

## UPSC EDITORIAL ANALYSIS 01 JUN 2021

### EDITORIAL 1: RECOGNISING CASTE-BASED VIOLENCE AGAINST WOMEN

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**Topic: General Studies Paper-1 (Women and Social Justice)**

**Context:**

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



**Supreme Court's Verdict:**

- The Supreme Court in its verdict for Patan Jamal Vali v. State of Andhra Pradesh where the victim was a blind 22-year-old Dalit woman, similar to the Hathras case gave a new judgement.

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- In this case, in Supreme Court's verdict, the intersectionality of caste, gender and disability were considered.
- The trial court and the High Court had convicted the accused for rape under Section 376 of the Indian Penal Code (IPC), and under Section 3(2)(v) of the PoA Act, and sentenced him to life imprisonment.
- Justice D.Y. Chandrachud and Justice M.R. Shah, while delivering their verdict in Supreme Court confirmed that the accused must be punished for rape under the IPC and not under the PoA Act.
- Through this judgement, the court has used the opportunity to bring recognition to intersectional discrimination faced by women on the grounds of sex, caste and disability.

### The intersectional approach

- The Supreme court in this case relied on an intersectional approach, by taking into account multiple marginalities that the victim faced.
- It used theories of intersectionality such as Kimberlé Crenshaw who first coined the term 'intersectionality and on the statement of the Combahee River Collective which addressed the intersectional discrimination faced by black women in the U.S.
- Based on this, the Supreme court recognised that when the identity of a woman intersects with her caste, class, religion, disability and sexual orientation, she may face violence and discrimination due to two or more grounds.
- It focussed on how multiple sources of oppression can cumulatively produce a specific experience of subordination for the blind Dalit woman.
- Placing special emphasis on making the criminal justice system more responsive to women with disabilities facing sexual assault, the Supreme court has laid down directions to train judges, the police and prosecutors to be more sensitive in such cases.
- However, Though the court has used an intersectional lens, it has set aside the conviction under the PoA Act.
- The PoA Act was enacted to address atrocities against persons from SC and ST communities and in 2015 it was amended to specifically recognise more atrocities against Dalit and Adivasi women including sexual assault, sexual harassment and Devadasi dedication.
- Section 3(2)(v) states that if any person not being an SC/ST member commits an offence under the IPC punishable with imprisonment of 10 years or more against a person, then the person as per the POA Act shall be punishable with imprisonment for life and with fine.
- In 2015 it was amended that the accused shall be punished under POA Act if he is aware that the victim is a member of "Scheduled Caste or Scheduled Tribe". This was amended in of SC/ST".
- Court has mostly set aside cases of sexual violence against Dalit and Adivasi women, under the PoA Act.
- In 2006 in Ramdas and Others v. State of Maharashtra case, where a Dalit minor girl was raped, the Supreme Court set aside the conviction under the PoA Act stating that the mere fact that the victim happened to be a woman who was a member of an SC community would not attract the PoA Act.
- Even In the Dinesh Alias Buddha v. State of Rajasthan case, the Supreme Court held that mere prosecution that the rape was committed on the victim since she was a member of Scheduled Caste is not right.

- Also, in the 2017 Asharfi v. State of Uttar Pradesh case, the court held that the evidence and materials on record did not show that the appellant had committed rape on the ground that the victim was a member of an SC community.
- Further, In 2019, in Khuman Singh v. State of Madhya Pradesh, in a case of murder, the court held that though it is clear that the deceased is a member of an SC community, however since there was no evidence to show that the offence was committed only on that ground; conviction under the PoA Act was set aside.
- Thus, in several incidents the act is set aside, insisting on an unrealistic burden of proof.
- There is a need to take a different view of this Act.

### **Burden of proof**

- In most of the cases, courts held that there was no evidence to show that the accused committed sexual assault on the ground that the victim was a member of an SC/ST community.
- The question arises on how could a prosecution prove in any given case that the accused had sexually assaulted the victim because she was Dalit/ Adivasi and what evidences can be used.
- The only evidence that can be used is that the victim was from an SC/ST community and that the accused was aware of that.
- Further, When a woman is from a marginalised caste and is disabled, and when she faces discrimination due to her sex, caste/tribe and disability, it makes her more vulnerable to sexual violence and this should be recognised as per the intersectionality theory.
- In the Patan Jamal Vali case, the court using the intersectional lens recognized that evidence of discrimination or violence on a specific ground may be absent or difficult to prove.
- It recognised that merely because the victim's mother did not mention in her statement to the police that the offence was committed against her daughter because she was from an SC community would not take away the fact from the court and it should be presumed that the accused knew the victim's caste as he was known to the victim's family.
- Despite knowing those facts, the court held that there was no separate evidence led by the prosecution to show that the accused committed the offence based on the victim's caste.
- And further, when it was giving its judgement based on intersectionality, where multiple grounds of marginalisation faced by women should be considered, the court failed to use it effectively by stating that it becomes difficult to establish whether it was caste, gender or disability that led to the commission of the offence.
- Repeated setting aside of convictions under the PoA Act would bolster the allegations that the law is misused and lead to increased caste-based violence faced by women.
- Further, as per the recent Parliamentary Standing Committee Report on Atrocities and Crimes against Women and Children, the "high acquittal rate motivates and boosts the confidence of dominant and powerful communities for continued perpetration".

### **Conclusion:**

- ✓ In the Patan Jamal Vali case, the court could have used the opportunity to uphold the conviction under the PoA Act on basis of intersectionality and refer the matter to a larger bench if needed.

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- ✓ There is a need to stop hyper-technicality of evidence and recognise caste-based violence against women when it is prima facie, Else, our caste discrimination laws will be rendered toothless.
- ✓ If the court had given in its verdict based on intersectionality theory, it should have influenced an interpretation of the PoA Act that reflects the lived experiences of women facing sexual violence.

### Reference:

<https://www.thehindu.com/opinion/op-ed/recognising-caste-based-violence-against-women/article34692073.ece>

## EDITORIAL 2: VULNERABLE, SCARED, GRIEF-STRICKEN: HOW GOVT CAN SUPPORT CHILDREN, WHO'VE LOST PARENTS, TO COVID

### Topic: General Studies Paper-2 (Welfare of Vulnerable Sections)

#### Context:

- During Disasters and pandemic, Children are vulnerable as their safety, health, holistic development, and even their very futures are at risk.
- There is a risk that they may be trafficked or forced into child labour; teenage girls may be forced into child marriage.
- Further, When families slip into poverty, children may suffer exclusion, marginalisation, abuse, and even violence.



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### Steps taken:

- During the first wave of the Covid-19 pandemic, several children were cut off from formal education as the schools were closed, lack of access to devices, connectivity and data, there was a disruption in their learning.
- However, Government through its various activities helped the Children. For example, Karnataka came up with a set of light-touch daily activities on YouTube and television to keep children engaged and stimulated.
- The Government also set up Neighbourhood learning centres which were guided through physical visits by school teachers.
- The state's 5,600-plus rural libraries were revitalised, with separate children's sections, bright murals, and new furniture and All rural children were given free library cards.
- Reading and talking about books became a way for children, teachers, and families to connect with learning.
- Karnataka's rural and urban local bodies conducted a house-to-house child survey of children up to the age of 18 to identify those not enrolled in Anganwadi, school or junior college.
- However, The second wave has hit children even harder by making many children orphan.
- For example, The teenage boy who wanted to speak on the phone to his father in the Covid ICU, The 12-year-old going from hospital to hospital with his Covid-positive mother, in search of a hospital bed for her, few Children have lost both of their parents due to Covid, and are now in the care of their aged grandparents.

### Steps to be taken:

- To overcome this distress, Short, medium and long-term measures need to be taken by the Government.
- Along with empathy and kindness, the government needs to create Separate Covid isolation centres, where a parent may stay with the young child, separate quarantine centres and trained child protection staff, to shelter children while their parents or guardians recover.
- Instead of making children stay in institutions, they should be provided kinship care with extended family.
- Child wish and the ability of the family members to care for them should be part of the decision of the Child Welfare Committee. Fake messages regarding adopting "Covid orphans" should be dealt with seriously.
- Foster care and adoption of children who have lost parents to Covid should take place only through the legal process.
- When there is a concern regarding a possible third wave of Covid, We must plan for the eventuality, and the systematic physical triaging for children, and their isolation for treatment.
- Children with mild-to-moderate cases of Covid infection should be allowed to stay at home, and for those who are hospitalised, a parent or guardian must be permitted to be with them. Child protection staff must be positioned at hospitals to help needy children.
- To overcome the distress of the second wave, Grief and trauma counsellors will need to be prepared for this responsibility. Master trainers need to be identified and trained in

districts, selected from high school teachers, nurses, mental health counsellors, and Anganwadi supervisors.

- Children should be provided emotional support to speak about their loss.
- Teenagers who have seen parents struggle, or lost family members, will tend to suppress their feelings and may try to respond with fortitude and resilience to care for siblings. They should be counselled and supported to process their grief.
- The government has already taken steps for orphan children due to pandemic like Free education in good schools; healthcare; monthly allowance; a mentorship programme.
- A fixed amount can also be given to them when they become adults, it would help them to get a start in life.
- These important measures will help. protect children who have lost their parents to Covid.
- Along with other measures, Meal supplementation through anganwadis and schools, growth monitoring of young children and counselling of pregnant women and breastfeeding mothers should continue.
- Also, when schools reopen, there should be a focus not on learning loss or deficits, but on what children have gained in these few months.
- Children during the pandemic have learned a lot about emotional strength, maturity, and resilience as they have watched their families struggle to cope during the pandemic, They should be encouraged to share and reflect on this learning.
- Also, the Government should invest in infrastructure for children's development, like the construction and renovation of anganwadis, schools, rural libraries, primary health centres and subcentres.
- Ceiling fans, ventilation, child-friendly renovations, a fresh coat of paint, Benches for schools, so that children don't have to sit on the floor to study, Drinking water, functional toilets, nutrition gardens with fruit trees where the birds can sing would make schools more attractive for children and help them to learn better.

### Conclusion:

- ✓ One day, the pandemic will end for sure, Things will normalise and children will return with their laughter to anganwadis and schoolyards once again and when they return we should provide them with the best possible facilities and support them emotionally, physically and financially to overcome distress in life so that they can have a brightening future.

### Reference:

<https://indianexpress.com/article/opinion/columns/modi-government-support-children-coronavirus-pandemic-7338599/lite/>

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