

Lifting as We Climb: Recognizing Intersectional Gender Violence in Law

SHREYA ATREY*

Atrey, S., 2015. Lifting as We Climb: Recognizing Intersectional Gender Violence in Law. *Oñati Socio-legal Series* [online], 5 (6), 1512-1535. Available from: <http://ssrn.com/abstract=2709972>



Abstract

This paper interrogates the meaning of lifting all women as we climb the ladder of gender equality and justice by recognizing that gender violence affects women differently. This is because violence against women is perpetrated not only on the basis of their gender or sex but also other identities of race, religion, caste, region, age, disability, nationality, sexual orientation etc. With reference to CEDAW jurisprudence and examples from India, I seek to explain this understanding with the help of a normative framework of 'intersectional integrity'. The framework insists on considering claimants as a whole by tracing unique and shared patterns of gender violence when it is also based on other identities such as race, religion, caste, region, age, disability, nationality, and sexual orientation. I argue that applying the framework allows us to diagnose and address the nature of violence suffered on multiple identities, in a clear and comprehensive way.

Key words

Gender violence; intersectionality; CEDAW; India

Resumen

Este artículo cuestiona el sentido de levantar a todas las mujeres a medida que se asciende la escalera de la igualdad de género y la justicia, reconociendo que la violencia de género afecta a las mujeres de manera diferente. Esto se debe a que la violencia contra las mujeres se comete no sólo sobre la base de su género o sexo, sino también por su raza, religión, casta, región, edad, discapacidad, nacionalidad, orientación sexual, etc. Se pretende explicar esta afirmación con la ayuda de un marco normativo de "integridad interseccional", a través de referencias a la jurisprudencia del CEDAW y ejemplos de la India. El marco insiste en considerar a las demandantes en su conjunto, trazando patrones únicos y compartidos de violencia de género cuando se basa también en otras identidades como raza, religión, casta, región, edad, discapacidad, nacionalidad, orientación sexual. Se sostiene que la aplicación del marco permite diagnosticar y abordar la naturaleza de la violencia sufrida en múltiples identidades, de forma clara y completa.

I am grateful to Professor Sandra Fredman for engaging with my thoughts on intersectionality over the years and for providing invaluable feedback on this paper. I am also thankful to Professor Julie Goldscheid and two anonymous reviewers for their insightful comments. All oversights remain my own.

* Hauser Postdoctoral Global Fellow (NYU), DPhil Law (Oxon.), B.C.L. (Dist.) (Oxon.), B.A. LL.B. (Hons.) (NALSAR). 139 MacDougal St Suite 513 Wilf Hall NY, NY 10012 USA sa141@nyu.edu



Palabras clave

Violencia de género; interseccionalidad; CEDAW; India

Table of contents

1. Introduction.....	1515
2. Intersectionality theory and gender violence.....	1516
2.1. Violence against women through the lens of intersectionality.....	1516
2.2. Violence against women and intersectional integrity.....	1518
3. Gender violence in International Law.....	1520
4. Intersectional gender violence in India.....	1525
4.1. Three examples.....	1526
4.2. The departures in shadow reports.....	1527
4.3. Intersectionality and Justice Verma Committee report.....	1529
4.4. Addressing intersectional gender violence through intersectional integrity	1531
5. Conclusion.....	1532
References.....	1532
Cases.....	1535

1. Introduction

Lifting As We Climb was chosen as the guiding epithet upon the formation of the National Association of Colored Women's Club in the United States (Encyclopedia Britannica 2015). It was inspired by the commitment of Black women's movement to relate to and uplift all women and all dispossessed. To them, inclusiveness and diversity was of central significance in feminist politics.

In comparison, the women's movement surrounding gender violence in India seems to be fractured by its apparent display of universality. Within the discourse on gender justice following the brutal gape rape and death of the 23-year-old physiotherapy student Jyoti Singh Pandey in December 2012 in New Delhi, there is a small but strong sub-current for recognizing intersectionality in women's identities for redressing violations. The claim is that gender violence is not just a matter of gender subordination but is also shaped by experiences grounded in the intersections of gender with other identities such as caste, creed, religion, class, age, disability, nationality and sexual orientation. In this sense, the experiences of rape or sexual assault may be vastly dissimilar but equally shocking. But the possibility of having these other identities recognized in the legal understanding of gender violence remains a continuing struggle in India, as it does elsewhere.

This paper interrogates the meaning of lifting all women as we climb the ladder of gender equality and justice. It expands and explains the category of intersectional gender violence through the lens of intersectionality theory and the right to integrity so that it includes experiences of persons with intersectional identities, i.e. intersections of sex, gender, race, caste, class, religion, region, nationality, sexual orientation, disability, age etc. I argue that this framework of 'intersectional integrity' provides the normative backbone for conceptualizing gender violence in a more inclusive and effective manner.

This paper is divided into three parts. Part I introduces the normative framework of 'intersectional integrity' for understanding gender violence suffered not just because of gender but also other status-identities. This normative framework is developed in appreciation of intersectionality theory developed by Kimberlé W Crenshaw and the right to integrity as developed in disability jurisprudence. The framework provides the theoretical background for understanding the nature of intersectional gender violence in law. Part II analyses the treatment of intersectional gender violence in international law and demonstrates the easy possibility of classifying individual complaints on gender violence decided by the CEDAW Committee in intersectional terms. In light of the theoretical background and CEDAW jurisprudence, Part III seeks to explain the nature of intersectional gender violence in India. It begins with three cases that, despite their intersectional dimensions, were simply classified as 'gender' violence cases. As a State Party to CEDAW, the developments within the Indian discourse are also reflected in the NGO Shadow Reports submitted to the CEDAW Committee. The existing legal position is consolidated in the Criminal Law (Amendment) Act 2013, which was prompted by the Justice Verma Committee Report that stands as one of the most progressive statements on gender violence in India. The paper tests the legal developments against the conceptual framework of intersectional integrity in redressing intersectional gender violence. The emerging insight is that the domestic and international legal developments have not fully and consistently captured the nature of intersectional gender violence. It is with the application of the framework of intersectional integrity that we uncover the nature of gender violence based on victims' multiple identities, which in turn assists in redressing these violations. Thus, the framework brings diagnostic clarity in detecting, understanding and describing the nature of harm involved in intersectional gender violence, which feeds into the ultimate finding a judicial body makes in adjudicating such a claim or the formulation a legislature adopts in preventing and prohibiting it. In this sense, the paper's diagnostic aim unearths the conceptual roots for understanding the

nature of intersectional gender violence, which can in turn assist in realizing legislative, policy and adjudicative aims for addressing it.

This paper focuses primarily on intersectional gender violence against women, i.e. violence against women perpetrated not only because of their sex or gender, but also because of their caste, race, religion, region, nationality, occupation, class, sexual orientation, age, disability etc. The use of the 'embarrassed "etc"' (Butler 1990, p. 182) at the end of the list of relevant status-identities is meant to denote the possibility of recognizing identities beyond those that are listed in legal documents, like the constitutional and legislative guarantees of non-discrimination. Within the limits of how identities come to be recognized in law, say, as 'grounds' or 'analogous grounds' of discrimination, this paper leaves open the possibility of intersectional gender violence to cash in on the opportunity to make gender violence more inclusive and representative (Fredman 2010, pp. 130-139). Furthermore, the focus on violence against women should not detract from the applicability of intersectional integrity as a framework for understanding violations based on multiple identities. It should be equally applicable to, even if not directly representative of, all genders and transgender within the category of 'gender violence' and not just those classified as women per se. At the same time, the suggested normative framework can be applied more broadly to other forms of violence occurring on intersectional basis, for example, against disabled men or gay men. The references in this paper should then be treated as examples which are capable of being extrapolated for explaining the qualitative experience of gender violence, and in fact violence per se, for anyone with multiple and intersecting identities as women, Dalits, Blacks, gays, lesbians, disabled, young, old, poor, rural, immigrants etc. It is only with this unexceptional commitment, that we can lift one and all in climbing the ladder of gender justice.

2. Intersectionality theory and gender violence

Intersectionality theory seeks to understand the disadvantage associated with status-identities as based on multiple and intersecting grounds of race, sex, gender, disability, class, age, caste, religion, sexual orientation, region etc. Intersectionality was first translated in the legal realm by Kimberlé Crenshaw in her 1989 article (Crenshaw 1989), with the aspiration of addressing intersectional disadvantage through discrimination law. Initially developed in the context of Black women in the United States, intersectionality has since been transported and applied widely transnationally and in relation to identities beyond gender, class and race. (Doucet and Siltanen 2008, Cooper *et al.* 2009, Casey and Taylor 2010, Chow 2011).

This part begins by explaining how Crenshaw used intersectionality theory to explain the nature of violence against Black women in her second article on intersectionality published in 1991 (Crenshaw 1991). I use the concept of a Venn diagram to explain the unique and shared dimensions of disadvantage captured by intersectionality theory. I also draw on the right to integrity identified in international human rights law to explain how it assists in conceptualizing intersectional gender violence in a complete manner. The purpose of this part is to sketch the normative foundation of 'intersectional integrity', using intersectionality theory as a basis for the Venn diagram and complementing it with the notion of 'integrity', to understand the legal category of intersectional gender violence.

2.1. Violence against women through the lens of intersectionality

Crenshaw introduced intersectionality theory to show that any real commitment towards eliminating racism and patriarchy could not ignore those located at the intersections of both—i.e. Black women (Crenshaw 1989, p. 166). This was because Black women's experiences were defined by the intersection of both blackness and femaleness and could not be explained exclusively in terms of either race or

gender. This meant that Black women shared experiences of sexism with white women or of racism with Black men, but also experienced being both Black and female in a unique way. The qualitative understanding of their disadvantage involved an appreciation of both the unique and shared dimensions, which cannot be understood exclusively, coincidentally or additively (King 1988). Thus, the compounded nature of disadvantage flowing from multiple identities could neither be deflated into the experiences of white women or Black men, nor could it be inflated into an uninteractive category of disadvantage of its own.

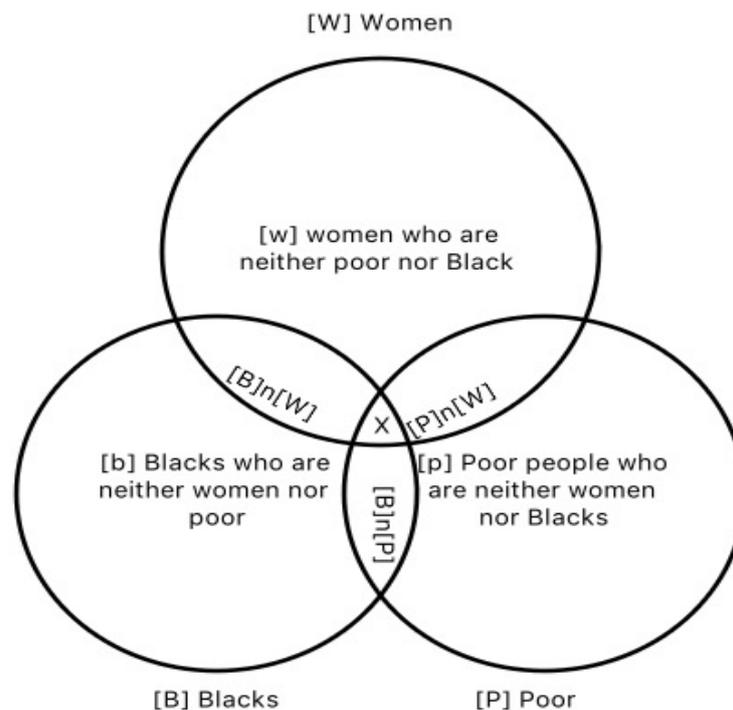
Crenshaw used this central thesis to explain the differences in women's experiences of violence (Crenshaw 1991). By using the examples of battering and rape, she considered "how the experiences of women of color are frequently the product of intersecting patterns of racism and sexism." (Crenshaw 1991, pp. 1243-45) Crenshaw posited that:

Where systems of race, gender, and class domination converge, as they do in the experiences of battered women of color, intervention strategies based solely on the experiences of women who do not share the same class or race backgrounds will be of limited help to women who because of race and class face different obstacles. (Crenshaw 1991, p. 1246)

She presented a series of examples showing this qualitative difference in women's experiences. One of the instances concerned the 1990 amendment to the Immigration and Nationality Act (United States), which provided that a person who immigrated to the United States to marry a citizen or a permanent resident must remain 'properly' married for two years prior to applying for permanent resident status. This made spouses facing extreme forms of battering and domestic violence reluctant to either report the brutality or leave the partner, lest they lost the chance to apply for permanent status (Crenshaw 1991, p. 1247). To remedy this, the Congress enacted an exception for hardship caused by domestic violence. But the conditions for meeting this exception required formal evidence of domestic violence in the form of affidavits or reports from police or socio-medical persons. Immigrant women were far less capable of accessing such formalized procedures and hence rarely claimed the benefit of the exception. The lack of resources and cultural and language barriers limited the possibility that immigrant women either escaped domestic violence or successfully claimed under the exception (Crenshaw 1991, pp. 1248-1249). This example shows how patterns of gender violence and disadvantage are not limited to gender but also involve immigrant status, race, religion, socio-economic status etc. As Crenshaw observed: "modest attempts to respond to certain problems can be ineffective when the intersectional location[s] of women [with intersectional identities] is not considered in fashioning the remedy..." (Crenshaw 1991, p. 1250)

A chief takeaway from this example is that a provision meant to address gender violence against women cannot be effective when predicated *solely* on gender. It signifies that the experience of gender violence can structurally differ for women on the basis of their race, immigrant status, religion, region, caste and culture. In folding these diverse differences into 'gender', we create an inaccurate conception of violence against women. It is also clear that the experiences of violence against women cannot simply be reduced to a function of their race or religion alone without taking into account their gender. In this sense, the term 'gender violence' does both too much and too little. It does too much by seeking to represent violence against *all* women and at the same time doing too little by falling short of actually understanding the difference in the nature of violence experienced by women. Violence against women with intersectional identities then needs to be understood as 'intersectional gender violence' rather than solely 'gender' violence. What intersectionality does is that it highlights the interrelationship between multiple intersecting identities as creating both shared and unique dimensions of experience.

This point can be understood as a Venn diagram, which pictorially exhibits all finite relationships between intersecting elements. The several points of intersections depict not the aggregate or exclusive characteristics but a shared and unique confluence of interaction between the elements. For example, to map the patterns of violence against women of color, Crenshaw used intersectionality for demonstrating that violence against Black women is frequently a product of intersecting patterns of racism, sexism and poverty. If we depict violence against poor Black women as a Venn diagram, it is a product of intersecting patterns of experiences of three groups: women, black and poor.



The whole circles B (Blacks), P (poor) and W (women) all intersect and together yield the portion X. This portion demonstrates shared properties of the three intersecting circles; and at the same time, it also depicts certain unique characteristics that are not shared with the non-intersecting portions b (Blacks who are neither women nor poor), p (economically disadvantaged who are neither Black nor women) and w (women who are neither Black nor poor). It also shows some shared characteristics with Black women who are not poor $B^{\cap}W$, poor women who are not Black $P^{\cap}W$ and Blacks who are poor but not women $B^{\cap}P$. However, the only way to fully comprehend the position of poor Black women is to take into consideration their whole identity yielded by these shared characteristics as well as the unique characteristics of their position X. This is the central thesis of intersectionality, which brings to light the unique and shared patterns of violations suffered by those with multiple and intersecting status-identities. This central thesis serves a diagnostic or evaluative function, i.e. it *explains* the causal basis of violence against women beyond their sex or gender and as based on other identities of race, caste, class, religion, sexual orientation, disability etc.

2.2. Violence against women and intersectional integrity

When gender violence is mapped in intersectional terms, it helps us use foundational categories (like gender) for understanding the interrelationships between intersecting identities (like race and gender; race, gender and class; race,

gender, class and disability etc). The purpose of changing the conception of gender violence by viewing it from an intersectional lens is to challenge the uni-dimensional understanding of the nature of violence based on gender, but not only so—thus, classifying gender violence also on the basis of race, class, caste, region, religion, disability, sexual orientation, etc. One unarticulated premise of taking into account all relevant identities that form the claimant's experience of gender violence is the importance of considering *identities as a whole*. The purpose of casting the lens of intersectionality will be incomplete if one or two or a fraction of the claimant's status-identities are considered in forming some shared and unique patterns rather than considering all of them at the same time. This is because experiences of violations cannot be neatly segregated based on one or few of the identities. As Pothier explains:

... as a woman with disability (visual impairment due to Albinism...I can never experience gender discrimination other than as a person with a disability; I can never experience disability discrimination other than as a woman. I cannot disaggregate myself nor can anyone who might be discriminating against me. I do not fit into discrete boxes of grounds of discrimination. Even when only one ground of discrimination seems to be relevant, it affects me as a *whole* person. (Pothier 2001, p. 59)

Thinking in terms of a Venn diagram allows us to view the result of intersections as a whole. For example, Black women's experiences can only be considered when race and gender are taken together as a whole to reflect unique and shared dimensions of racism and sexism. Thus, a singular understanding based on sexism or racism alone or an additive understanding which clumps racism and sexism together or another combination of the fragments allows people to be either less than, some of or more than the whole—none of which represents their real position. As Grillo remarks: "This fragmenting of identity by legal analysis, a fragmenting entirely at odds with the concrete life of [a] woman, is the subject of the intersectionality critique." (Grillo 1995, p. 17) Thus, to accurately reflect people's lived experiences of multiple identities, a key implication of the intersectionality theory is its emphasis on treating people's experiences as a whole for considering the unique and shared patterns of violations created by multiple and intersecting identities. This notion in intersectionality theory of viewing identities as a complete whole is reflected in the idea of 'integrity'.

"Integrity" has been traditionally recognized as a value underpinning the right against torture and inhuman or degrading treatment or punishment (UDHR art 5, United Nations 1966, art 7, European Union 2000, art 3). However, its full reach is reflected in Article 17 of the United Nations Convention on the Rights of Persons with Disabilities ("**CRPD**"), which specifically spoke in terms of a 'right to integrity.' The text of Article 17 guarantees persons with disabilities the right to respect for their physical and mental integrity on an equal basis with others. The reasoning behind the drafting of this text explains how this generalist language was meant to reaffirm the wholeness of disabled identity. Viewed as insufficient and lacking, persons with disabilities challenge the negative portrayal of their identities by substituting it with a positive assertion of the disabled body and life as complete. This understanding of integrity, in line with the semantic meaning of the term, undercuts the notions of disabled life as incomplete, abnormal, or deficient. Thus, integrity creates the space for asserting respect for bodies and lives dissimilar to our own (Fiedler 1993). At its core, it allows for breaking through the prism of "normal" and viewing people *just as they are* (Equality and Human Rights Commission 2010, p. 24).

In this sense, the right to integrity in the legal discourse has evolved both as a right against physical and psychological violence and also as a right to whole identity. Both these dimensions squarely resonate with the issue of intersectional gender violence. Intersectional gender violence is about: (i) *rejecting* violations of bodily and mental integrity when perpetrated based on people's multiple and intersecting

identities (intersectionality); and (ii) *recognizing* that violence should be understood as a whole taking into account unique and shared patterns of violations yielded by intersections of gender, race, caste, religion, disability, age, sexual orientation etc (integrity). The intersectional dimension shows the nature of gender violence as constructed by unique and shared patterns of experiences (as depicted in a Venn diagram); whilst the integrity dimension emphasizes that experiences of intersectional gender violence can only be understood in this way when considered as a whole. This bipartite framework of 'intersectional integrity' serves as the normative background for deconstructing the nature of intersectional gender violence. Its explanatory force provides an accessible and accurate way of understanding the category of intersectional gender violence. The next part proceeds from theory to practice and highlights the conceptual gap in redressing intersectional gender violence from the standpoint of intersectional integrity.

3. Gender violence in International Law

The commitment to address intersectional gender violence has increasingly gained traction in international law. In May 2008, an expert group (organized by the United Nations Division for the Advancement of Women and the United Nations Office on Drugs and Crime) provided a report on good practices in legislation on violence against women. Noting the obligation of the UN member states to combat gender violence, the report provided concrete suggestions for enacting laws in the domestic sphere. It identified the legislative goal as:

The goal of legislation on violence against women should be to prevent violence against women, to ensure investigation, prosecution and punishment of perpetrators, and to provide protection and support for complainants/survivors of violence. (United Nations Division for the Advancement of Women, United Nations Office on Drugs and Crime 2008, p. 5).

It also identified the guiding principle of addressing gender violence as:

[taking] into account the differential impact of measures on women according to their race, class, ethnicity, religion, disability, culture, indigenous or migrant status, legal status, age or sexual orientation. (United Nations Division for the Advancement of Women, United Nations Office on Drugs and Crime 2008, p. 6).

The Report went on to specifically mandate that the text of the laws:

recognize that women's experience of violence is shaped by factors such as their race, colour, religion, political or other opinion, national or social origin, property, marital status, sexual orientation, HIV/AIDS status, migrant or refugee status, age, or disability, and include targeted measures for particular groups of women, where appropriate. (United Nations Division for the Advancement of Women, United Nations Office on Drugs and Crime 2008, p. 14).

It further recommended that legislations provide for collection of statistical data on violence against women disaggregated by sex, race, age, ethnicity and other relevant characteristics (United Nations Division for the Advancement of Women, United Nations Office on Drugs and Crime 2008, p. 24). These mandates have been reiterated in the UN Handbook For Legislation on Violence Against Women (United Nations 2010). Although not directly binding, these concrete suggestions demonstrate a commitment for combating intersectional gender violence. But what does this commitment reflect on the concept of intersectional gender violence and how do we understand the nature of such violence? It is important to bolster the commitment with an explanation of *what* is distinctive about intersectional gender violence. While intersectional gender violence continues to develop in the jurisprudence of UN treaty bodies (Bond 2003, Goldscheid and Liebowitz 2015), the CEDAW Committee jurisprudence is a particularly appropriate starting point to search for this explanation. With its focus on women, its treatment of intersectional gender violence can reveal how the Committee understands and addresses this category of violence.

The text of CEDAW does not explicitly recognize a right to be free from gender violence. Gender violence or sexual harassment has neither been mentioned in CEDAW as a facet of discrimination nor as a violation of human rights and fundamental freedoms of women. However, since General Recommendation No. 12 (CEDAW 1989) titled "Violence Against Women," the issue of gender violence has been squarely brought within the contours of CEDAW. General Recommendation No. 12 recognized for the first time that, the obligations under Articles 2, 5, 11, 12 and 16 of CEDAW required "the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life." It mandated States to include in their reports, information on violence and on measures introduced to deal with it. General Recommendation No. 19 (CEDAW 1992), also titled "Violence Against Women," further addressed gender violence in a comprehensive way such that it stands as one of the most relevant texts on gender violence in CEDAW jurisprudence and in international law generally. The Committee explicates its clearest understanding of gender violence within CEDAW as:

The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. (CEDAW 1992, para 6)

The Committee's understanding of violence against women is that which is committed *because* of being a woman—thus identifying women's gender as determinative in classifying violence against them as gender-based. Beginning with this foundational principle, General Recommendation No. 19 does not directly speak of gender violence against women perpetrated also on the basis of race, caste, region, disability, age etc. In a passing reference it indicates that poverty and unemployment may lead to exploitation and abuse of women but it does not specify how the nature of such exploitation and abuse is compounded by the intersection of identities (CEDAW 1992, paras 14-15). It further indicates that certain traditions and cultures may perpetuate patterns of violence and abuse against women, especially pregnant women, young girls or rural women (CEDAW 1992, paras 20-21). But this falls short of conveying that cultures and traditions often *dictate* the nature of violence against women and define it in terms that are both similar to and different from violence predicated only on women's gender. General Recommendation No. 28 goes further in explicitly recognizing intersectionality as a form of discrimination broadly in these terms:

Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. (CEDAW 2010, para 18)

While it does not mention intersectionality in its discussion on gender violence in reference to General Recommendation No. 19 (CEDAW 2010, para 19), if read together, the two General Recommendations can be interpreted as speaking in terms of prohibition, prevention and redressal of intersectional gender violence. The CEDAW Committee jurisprudence too has progressively shown signs of suitably grappling with intersectionality. Whilst the early jurisprudence often stuck to focusing on women's gender alone, later cases took into account multiple identities of victims, especially in a way that shows an appreciation of the framework of intersectional integrity. Some examples are in order.

In *AT v Hungary* (2003) the facts indicated an interdependent and cyclical relationship between the claimant's condition of being economically dependent, a

single parent of a disabled child and the patterns of domestic violence this yielded. The complaint detailed four years of extreme battering by the claimant's husband, which was not *just* a result of the claimant's gender but also of being a poor single parent and an estranged spouse. The Committee held that Hungary had violated Article 2(a), (b) and (e) of CEDAW read with General Recommendation No. 19 by failing in its obligations to prevent and protect women from violence. The reasoning behind this finding briefly alluded to the claimant's vulnerability as a single mother of a disabled child in paragraph 9.4: "She has been unable to flee to a shelter because none are equipped to accept her together with her children, one of whom is fully disabled." This reference to intersectionality did not pan beyond the lone sentence and did not inform the specific recommendations made by the Committee to address in particular the situation of women like the claimant who needed measures similar to all women facing domestic abuse but also those which catered to their unique position as economically dependent estranged spouses with disabled children. This was in spite of the record, which showed a clear connection between the claimant's experiences and her multiple identities. The inability to pursue effective legal remedies in time or to escape to a shelter because none catered to a mentally disabled child were centrally connected to disadvantage accruing from poverty and disability of her child. In reducing this connection to a cursory mention, the Committee failed in appreciating the demands of both intersectionality and integrity—(i) understanding and describing the nature of intersectional gender violence as it created unique and shared patterns of vulnerability based on gender, class, marital status and disability, i.e. reckoning with the unique position of disadvantage of a single mother of a disabled child and also how it related to single mothers, disabled and economically vulnerable groups; (ii) respecting the integrity of the claimant and treating her as a whole in appreciating her experiences rather than just as a woman. In the absence of this exercise which draws causal connections with multiple identities of the claimant as a whole, the Committee's recommendations such as improving access to free legal assistance and better shelter and counseling services, remained generalist and imprecise. The focus of the recommendations remained the single identity category of gender without an appreciation of how women with other disadvantaging identities experience gender violence in a way that is both similar to but different from women who are disadvantaged *only* on the basis of gender. This resembles Crenshaw's example of the immigration exception under the US law which failed to cater to the constituency of battered immigrant women, who were perhaps most in need of its protection. The takeaway from both these examples is the same: in the absence of understanding how gender violence accrues on an intersectional basis, we may fail to address it as well.

It is arguable that this is an inevitable result of the single-axis focus on women in CEDAW. However, the focus on women and their sex-based disadvantage cannot be overstated as a justification of gender-exclusive analysis when gender-based violations themselves are based on other status-identities. Such a delimited view of CEDAW jurisprudence would be unsustainable in the light of its object and purpose of affirming the recognition, enjoyment and exercise of human rights and fundamental freedoms by women. (CEDAW 1979, preamble, article 1) Thus, the lack of appreciation of intersectional gender violence as gender violence in early CEDAW jurisprudence may have resulted from CEDAW's avowed focus on women, but cannot be justified within its broad and inclusive mandate. But *AT v Hungary* was only first in the line of cases which took a gender-exclusive view of violence. Another example is of *AS v Hungary* (2005), which involved a complaint from a Roma woman who was subjected to coerced sterilization by medical staff at a Hungarian hospital. Violence in medical procedures including forced sterilization has been recognized within General Recommendation No. 19. Despite the structural discrimination and violence against Roma women in Europe, especially in the form of forced sterilisation, the Committee's decision failed to particularize the gender violence in this instance as shaped by the claimant's identity of being not just

Roma, but also mother of three children and pregnant with her fourth, lacking in literacy and education (she did not understand the term 'sterilization' until explained after it was performed) and suffering from depression. Even as the claimant pointed to her especially vulnerable position as a Roma and a mother in distress due to her complicated pregnancy and delivery, the Committee did not consider how the violations were a product of her vulnerable position as a whole. It recalled in relation to General Recommendation No. 19:

The sterilization surgery was performed on the author without her full and informed consent and must be considered to have permanently deprived her of her natural reproductive capacity. Accordingly, the Committee finds the author's rights under article 16, paragraph 1 (e) to have been violated. (*AS v Hungary* (2005), para 9.4)

The nature of violation was then held to be based on gender only, discounting how full and informed consent was compromised due to the author's intersectional identity and not just gender. Relevant facts such as being ill-informed because she was Roma and the aggravating circumstance of a complicated pregnancy and delivery vitiated her full and informed consent. The absence of accounting for these facts by appreciating how they yielded unique and shared dimensions of violations (intersectionality) by treating the claimant as a whole (integrity) is not just disappointing but diminishing of the CEDAW Committee's commitment to address gender violence.

Similarly, in *NSF v United Kingdom of Great Britain and Northern Ireland* (2005), the author of the communication was a Pakistani asylum seeker and a mother of two children, living in the United Kingdom. Her deportation exposed her and her two children to fear of violence at the hands of her former husband in Pakistan. During her six years of marriage in Pakistan, she was subjected to continued domestic violence and marital rape, which eventually led her to seek divorce and escape to a nearby village. When her husband arrived with men armed with knives and threatened to kill her, the author managed to flee the country and apply for asylum in the UK. She appealed the refusal of her asylum application on grounds that it violated the 1951 Convention on the Status of Refugees and the European Convention on Human Rights and Fundamental Freedoms. After pursuing a series of appeals and procedures, the author finally brought a complaint under the CEDAW optional protocol protesting the refusal of asylum. She based her complaint on her specific vulnerability as a woman, from a developing country, as a single mother and a divorcee facing threats of violence from her former husband (*NSF v United Kingdom* 2005, para 3.1). Although the complaint pertained to the asylum decision and was held inadmissible, the Committee went ahead to observe that the communication raised: "the issue of the situation in which women who have fled their country because of fear of domestic violence often find themselves." It recalled that in General Recommendation No. 19, the Committee had posited that: "the definition of discrimination against women in article 1 of the Convention includes gender-based violence, i.e. violence that is directed against a woman because she is a woman or that affects women disproportionately." (*NSF v United Kingdom* 2005, para 7.3). Once again, despite being asked to consider the specific implications of other identities that transformed the nature of gender violence, the Committee applied a uni-dimensional understanding of gender in denying the admissibility of the claim.

This is a recurring pattern in a catena of CEDAW Committee decisions which bear out the interrelationship of violence with gender, poverty, immigrant status and single parenthood, such as in *YC v Denmark* (2014), *SO v Canada* (2014), *Isatou Jallow v Bulgaria* (2012), *Guadalupe Herrera Rivera v Canada* (2011) and *MPM v Canada* (2010). Whilst the CEDAW Committee often recapitulated and noted the facts in relation to multiple identities of the claimants, it did not evaluate the nature of harm from this intersectional perspective but only in light of the predominant strand of gender. Thus, the CEDAW Committee lagged in driving home the point that what we call gender violence is not just a matter of gender alone. It becomes

evident that: (i) there have been frequent and clear examples of intersectional gender violence which have been rendered invisible because (ii) even where noted, the Committee missed the importance of multiple and intersecting identities as “part and parcel of the cause and consequences of gender violence” (Goldscheid and Liebowitz 2015, p. 309). This void divulges the need for a framework like intersectional integrity in deconstructing the nature of intersectional gender violence in law. At least two examples from the later CEDAW Committee jurisprudence justifies the relevance of this framework in the systematic appreciation of cases of intersectional gender violence. *Kell v Canada* (2012) and *RPB v Philippines* (2014) provide worthwhile cues for appreciating such violence by applying the normative framework of intersectional integrity within the text of CEDAW and its General Recommendations.

Kell v Canada (2012) provides a breakthrough in its treatment of intersectional gender violence. The Committee’s opinion marks an important departure in terms of taking intersectional gender violence seriously by recognizing how it is distinct and how it must be addressed. Cecilia Kell, an aboriginal woman, had suffered economic and domestic abuse and violence at the hands of her civil partner William Senych. Kell and Senych were co-owners of property, which was specifically earmarked for the Rae-Edzo community, to which Kell belonged. Senych was not otherwise entitled to this property other than as a co-owner with Kell. Some years later, without Kell’s knowledge, Senych had her removed as co-owner of the property. Following a lengthy and unsuccessful legal process of challenging her fraudulent removal from the property, Kell approached the CEDAW Committee seeking a finding that Canada had discriminated against her on the grounds of sex, marital status and cultural heritage. In its first such unequivocal statement the Committee held that:

The Committee considers that the author has established a distinction based on the fact that she was an aboriginal woman victim of domestic violence, which she clearly submitted in her first lawsuit against her partner, and that such violence had the effect of impairing the exercise of her property rights...Accordingly, the Committee finds that an act of intersectional discrimination has taken place against the author. (*Kell*, para 10.2)

The statement makes clear that the Committee’s evaluation of the claim appreciated both the dimensions of intersectionality and integrity in tracing unique and shared patterns by taking a full and complete view of the claimant’s identity as an aboriginal woman. Whilst the Committee did not describe these patterns at length, the intersectional standpoint is fleshed out fully in the Committee’s recommendations. It mandated that the steps Canada must take to address discrimination in relation to ownership of property should relate to intersectional discrimination specifically, taking into account aboriginal women like Kell. (*Kell*, para 10.3) For example, the Committee recommended recruiting and training of more Aboriginal women to provide legal aid and reviewing the legal aid system to ensure Aboriginal women who are survivors of domestic violence have effective access to justice. Subsequent cases such as *RPB v Philippines* (2014) show a similar engagement with the framework of intersectional integrity as *Kell*.

In *RPB*, the author of the communication was a woman who was poor and deaf-mute. She was raped and the accused was acquitted in proceedings before a Philippines’ trial court. She was barred from challenging the acquittal under Philippines law based on double jeopardy. The author claimed before the CEDAW Committee that the acquittal was erroneous because, inter alia, the trial court had “failed to consider the rape in the context of her vulnerability as a deaf girl.” (*RPB*, para 3.1) She argued that the Philippine justice system employed discriminatory gender myths and stereotypes in adjudicating rape cases from the standpoint of an imaginary “ordinary Filipina” and not in reference to real victims like her (*RPB*, para 3.8). In relation to her own intersectional position, she pointed out that the trial court had applied a stereotypical understanding of rape scenario, which did not

incorporate the experience of a deaf minor girl. The behavioral responses of the author as a disabled girl, and her inability to convey that there was no consent, were different from the facts in cases involving non-disabled women. (*RPB*, paras 3.2-3.4) The trial court's finding that "being a deaf mute does not render her incapable of creating noise [or ...] resist[ing] the aggression," disregarded how a deaf-mute victim would respond to and resist rape. In addition, she claimed that the absence of sign language interpretation and post-trauma counseling or support services contributed to the serious irregularities in the justice delivery system. (*RPB*, paras 3.9-3.10). She further explained that:

deaf women, especially girls, occupy a difficult position in Philippine society because they are disadvantaged both to men (men with or without disability, including deafness) and women (women without or with disability other than deafness). In addition, deaf women and girls, who are victims of sexual violence, often suffer from poverty and lack access to formal education. (*RPB*, para 3.8)

The Committee agreed with all of author's claims and explained its perspective on the issue as:

In the particular case, the compliance of the State party's obligation to banish gender stereotypes on the grounds of article 2 (f) needs to be assessed in the light of the level of gender, age and disability sensitivity applied in the judicial handling of the author's case. (*RPB*, para 8.8)

It is clear that this case was framed primarily as a matter of intersectional gender violence where the author elaborately explained her violations through the lens of her whole identity as a deaf-mute minor girl. The Committee's favorable treatment of her case kept stride with the claimant's formulation in appreciating intersectional gender violence in this way: it traced the shared patterns of gender violence with women (*RPB*, para 8.9, 8.10), women with disabilities in relation to General Recommendation No. 18 (*RPB*, paras 8.3, 8.6 8.7) and particularly for the claimant as a young deaf-mute girl (*RPB*, paras 8.5, 8.8). The full consideration of the multiple and intersecting forms of violence at play in *RPB* is reflected in the Committee's description of the author's claim, its own response on the merits of the claim and also its final recommendations (*RPB*, para 9). For example, the Committee specifically mandated the State party to:

[e]nsure that all criminal proceedings involving rape and other sexual offences are conducted in an impartial and fair manner and free from prejudices or stereotypical notions regarding the victim's gender, age and disability. (*RPB*, para 9(b)(iii))

Kell and *RPB* thus provide useful examples of how the Committee's evaluative work can be channeled towards understanding and responding to intersectional nature of gender violence with the perspective of intersectional integrity. Even though the Committee did not operate within the so-called theoretical framework of intersectional integrity, its normative underpinnings visible in *Kell* and *RPB* can be explained in reference to it. The significance of this trend is a diagnostic one—that is, it helps to trace, explain and address the reasons for gender violence by systematically accounting for multiple status-identities in the experience of gender violence, which in turn affects the assessment of and remedies awarded in a claim.

4. Intersectional gender violence in India

With the backdrop of the theoretical framework of intersectional integrity and the CEDAW Committee's consideration of individual communications on intersectional gender violence, I now turn to consider the discourse in India. This part is divided into four sections. 4.1 considers three examples—the gang rapes of Mathura and Bhanwari Devi, and violence against Muslim women in the 2002 Gujarat riots. The following two sections engage with two key texts which have dealt with intersectional gender violence in India—4.2 considers the strides made in the NGO Shadow Reports submitted to the CEDAW Committee, and 4.3 discusses the Justice Verma committee report and its treatment of intersectionality. Finally, 4.4

consolidates the learnings from these examples and reaffirms the explanatory force of the framework in uncovering the nature of intersectional gender violence.

4.1. Three examples

This section discusses three significant cases of intersectional gender violence and argues that they were exclusively but erroneously interrogated through the lens of gender alone. The loss in reducing these cases to 'gender' violence is in failing to accurately identify and address the nature of violence suffered.

In the case of *Tukaram v State of Maharashtra* (1979), Mathura, a sixteen-year-old tribal girl had come to register a complaint against her brother, who was harassing her about her relationship with her boyfriend. She was gang raped by policemen in the compound of the police station. Whilst the Nagpur bench of the Bombay High Court convicted the two policemen, the Supreme Court reversed the judgment and dismissed both the circumstantial evidence as well as the testimony of Mathura, calling it "a concoction" and "a tissue of lies." (*Tukaram* (1979), p. 817) Outraged by the judgment, activists demanded change in evidentiary requirements in rape cases but did not touch upon *why* Mathura's testimony was disbelieved and disregarded, something centrally linked to the specific vulnerability of poor, minor and lower-caste women—facts that were left unaccounted in the judgment. The Criminal Law Amendment Act 1983 amended the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act with respect to matters like custodial rape, making it an offence to reveal the identity of rape victims, changed the burden of proof to be on the accused when the woman claims that she did not consent and, deleted the provision referring to the character of the prosecutrix in a rape case (Indian Penal Code 1860, s 228A, s 375, s 376, s 376A etc; Indian Evidence Act 1892, s 114A). But the legislative changes did not address the systemic nature of sexual exploitation of poor Dalit and tribal women and in turn normalized it by failing to give any attention to class/caste/tribe in addressing custodial gender violence (Bhagwat 1995, p. 6) which was at the heart of Mathura's case. The judicial and legislative characterization of Mathura's case as one simply of custodial 'gender' violence, missed how patriarchy modifies its character in relation to age, poverty and caste. It failed at both levels of the framework of intersectional integrity—in occluding unique and shared patterns of violations associated with multiple and intersecting status-identities (in this case, of gender, class, caste and age); and in failing to treat the claimant as a whole (a young tribal woman) instead of only as a woman. The ultimate failure is one of failing to diagnose and address intersectional gender violence as gender violence at all.

Similarly, Bhanwari Devi's gang rape was exclusively gender-ized despite the clear caste basis of the violations as a Dalit woman. Bhanwari Devi worked as a 'saathin' (friend) grassroots worker employed as part of the Women's Development Project in the state of Rajasthan. She campaigned in her village against child marriage and had tried to frustrate the wedding of a nine-month old girl in a powerful upper-caste Gurjar family. In retaliation, she was gang raped by the upper-caste Gurjar men to penalize her for blocking the child marriage in their family. The lower court dismissed the complaint on the basis that upper-caste men could not possibly have raped a Dalit woman. The issue was taken up by activists who demanded protection of women from sexual harassment at workplaces. While justice for Bhanwari Devi remains elusive with the criminal appeal still pending in Rajasthan High Court, activists expedited their relief through public interest litigation in regards sexual harassment through a separate matter brought to the Supreme Court. The Supreme Court began addressing the petition, which finally resulted in the Sexual Harassment in Workplace Guidelines, as:

The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of social worker in a village of Rajasthan. That incident is the subject matter of a separate criminal action and *no further mention of it, by us, is necessary.* (*Vishaka* 1995, p. 3011).

The characterization of the petition stemming from Bhanwari Devi's gang rape as merely a case of sexual harassment rather than as sexual assault or rape perpetrated on the basis of caste, is a glaring omission in the understanding of her violations. Turning her case into a general matter of 'gender equality' (*Vishaka* 1995, p. 3011), not only hijacks a test case which really belonged to Dalit women, but also fails in fulfilling the promise of realizing gender justice for all women. Even the Supreme Court Guidelines on Sexual Harassment did not specifically address the situation of Dalit women like Bhanwari Devi who were targeted because of their intersectional identity as Dalit women. Without directly addressing the nature of harm involved in sexual assault and harassment against Dalit women, cases like Mathura's or Bhanwari Devi's will continue to be mischaracterized (rape devolving into sexual harassment), disbelieved (the credence given to a Dalit women's complaint and testimony) and ultimately discarded (dismissing the possibility that upper-caste men *can* and *do* perpetuate sexual violence against Dalit women). The legal discourse around these two cases reveals the persisting sidelining of caste, tribe, poverty and age as gender issues.

Finally, consider the systemic violence perpetrated against Muslim women during the 2002 Gujarat riots. As reported by Human Rights Watch:

Muslim women and girls in Gujarat were stripped and paraded naked, gang-raped, mutilated and burnt alive. Iron rods and other objects were inserted into their bodies. In some cases, the police reportedly opened fire on Muslim men who tried to save them. (Human Rights Watch 2003, p. 22).

The communal riots between Muslims and Hindus did not just stop at mob violence but extended to afflicting the bodies of innocent women and children of both communities. Since the concept of honor of the community is bound to the chastity and respect of women's bodies, sexual violence against Muslim women was pursued as the obvious strategy of directly wounding the pride of an entire community. As the report of International Initiative for Justice remarks:

The specific targeting of women [was a] part of a conscious strategy to terrorize the Muslim population of Gujarat...sexual violence played a fundamental role and was used 'as an engine of the mobilisation of hatred and destruction.' (International Initiative for Justice Report 2003)

Thus, the bodies of Muslim women became the battleground of rioting. They were targeted not *only* because they were women but because they belonged to a particular community, that they were Muslim. The resulting brutalities, even if vast and persistent, were neither reported nor documented officially. In fact, the report of the three-member committee appointed by the National Commission of Women did not delve into violence against Muslim women in Gujarat riots. The marginalisation of such large-scale violence against Muslim women (as compared to violence against Hindu women which was considerably better reported and addressed), strikes at the core of the problem here—that in the absence of a theoretical framework we fail to not only understand and address such violence but also fail to identify it as problematic at all. The lack of attention to violence against Muslim women veiled the nature of their violations as simply another instance of communal violence rather than as an intersectional issue of gender justice. (Human Rights Watch 2003, p. 10).

4.2. *The departures in shadow reports*

Although neither binding nor official, the Second NGO Shadow Report submitted to the CEDAW Committee (NAWO 2006) marked a departure point for Indian activists to discuss publicly and widely the disturbing reality of intersectional gender violence in India before the CEDAW Committee. The Report was coordinated by National Alliance of Women and edited by the leading academic and activist, Kalpana Kannabiran. Broadly, the issues of the Shadow Report concerned the condition of

women but especially gender violence considered in light of the CEDAW General Recommendation No. 19. The Shadow Report noted that:

Constitutional and legislative provisions that have been enacted to protect women from discrimination have not proved to be an effective deterrent. There remains a high incidence of gender-based violence against women, which takes even more extreme forms because of customary practices (e.g. dowry, *sati*, *devadas*); extreme forms of physical and sexual violence and harassment against women who belong to particular castes or ethnic or religious groups... (NAWO 2006, pp. 216-17).

In this light, the Report did not engage with gender violence generally but nuanced the instances and experiences based on various status-identities, which affected violence against women. The intersectional position of Dalit, tribal, indigenous, Muslim, disabled, homosexual, HIV+, poor, employed or unemployed, single or married women were all specifically considered as giving rise to distinct violations within the broad spectrum of gender violence. Specific attention was given to women in vulnerable situations like the Gujarat riots, tsunami disaster and women in armed conflict in the North East.

For example, in relation to Dalit women, the Report asserted:

Dalit women 'face targeted violence from state actors and powerful members of dominant castes and community especially in the case of rape, mutilation, and death; they face...gender violence at the workplace that includes fields [as agricultural labourers], on the streets [as manual scavengers and garbage pickers], in homes [as domestic workers], and through religious custom.' (NAWO 2006, pp. 28-9).

It further explained the position of Dalit women as "dalit among dalits" since they are thrice alienated on the basis of their caste, class and gender. (NAWO 2006, p. 29). For economically disadvantaged women, it observed: "Poor women in slums experience enormous and unacceptable levels of violence in their daily lives in the family, community, work place and public place." (NAWO 2006, p. 211). It also noted that disability compounds the experience of disadvantage and expounds the nature of violence against disabled women. (NAWO 2006, p. 220). These formulations of intersectional gender violence come close to the framework of intersectional integrity by considering women as a whole and in terms of all of their relevant disadvantaging status-identities and in considering the qualitative nature of experiences which are unique but also shared with others similarly placed. Thus, even as the Shadow Report noted that: "Gender-based violence is psychological, physical or sexual violence that is *rooted in the power differential between men and women*," it is clear that it does not *only* take it to be rooted therein and there are clear explanations, like those highlighted above, as to how gender violence is also predicated upon other identities.

While the Shadow Report regretted the "non-recognition of the intersectional nature of discrimination, compounded by the non-inclusion of crucial measures that sharpen discrimination against women" (NAWO 2006, p. 29), it simultaneously prepared the groundwork for recognizing the intersectional nature of discrimination and violence against women. The meticulous detailing of experiences of violence of women who are *not* upper-caste, middle class, heterosexual and non-disabled provided the key to recognizing a broader range of gender violence experiences. It highlighted the structural complexity of intersectional gender violence and hence provided the explanatory and evidentiary basis needed to apply a framework like intersectional integrity. In fact, the latest Shadow Report to the CEDAW Committee in its 58th Session compiled by Women's International League for Peace and Freedom focused on the three issues of Gujarat riots, militarization and gun violence and violence by armed forces in conflict areas in largely similar terms (Women's International League for Peace & Freedom 2014). The work in the Second Shadow report thus remains a leading example in its exploration of intersectional

gender violence and a clear demonstration of how integrity and intersectionality are to be pursued together to explain the phenomena by speaking of uniqueness, sameness and wholeness of experiences in the same breath.

4.3. Intersectionality and Justice Verma Committee report

The national awakening after the horrific gang rape of Jyoti Singh Pandey in 2013 devolved into a clamor for legal reform. A three member Committee headed by Justice Verma was constituted on 23 December 2013 "to look into possible amendments to the Criminal Law to provide for quicker trial and enhanced punishment for criminals committing sexual assault of extreme nature against women." (Verma *et al.* 2013) The 657-page report was submitted on 23 January 2013 and marks a breakthrough in women's movement in India.

The Report considered broad questions on the condition of women in India by tackling major issues like sexual assault and rape, sexual harassment, child abuse, *khap panchayats* (informal dispute settlement bodies in villages which are conservative and lawless) and honor killings. Despite the vast breadth and depth of the Committee Report, the overarching theme that inspired the progressive thinking seems to have been the epithet of gender equality enshrined in the Constitution of India. The Committee remarked:

We wish to base a large number of our conclusions on the theory of the Constitution. The actions of those in authority have been in conflict with constitutional theory under which citizens of India are entitled to equality. We wish to say that equality is the bedrock of the Constitution. (Verma *et al.* 2013, p. 24)

It further drew the connection between women's inequality and Constitutional ideals as:

If true empowerment of women were to mean anything, it is necessary that law, as well as public policy, must be capable of engaging substantially with women's rights, opportunities, acquisition of skills, the ability to generate self-confidence and insist on total equality in relationships, both with society and the State. It is the inability of women to claim equality in society which has led to a slant against women as a consequence of which there has been a latent bias against women in the prosecution of crimes including its prevention. (Verma *et al.* 2013, pp. 8-9)

With such background values, the Committee sought to address the issue of gender violence in India. This section does not address all of the Committee's observations in the Report, even as they remain significant; it only discusses the Committee's handling of intersectionality, to understand the way in which the Committee conceptualized intersectional gender violence. What comes through in this survey is that, although the Committee made several sporadic references to violence perpetrated against women based on class, caste, religion or disability, it did not squarely identify the nature of such gender violence as a matter of intersectional integrity, i.e. by qualitatively appreciating the identity of victims as a whole to explain what is unique about such violence and how it relates to gender-based violence and other forms of violence based on status-identities.

The Report is rife with references to intersectionality, speaking frequently of women of caste or minority religions. In tune with the general tenor of the Report, these references relate more closely to the broader concerns of gender equality and justice. Thus, the Committee promotes inter-caste and inter-religion marriages (Verma *et al.* 2013, pp. 228-29) and reproaches honor killings and *khap panchayats* for derogating women's rights (Verma *et al.* 2013, p. 225). Women and children with disabilities find appropriate mention when the Committee is speaking of the state acting as *parens patriae* (Verma *et al.* 2013, pp. 39, 66, 420) for establishing protective homes and institutions (Verma *et al.* 2013, pp. 197, 223, 269, 270) as well as special counseling services (Verma *et al.* 2013, pp. 273-74) and revising court procedures for ensuring accessibility (Verma *et al.* 2013, p. 295, 416). In relation to elderly women, the Committee spoke directly in terms of their

“right to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity” (Verma *et al.* 2013, p. 232) As regards women of caste, the Committee drew upon the connections with the “inequities of social status, caste prejudices, and economic deprivation [which] further compound the gender injustice” (Verma *et al.* 2013, p. 14). The Report referred to the cases of Mathura and Bhanwari Devi (*Tukaram* 1979, *Vishaka* 1995) but made no specific reference to the claimants’ caste, once again sidelining an important aspect of the nature of sexual violence perpetrated against them. In relation to Bhanwari Devi, the Report stated:

Despite the well-known Bhanwari Devi case, which led to the *Vishakha* judgment, full justice continues to elude the victim of sexual harassment and sexual assault even after two decades... The most appalling feature of the case is that the trial court acquitted the accused observing that the rapists were middle-aged and respectable persons of a higher caste who could not have raped a lower caste woman. The mindset of the judiciary also needs to be improved by their education in gender sensitivity. The women’s tragedy is to face the compounding of gender and social injustice... (Verma *et al.* 2013, pp. 14-15)

Even as the Report came close to identifying caste as a function in the equation of gender violence, it did not tease out the point any further to deconstruct the systemic nature of gender violence perpetrated on the basis of caste. Other than the bare mention of Bhanwari Devi’s caste, the Report went no further in explaining how caste actually changed the nature of violence against her—such that the gang rape could not solely be described as a matter of ‘gender’ violence.

The clearest attempt to address intersectionality is visible at page 38 of the Report where the Committee remarked:

If there has to be a society which is based on equality of gender, we must ensure that not only does a woman not suffer on account of gender but also not suffer on account of caste or religion in addition. Thus a woman may suffer a double disadvantage – a) because she is a woman, and b) because she belongs to a caste/tribe/community/religion which is disadvantaged, she stands at a dangerous intersection if poor. (Verma *et al.* 2013, p. 38)

Whilst facially going beyond gender, the way Committee used other identities to explain gender inequality is problematic. The view that disadvantage associated with intersection of identities can be expressed distinctly or as a sum (‘double disadvantage’) of the individual disadvantages is at odds with the framework of intersectional integrity which resists fragmentation and mathematical representation of violations and insists on considering multiple intersecting identities as a whole by qualitatively unpacking the unique and shared dimensions of violations. For example, the experience of being a Muslim woman can only be explained in reference to the whole identity of being *both* Muslim and woman—which is not simply the additive result of being a Muslim man and a Hindu woman. Adrien Katharine Wing explains this powerfully in relation to Black women: “the experiences of black women...might reflect the basic mathematical equation that one times one truly does equal one...[Their] experiences...must be seen as multiplicative, multi-layered, indivisible whole...” (Wing 1991, pp. 181-2, 200)

The Committee’s reference to “compoundedness” of vulnerabilities is certainly an improvement over its additive understanding, as it remarked:

Thus, complaints of rape become mere matters of formality - low on priority because there is no understanding of the acuteness of the violation of human rights in respect of a woman by sexual assault and the psychological trauma she undergoes. This is compounded by vulnerabilities emanating from class/caste/community disadvantages and also that of poverty. (Verma *et al.* 2013, p. 44)

However, the Report did not pursue the claim any further and avoids an explanation of how intersectionality actually creates “compounded” vulnerabilities.

The final recommendations from the Committee suggests a legislative provision worded as: "No woman shall be unfairly discriminated on grounds of gender including ... discrimination by virtue of a woman belonging to another sub-sect of caste, religion, region or race." (Verma *et al.* 2013, p. 431) This formulation seems to endorse intersectionality. However, without an explanation of what it means to experience "discrimination by virtue of...belonging to another sub-sect of caste, religion, region or race," the Committee does not lay down the groundwork for recognizing gender violence against *all* women. Thus, it is not surprising then that the Criminal Law Amendment Act 2013, which implemented several of the Committee's recommendations on provisions relating to sexual offences in the Indian Penal Code 1860, Indian Evidence Act 1872, and Code of Criminal Procedure, 1973, did not touch upon intersectional gender violence. It added new offences such as acid attacks, voyeurism, stalking and amended the definitions of rape and trafficking, but did not reflect on the consequence of these offences when committed because of a claimant's race, caste, disability, age, sexual orientation, in addition to gender. In this sense, the strides made in the Shadow Reports in revealing the incidence and nature of intersectional gender violence, and cursorily referred to in the Justice Verma Committee Report, were ultimately missed by the crucial Criminal Law Amendment Act 2013, and since remain wanting in the official prose on gender violence in India.

4.4. Addressing intersectional gender violence through intersectional integrity

This paper has considered the normative framework for understanding what I have termed "intersectional gender violence," i.e. violence perpetrated on the basis of combination of status-identities of gender, race, caste, religion, sexual orientation, age, disability etc. As the Indian and CEDAW Committee examples show, the lack of a systematic consideration of the nature of violence perpetrated based on multiple identities leads to an inaccurate portrayal of the experience of violence, which may negatively affect the chances of obtaining relief. Instead, an emphasis on the two dimensions of the framework allows a clear and comprehensive appraisal of the nature of such violence—first, by tracing the unique and shared patterns of violations based on multiple and intersecting identities (intersectionality); and secondly, by considering the claimant as a whole without splintering or lumping together the identities (integrity). Filtering the facts and evidence of gender violence through this framework allows us to accurately understand the category of intersectional gender violence, in order that it may be adequately addressed in law.

The paper has this prepared the groundwork for future efforts in developing legislative formulations, adjudicative tests and policy measures for addressing intersectional gender violence based on an accurate understanding of the issue. This paper neither suggests such a formulation, nor considers practical matters such as where that type of amendment could be inserted, whether in the Indian Penal Code, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 or the Domestic Violence Against Women (Prevention and Protection) Act 2005. It also does not proffer amendments to court procedures and substantive legal tests for accommodating this conceptual understanding. In line with the aim of the paper to provide an explanatory account of how intersectional gender violence can be causally understood through a framework like intersectional integrity, the paper merely suggests the baseline legal commitment which accommodates the possibility of detecting and addressing intersectional gender violence.

When asked about uniting our responses towards intersectionality, Toni Cade Bambara remarked: "the most effective way to do it, is *to do it.*" (Salaam 2007, p. 63). If this is taken as the guiding principle for addressing intersectional gender violence, any general provision on or test of gender violence will have to be couched in intersectional terms. As the analysis in this paper sought to show, intersectional gender violence should be centrally located within the compass of

gender violence in a way that recognizes its true and complex character. This has been widely recognized in international law documents, which insist that definitional provisions include the fact that gender violence can also be based on race, religion, caste, sexual orientation, age, disability etc. The second consideration highlights the compounded effect of suffering gender violence based on status-identities other than gender, which not only transforms the experience but also aggravates it. This will lead to a recognition that, for example, if gender violence is predicated also upon religion or disability or both of them at the same time, it will give rise to a distinct and aggravated form of violation. A suggestion in this regard is the inclusion of such language: "aggravated sexual assault includes sexual assault perpetrated on grounds of the complainant's religion, race, caste, place of birth, age, disability, sexual orientation or any of them." (Fredman 2013) A comprehensive legal reform project will have to do far more, for example, to account for intersectionality in sentencing and punishment, to include it in reference to all forms of violence, and to rethink evidentiary rules of proof etc. This project has laid the foundation for future efforts for addressing intersectional gender violence at all levels by expounding on its normative character.

5. Conclusion

This paper has outlined the theoretical framework of intersectional integrity for understanding the category of intersectional gender violence. It has charted the developments in India and in international law, some heartening, some disappointing; but all formative in appreciating the existing discourse on gender violence, which cannot be classified as solely based on gender. The framework shows what it is to say that gender violence is intersectional in nature—first, that it is both unique and similar to patterns of violence based on racism, casteism, sexism, ageism, homophobia, regionalism etc; and secondly, that such violence cannot be truly appreciated as gender violence alone but only as a whole by considering all the relevant status-identities of the claimants together and at the same time. The two dimensions of intersectionality and integrity thus provide the means for diagnosing and explaining the causal basis of intersectional gender violence as based on multiple identities in a systematic and comprehensive manner.

References

- Bhagwat, V., 1995. Dalit Women in India: Issues and Perspectives – Some Critical Reflections. In: P.G. Jogdand, ed. *Dalit Women in India: Issues and Perspectives*. New Delhi: Gyan, 1-7.
- Bond, J., 2003. International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations. *Emory Law Journal* 52 (1), 71-186.
- Butler, J., 1990. *Gender Trouble: Feminism and Subversion of Identity*. New York: Routledge.
- Casey, M., Taylor, S., eds., 2010. *Theorizing Intersectionality and Sexuality*. Basingstoke: Palgrave Macmillan.
- CEDAW - United Nations Committee on the Elimination of Discrimination Against Women, 1979. *Convention on the Elimination of All Forms of Discrimination Against Women* [online]. New York: United Nations General Assembly. Available from: <http://www.refworld.org/docid/3ae6b3970.html> [Accessed 30 December 2015].
- CEDAW - United Nations Committee on the Elimination of Discrimination Against Women, 1989. *General Recommendation 12, adopted at the Eight Session* [online]. Available from: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_5831_E.pdf [Accessed 28 December 2015].

- CEDAW - United Nations Committee on the Elimination of Discrimination Against Women, 1992. *General Recommendation 19, adopted at the Eleventh Session* [online]. Available from: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf [Accessed 28 December 2015].
- CEDAW - United Nations Committee on the Elimination of Discrimination Against Women, 2010. *General Recommendation 28, adopted at the Forty Seventh Session* [online]. Available from: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement> [Accessed 28 December 2015].
- Chow, E., 2011. *Analyzing Gender, Intersectionality, and Multiple Inequalities: Global, Transnational and Local Contexts*. Bingley: Emerald.
- Cooper, D., et al., eds., 2009. *Intersectionality and Beyond: Law, Power and the Politics of Location*. Abingdon: Routledge-Cavendish.
- Crenshaw, K., 1989. Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. *University of Chicago Legal Forum*, 139-167.
- Crenshaw, K., 1991. Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. *Stanford Law Review*, 43 (6), 1241-1299.
- Crenshaw, K., 2014. The Structural and Political Dimensions of Intersectional Oppression. In: P.R. Grzanka, ed. *Intersectionality: A Foundations and Frontiers Reader*. Boulder: Westview, 16-21.
- Crenshaw, K., Sumi, C., and McCall, L., 2013. Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis. *Signs*, 38 (4), 785-810.
- Doucet, A. and Siltanen, J., 2008. *Gender Relations in Canada: Intersectionality and Beyond*. Oxford University Press.
- Encyclopedia Britannica, 2015. National Association of Colored Women's Clubs (NACWC). In: *Encyclopaedia Britannica* [online]. Available from: <http://www.britannica.com/topic/National-Association-of-Colored-Womens-Clubs> [Accessed 28 December 2015].
- Equality and Human Rights Commission, 2010. *The United Nations Convention on the Rights of People with Disabilities: Equality and Human Rights Commission Guidance: What does it mean for you?* [online]. Manchester: Equality and Human Rights Commission. Available from: <http://www.equalityhumanrights.com/sites/default/files/documents/publications/uncrpdguide.pdf> [Accessed 4 November 2015].
- European Union, 2000. *Charter of Fundamental Rights of the European Union 2000/C 364/01* [online]. Available from: http://www.europarl.europa.eu/charter/pdf/text_en.pdf [Accessed 28 December 2015].
- Fiedler, L., 1993. *Freaks: Myths and Images of the Secret Self*. New York: Anchor Books.
- Fredman, S., 2010. *Discrimination Law*. Oxford University Press.
- Fredman, S., 2013. *The Reform of India's Sexual Violence Laws* [online]. Oxford Pro Bono Publico. Available from: http://issuu.com/opbp/docs/2013.1_-_submissions_on_indian_sexu/1?e=11668994/7566372 [Accessed 6 November 2015].
- Goldscheid, J., Liebowitz, D.J., 2015. Due Diligence and Gender Violence: Parsing its Power and its Perils. *Cornell International Law Journal* [online], 48 (2), 301-345. Available from:

- <http://www.lawschool.cornell.edu/research/ILJ/upload/Goldscheid-Liebowitz-final.pdf> [Accessed 27 December 2015].
- Grillo, T., 1995. Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House. *Berkeley Women's Law Journal* [online], 10 (1), 16-30. Available from: <http://scholarship.law.berkeley.edu/bglj/vol10/iss1/4> [Accessed 27 December 2015].
- Human Rights Watch, 2003. *Compounding Injustice: The Government's Failure To Redress Massacres in Gujarat, 15-3(c) 10* [online]. Available from: <https://www.hrw.org/report/2003/06/30/compounding-injustice/governments-failure-redress-massacres-gujarat> [Accessed 28 December 2015].
- International Initiative for Justice (IIJ), 2003. *Threatened Existence: A Feminist Analysis of the Genocide in Gujarat* [online]. Available from: <http://www.onlinevolunteers.org/gujarat/reports/iijg/2003/fullreport.pdf> [Accessed 30 December 2015].
- King, D., 1988. Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology. *Signs*, 14 (1), 42-72.
- NAWO - National Alliance of Women, 2006. *Second NGO Shadow Report on CEDAW (India)* [online]. Available from: <http://www.northeastnetwork.org/sites/default/files/resources/file/India%20Shadow%20report.pdf> [Accessed 28 December 2015].
- Pothier, D., 2001. Connecting Grounds of Discrimination to Real People's Real Experiences. *Canadian Journal of Women and the Law*, 13 (1), 39-73.
- Salaam, K., 2007. Searching for the Mother Tongue: An Interview with Toni Cade Bambara. In: L.J. Holmes, and C.A. Wall, eds. *Savoring the Salt: The Legacy of Toni Cade Bambara*. Philadelphia: Temple University Press.
- UDHR - Universal Declaration of Human Rights 1948 GA res 217A (III), UN Doc A/810, 7 [online]. Available from: <http://gisha.org/UserFiles/File/sources/UniversalDeclarationonHR.pdf> [Accessed 28 December 2015].
- United Nations Division for the Advancement of Women, United Nations Office on Drugs and Crime, 2008. *Good practices in legislation on violence against women: Report of the expert group meeting* [online]. Available from: [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20(final%2011.11.08).pdf) [Accessed 8 June 2013].
- United Nations, 1966. *International Covenant on Civil and Political Rights 1976. 999 UNTS 171* [online]. Available from: <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> [Accessed 28 December 2015].
- United Nations, 2006. *Convention on the Rights of Persons with Disabilities 2006 GA Res 61/106, UN Doc A/RES/61/106* [online]. Available from: <http://www.un-documents.net/a61r106.htm> [Accessed 28 December 2015].
- United Nations, 2010. *Handbook For Legislation on Violence Against Women* [online]. New York: UN. Available from: <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> [Accessed 8 June 2013].
- Verma, J.S., Seth, L., and Subramamium, G., 2013. *Report of the Committee on Amendments to Criminal Law* [online]. Available from: <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf> [Accessed 31 December 2015].

Wing, A.K., 1991. Brief Reflections toward a Multiplicative Theory and Praxis of Being. *Berkeley Women's Law Journal* [online], 6 (1), 181-201. Available from: <http://scholarship.law.berkeley.edu/bgj/vol6/iss1/16> [Accessed 27 December 2015].

Women's International League for Peace & Freedom, 2014. *Third NGO Shadow Report on CEDAW (India) 2014* [online]. Geneva: Women's International League for Peace & Freedom. Available from: <http://wilpf.org/wp-content/uploads/2014/06/CEDAW-WILPF-India-shadow-report.pdf> [Accessed 6 November 2015].

Cases

AT v. Hungary, 2003. United Nations Committee on the Elimination of Discrimination against Women. Communication No. 2/2003.

AS v. Hungary, 2005. United Nations Committee on the Elimination of Discrimination against Women. Communication No. 4/2004.

Cecilia Kell v. Canada, 2012. United Nations Committee on the Elimination of Discrimination against Women. Communication No. 19/2008.

Guadalupe Herrera Rivera v. Canada, 2011. United Nations Committee on the Elimination of Discrimination Against Women. Communication No. 26/2010.

Isatou Jallow v. Bulgaria, 2012. United Nations Committee on the Elimination of Discrimination Against Women. Communication No. 32/2011.

MPM v. Canada, 2012. United Nations Committee on the Elimination of Discrimination against Women. Communication No. 26/2010.

NSF v. United Kingdom of Great Britain and Northern Ireland, 2007. United Nations Committee on the Elimination of Discrimination against Women. Communication No. 10/2005.

RPB v. Philippines, 2014. United Nations Committee on the Elimination of Discrimination against Women. Communication No. 34/2011.

SO v. Canada, 2014. United Nations Committee on the Elimination of Discrimination against Women. Communication No. 49/2013

Tukaram v. State of Maharashtra, 1979. All India Reports 185 (Supreme Court of India).

Vishaka v. State of Rajasthan, 1997 Supreme Court Reports 3011 (Supreme Court of India).