the enforcement of the amended provisions of 2015. The accused and the victim were from the same village. The accused regularly visited the victim's house as he was an acquaintance of the brothers of the victim. Therefore, it was obvious that the accused was well aware of the caste of the victim. But unlike the post-amendment scenario, 'mere knowledge' would not be sufficient to establish guilt.

It was also observed that the omission to mention ground of caste identity in the complaint/statement to the police is immaterial for maintenance of charge under section 3(2)(v) of the Act. Nonetheless, separate evidence is essential for proving the said charge. But in the present case no evidence was produced to prove that the offence was committed by taking advantage of the victim's caste identity.

The decision of the court in this regard is in line with the basic tenets of *ex post facto* law. The requirement of "personal knowledge" of the accused about the family of the victim and the presumption that the accused was aware of the caste or tribal identity of the victim is inserted by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. So, the facts of the *Patan* case attract this presumption, but the offence was committed prior to the amendment and benefit of this amended provision was, and rightly so, not given to the victim. As a result, the accused was acquitted of the offence under the 1989 Act because of the lack of evidence and failure of the prosecution to discharge the burden of proof under the provision. The court aptly remarked that the post-amendment scenario has "facilitated the conduct of an intersectional analysis under the Act." It is because after the amendment mere

knowledge or acquaintance of the accused with the victim's family is sufficient to attract the charges under section 3(2)(v) of the amended 1989 Act.

V. Criteria for imposing sentence

For the case at hand, the Supreme Court is of the opinion that the victim was doubly disadvantaged, given her social background and also because she was visually impaired, she was left vulnerable in the hands of the accused. The Supreme Court affirmed that the accused frequently visited the house of the prosecutrix and was well aware of their social situation. The court stated that "The prosecution has not led any evidence to prove that the offence, as we have noticed, 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. This is a distinct issue. But the fact that PW2 belonged to a Scheduled Caste is not a factor which is extraneous to the sentencing process for an offence under section 376"⁴⁷.

Keeping the nature and the gravity of the offence in mind, the Supreme Court was of the opinion that the Sessions Court was correct in prescribing the sentence of imprisonment of life and such punishment shall be upheld in light of ground realities of the prosecutrix. The fine of Rs. 1000/- and default imprisonment of six months imposed by the Sessions Judge and affirmed by the High Court was also confirmed.

VI. Conclusion

The court in this case convicted the accused u/s 376(1) of IPC and not u/s 3(2)(v) of the 1989 Act, since no evidence suggests that the victim was raped on account of belonging to the SC community. The court looked at intersectionality in great length recognizing that a restrictive interpretation shall not be done and social realities must be catered to. With this perspective, the Court stated that that even though the accused shall not be convicted u/s 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, it will definitely have some bearing on the sentencing and that it was a relevant ground for the Sessions Court to convict the

⁴⁷ *Patan Case*, para 72.

accused for life imprisonment. Viewing the circumstances of the case from an intersectional lens has broadened the horizons of the court, also offering multidimensional perspectives, enabling the court to view oppression on multiple grounds, each disadvantage adding to the other.

The opinion of the authors aligns with the judgement given by the bench, considering the sensitivity of the judges towards the socio-economic vulnerabilities of the victim. The court has looked at the present matter with the lens of intersectionality while also giving due regard to the testimony of the prosecutrix, sensitized with the situation of the prosecutrix and did not reflect on her condition as mere “add ons” to her situation. The court was cognizant of the fact that her social and physical conditions have played a role in her vulnerability as a victim and how she was at a higher risk and more susceptible to such a scenario of oppression– when compared to persons who show only one or more characteristics in common with the victim.

The Supreme Court, by means of the decision rendered in this case, has laid down a precedent for the courts in the country to look at oppression arising from multiple grounds and how the privileged might be committing atrocities on people who are more vulnerable than the others on social and economic grounds. While the link between the accused and the harm suffered shall be looked at, what also shall be looked at is the condition of the victim suffering the harm caused.