SEXUAL VIOLENCE IN INDIA

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India, a nation which had Mahatma Gandhi as its role model of rectitude became so unbelievably violent and corrupt that the women can no longer be safe within their bodies. Gandhi who defeated the whites to save the browns by relying on non-violence is considered as the father of the nation, but his values are being betrayed so easily that a woman is raped every twenty minutes\(^1\) in the world’s largest democracy and even children of five years are subjected to rape\(^2\). Economists predict that the future belongs to India as the country is obsessed with inclusive growth and the men with status and power, but the women who give birth to these men live in fear of discrimination and sexual violence. Who will protect the nation’s women? This inspired me to choose the subject ‘sexual violence/rape’ in India for the study and the inspiration that guided me to learn more about the topic made me interested in writing about it.

The research done in this subject has often provided more questions than answers, but I have gained a better understanding of the complexity of rape as well as the situation of women in the country.

No creation in this world is a solo effort, neither in this study. I wish to express my gratitude to my supervisor Susan Jackson for her valuable advice and feedback, information and inspiration, and for motivating me to finish this thesis.

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Abstract

This study is about gender based sexual violence in India. Rape is prevalent in many parts of the world but the reason to select India is because rape is the fastest growing crime in the country.

The purpose of this study was to investigate why the police system in India respond to rape cases inconsistently. In India the extreme expression of stratification in the society was introduced by the religion and gender, class and caste the salient social identities were used for categorizing the people in a hierarchical social structure. In this study in order to find the reasons for the lack of consistency by the police the intersectional identities gender, class and caste are used because of the significance it has in the Indian society. The method applied in this study is the case study approach using multiple cases; three different cases of rape committed by and against adults in India are used to understand real life phenomena.

The results revealed that gender, class and caste, the major components of the overlapping power systems of the Indian society intersect in the sexist society resulting in inconsistent police response influenced by the societal patriarchal mindset. The police response varies according to the position the perpetrators hold in the power structures.

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Key words : India, Rape, Sexual violence, Gender, Class, Caste.
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<td>CAT</td>
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<td>CEDAW</td>
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<td>HIV/AIDS</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>OHCHR</td>
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<td>STIs</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
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<td>UNIFEM</td>
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CHAPTER 1

Introduction to the Chapter

This chapter is about how the study is approached and the chapter covers in six sections: Subject introduction, Background, Research problem, Research question and Aim, Theory, Method and Material and Chapter outline. The theory part discusses intersectionality in a theoretical approach followed by the method and material which will be used to analyze and attain the information to answer the research question.

1.1 Introduction to the Subject

Sex is understood as the biological difference between men and women. Even though this difference should not matter to how people are seen and treated, the distinction between both is assigned through by gender and does make a difference (Pryke et al. 2003: 50). Gender violence is a term for wide range of violations, which consist of both the physical and the sexual, from example ranging from sexual assault in society to sexual abuse in prison. Women are disproportionately the victims of gender violence, which happens in different forms in different social contexts throughout the world (Merry 2009: 03).

Rape is a highly gendered violent behavior whereas the majority of the sexually violent perpetrators are men and the majority of their victims are women. Rape, the most common form of violence against women has been a part of human culture and is a profound violation of woman’s bodily integrity and can be a form of torture. The subject of rape comprises more than the actual physical act as it involves many factors such as law and customs, social and political events and so on. While the physical reality of rape has been unchanged over time and place however, the perceptions, ideas and laws about rape have changed (Smith 2004).

Violent crimes directed towards women such as rape poses serious violations of human rights. The advocates of women’s rights have been able to put pressure on governments by placing gender-based violence in human rights framework to fulfill government’s obligations under international human rights law to punish and prevent such violence. However, despite a substantial number of contraventions, rape still exists in some form, filling the lives of women with pain and terror from which some might never recover (UNIFEM 2003: 10).

While the United Nations continues to promote democracy as the best system to secure women’s dignity and rights, India the world’s largest democracy fails to protect the nation’s
women. This thesis is a study of rape in India and how the state system responds to it (55/2. United Nations Millennium Declaration).

1.2 Background

In India, rape is the fastest growing crime and reports indicate that rape of women and young girls in India has increased considerably especially in recent years. According to the National Crime Records Bureau in India (NCRB), there has been a startling increase of 873.3 percent in the number of rape cases registered in India from 1971 to 2011 (The Times of India, Dec 27, 2012). However, experts claim that the actual number of instances of rape is far from being recorded since the unreported number of cases is extremely high (Human Rights Watch: Dec 29, 2012). Rape remains as one of the highly underreported crimes of the world due to various reasons such as fear of retribution from their abusers, lack of remedies for the victims situation, fear of skepticism and societal stigmatization (Smith 2004: 60).

I decided to work on this topic for the thesis because the issue of rape has received increased attention as the number of victims is increasing dramatically and rape is considered as a major social and human rights issue. The elimination of violence against women remains one of the serious challenges especially in India as the prevalence of rape has exceed to a point where even children of five years of age are being tortured and raped (CNN, April 22, 2013).

I initially intended to do a study on a single case based on the legal system of India being given understanding that there is an existing law but slow justice system and very few convictions. My realization about the different types of rape (such as gang rape, prison rape, war rape etc.), diverse actors and the dissimilar responses to cases led me instead to examine multiple cases to see if there is a common thread running through rape cases in India. In the thesis three different cases of rape and torture within India are examined to understand the structural (government institutions) and societal (citizens) role and response.
1.3 Research Problem, Question and Aim

Even though the economic, political and social conditions in India are changing swiftly, still for women the circumstances are rare to be able to feel safe within their bodies with the startling increase in the number of rape cases in recent years. According to the National Crime Records Bureau (NCRB) rape cases in India have increased since 1990, the NCRB reported 10,068 rape cases in 1990 which increased to 24,206 cases in 2011. In India patriarchy exists and through sexual violence and rape men exerts their patriarchal power over women to display domination (Ray 2005: 85).

India has a history of many incidents of violence against women which was well publicized but it was the recent 2012 Delhi gang-rape case that galvanized a large scale of public response that pressurizes the government to take positive measures (IOB-India’s Economy Outlook; BBC, 04 January 2013). The police system in India plays a significant role in protecting the women and preventing gender based violence. However, there have also been reports in India on violation and discrimination by authorities tasked with protecting victim of sexual crime blocking investigation of the rape or dissuading the victim from registering a case based on the gender, class or caste. In India, both the state authorities and the society play a significant role in relation to women’s situation in the populous nation. (The Times of India, Apr 10, 2013).

A research question is a significant part of the research process as it guides the writer to focus on the study and the writing process. The function of the research question is to specifically explain what the study seeks to learn or understand from a broader subject such as gender based sexual violence or rape (Maxwell 2005: 65-66). My research question will be to determine,

How can understanding the intersectionality of gender, class and caste in India illuminate reasons why the police in India have inconsistent responses to rape cases in that country?

I intend to understand the causes that increase women’s vulnerability to rape in India and to see the structural (the authorities) and societal (the citizens) role and reaction towards different cases. However, the focus for the study will be on how the police system of the state handles different rape cases. Legal, empirical and moral views will be highlighted in the analysis. The elimination of violence remains one of the most serious challenges in the present time. Therefore, I believe this subject is very much relevant to the field of human rights and for a thesis at this level of study.
1.4 Theory

Intersectionality

A theory presents a concept that is testable which is backed by evidences and based upon hypothesis. Theory is significant because it provides a background for the research and a framework within which social phenomena can be understood therefore the research findings can be interpreted. The data’s collected for the research could be used to test or even develop theories (Bryman 2008: 06).

The dominant forms of masculinity and femininity are powerful, however men mostly employs violence and rape to preserve their position of power in certain communities (Goonesekere 2004: 71). To understand the vulnerability of women to the converging systems of domination I will analyze the subject using a theory from the feminist sociology; intersectionality. Intersectionality was developed from black feminism as the primary analytical tool for theorizing identity and oppression. However, in this study intersectionality will be used as an analytical tool to examine the intersections between different groups of minorities or identities and the ways these variable work in concert to create inequality. The reason to choose intersectionality is that due to the complexity in societal relationships in India almost everyone to some extent is disadvantaged, marginalized or oppressed. Intersectionality is not a theory focused on a certain group but it is an aspect of social structures shaping every person’s lives (Laurel Weldon, 2008). The aim of intersectional analysis is to show that individuals possess different types of identities and when these identities combine they can create unfavorable situations such as different types of violence and discriminations against human beings, it also point out the different identities. Intersectionality is used as an analytical tool for theorizing identity and oppression (Crenshaw 1989; Nash 2008: 03).

According to McCall, intersectionality is a method of studying ‘the relationships among various dimensions of social relationships and subject formations’ (McCall 2005). McCall also emphasizes the importance of intersectionality by calling it the most important theoretical contribution that women’s studies have developed (McCall, 2005: 1771-1800). By using intersectionality one could analyze the power relations in the society. Collins points out that the discrimination and disadvantages in different communities or cultures are not only related to each other but are also connected together and is influenced by the individual identities such as gender, class, color, ethnicity, race, religion, and so on which are the intersectional systems of society. The main concern of intersectionality is the formation of social identities.
and argues that most theory makes the mistake of examining only one variable at a time. Intersectionality is the intersection of multiple layers of power and the identities used in this study is gender, class and caste (Collins 2000: 42).

The gender, class and caste which are the major components of the intersectional systems of society are briefly explained in the chapter 5 (under the section 5.2).

1.5 Method and Material

The method chosen for this study is the case study approach using multiple cases to understand real life phenomena. Even though all designs can lead to successful case studies, multiple-case designs may be preferred over single-case designs because the chances of doing a good case study will be better as it is difficult to generalize from a single case (Victor 2006: 20).

Case study is an approach that uses in-depth investigation of a current social phenomenon; it can cover multiple cases and then draw a single set of cross-case conclusion (Robert 2009: 20). Case study is defined in one way as a “detailed examination of an event or series of events which the analyst believes exhibits the operation of some identified general principle” (May 2011). The choice of this method is based on the consideration that it is suitable and reliable. The case study is seen as a step in theory-testing, it is also used to further develop or revise existing theory. The advantage of this method is that there is a degree of analytical openness and it provides several different models of explanation to choose from when examining a case (May 2011: 221-223, 233). The motivation to select a multiple case study approach is because three different cases of rape is applied in this study for an intersectional analysis of the structural and societal system concerning the women subjected to sexual violence in India.

A qualitative method provides the possibility of conducting an in-depth analysis compared to the quantitative method which is preferable when processing larger statistical data. However, a qualitative approach will be employed in this study since the aim of the thesis is to gain an understanding related to the issue of women’s vulnerability to sexual violence/rape in India, rather than producing a statistical data (Jupp 2006: 248-251).

According to Tim May a researcher must interpret the meaning of an event, so values are inevitable in the process. I did not consider conducting interviews because of the difficulty in
finding the suitable candidates in the region and it may affect the validity if the person who can inform on a variety of aspects of the study is not interviewed. The survey studies on the other hand cannot be assumed to be reliable in this study as the method is based on questionnaire (May 2001: 97, 133). As a researcher of a human rights related topic it is important to be aware of the constraints and attempt to enhance the credibility of the study by confirming to the criteria of validity and reliability. However, a library that provides both primary and secondary sources will be accessed since the analysis of field materials forms the specialness of a case study apart from using other reliable materials for the study (May 2011: 77, 238).

I will use administrative documents and other reports of events or cases, relevant books and UN documents, news clippings and articles appearing in the mass media, newspapers or on the Internet. The websites of reliable organizations such as Amnesty International, Human Rights Watch, the United Nations including various agencies of the United Nations such as UNFEM, WHO and other relevant regional institutions will be used to interpret and understand the different cases. These materials or documents provide details of the rape cases including context. I will look into the legal instruments both regional and international in the human rights perspective to understand the violations.

### 1.6 Chapter Outline

The thesis is divided into five chapters. The first chapter is the introductory chapter, where the theory, method and material used for the study is also included. Chapter two mainly deals with rape, its definition, violations, and the causes and consequences. In the subsequent chapter three, the three cases of sexual violence in India will be presented, the three intersectional identities used for the study is introduced followed by India’s history of gender discrimination, the status of the women in the country and the final section under the chapter looks into the state obligation. The Chapter four deals with the research question and the analysis. The final chapter five is discussion of the research findings and summary and a conclusion.
CHAPTER 2

Introduction to the Chapter

The first part of the chapter is regarding the definition of rape, followed by the human rights violation caused by rape, because in order to put the laws effectively into practice it is important to understand the violations caused by the crime. In the third part, the reason why sexual violence happens and how it affects the victims will be discussed.

2.1 Defining Rape

The term rape is primarily perceived only as a sexual behavior since it overlooks the violence that accompanies the action (Merry 2009: 28). As sexual violence is a wider concept that also incorporates rape, I will employ both terms in the course of this thesis.

The United Nations defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (General Assembly Resolution 48/104). The definition of rape differs according to factors such as time and place, however rape is recognized as a crime that typically is committed by a man forcing another person to have sexual intercourse against their will, intercourse by force (Smith 2004: 169). Even though it is not only men who commits rape, rape is not always the outcome of an intense or obsessive desire for sexual gratification but mostly men employs sexual violence or rape as a method to exercise their control over the women to maintain the positions of power. The men motivated by the combination of power and anger especially in a patriarchal society prove their masculinity by exerting sexual violence over women (Goonesekere 2004: 111).

The subjugation or subordination of women to men is prevalent in large parts of the world but in some parts women are also subjected to discriminations, exploitations, oppressions and violence (UNIFEM 2003). In India despite significant reforms regarding the rape law under the Indian Penal Code (IPC) the word rape is legally defined as ‘‘whenever a man penetrates or does sexual intercourse with a woman without her consent or will, it amounts to rape’’ in the section 376 of the Indian Penal Code, 1860 (Supreme Court of India). Furthermore, In India rape can be defined as an ‘act of power' since patriarchy plays a vital role in violence...
against women. The patriarchal nature of the Indian society is based on a hierarchal system of power relation where men control women (Merry 2009: 32).

Rape, the sexual crime that mostly affects women is seen prevalent in certain communities, cultures and contexts. The UN Secretary-General has specifically pointed out that the elimination of violence against women remains one of the most serious challenges of our times (UN Doc. A/61/122/Add.1, 6 July 2006). Margot Wallström, the former Secretary-General’s Special Representative on Sexual Violence in Conflict, voiced strong concern about the prevalence of rape by stating that ‘while bullets, bombs and blades make the headlines, women’s bodies remain invisible battlefields’. She points that when rape is accepted as cultural then the violent act is made inevitable (UN News Centre, 25 March 2010).

2.2 Human Rights Violated by Sexual Violence

Gender discrimination is a global issue and violence against women is not only a crime but also a violation of women's human rights; rape or sexual violence for instance is not only an affront to the chastity of womankind but also a profound violation of her bodily integrity, security, and freedom from discrimination (Fried 2003: 88, 96).

Human beings are not the same and they differ in many ways however the human rights norms aim to provide a common understanding to individuals that they have equal rights. Human rights are rights that exist as an essential element which is equally entitled without any discrimination to all human beings. According to Article 2 of the UDHR, ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as, race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’ (Smith 2012: 214; Brownlie 2010: 40).

However, the significant statements regarding the right to be free from sexual violence is enshrined in the international human rights law under, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic (ICESCR), Social and Cultural Rights and the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979. The UDHR Article 3 and 7, states that “Everyone has the right to life, liberty and security of person” and “All are equal before the law and are entitled without any discrimination to equal protection of the law” (Brownlie 2010: 41). The Article 9 of the ICCPR refers to the same statement as UDHR Article 3, moreover the Article 7 mentions that
“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Brownlie 2010: 390-392). “In the ICESCR Article 3 it says that ‘The State parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant’” (Brownlie 2010: 372).

The Convention on the Elimination of All Forms of Discrimination (CEDAW) is the UN treaty that specifically mentions women’s basic right to equality and demands the states parties to take positive measure to fight against the prevalence of gender discrimination (Brownlie 2010: 418).

**Right to be free from all forms of Discrimination:**

Sexual violence or rape is considered as discrimination on the basis of sex and it interferes with the women’s ability to function as full citizens. The non-discrimination clause is seen significant as it is specified in almost all human rights instrument with the assumption that, human rights are universal and all human beings have human rights since they are ‘born free and equal in dignity and rights’ (UDHR Art. 1). The Article 2 of the UDHR, UN Charter Article 1 and 55, ICCPR Article 2 (1), and the ICESCR Article 2 (2), all these significant instruments emphasizes on the individual’s fundamental freedom without any kind of distinction (Smith 2012: 195).

The CEDAW (General Recommendation 19) mentions that gender-based violence such as rape is an extreme form of discrimination which ‘seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men’ (CEDAW 19, A/47/38). It also imposes an obligation to the states parties to take positive measures and develop strategies to eliminate all forms of violence against women. The state party is advised to review their laws and policies to meet the needs of the women vulnerable to sexual violence. The state has a responsibility to protect the members and to punish and prosecute the perpetrators (Merry 2009: 85, 86).

**The Right to Life:**

The right to life is considered the most significant of all rights since it protects the individual’s ability to act for the preservation and enjoyment of life. The gender based
violence such as rape consists of severe sexual and physical assault which in most cases causes death. Rape is mostly seen as a sexual behavior as the violence involved in it is ignored (Merry 2009: 28, 85). Rape victims have a high risk of HIV/AIDS which is a threat to their right to life especially when raped by strangers. The right to life is specifically mentioned in the International Covenant on Civil and Political Rights (ICCPR), the Article 6 (1) states that ‘every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life’ (Brownlie 2010: 391). However, the Universal Declaration of Human Rights (UDHR) also maintains that every human being has the right to life, liberty and security of persons in the Article 3 (Brownlie 2010: 41).

Moreover the concept of a right to life has been widely discussed by the human rights advocates and the international human rights organizations especially when certain states such as India impose death sentence to rapists (AI Media Centre, 22 Mar 2013). The ICCPR states its view against death sentence under the Article 6 (Brownlie 2010: 391).

The Right to Bodily Integrity:

Nussbaum in her Capability approach, has place bodily integrity under the Central Human Functional Capabilities and describes it as, ‘being able to move freely from place to place; being able to be secure against violent assault, including sexual assault, rape, and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction’(Nussbaum 1999: 55). Rape or sexual violence violates a person’s right to bodily integrity since in most cases it is mostly exercised over women without their valid consent and it also affects the victim’s physical and psychological health (Meanulty and Burnette 2006: 102-104). The Universal Declaration of Human Rights (UDHR) Article 5, points out that no one shall be subjected to torture or to cruel, inhuman or degrading treatment (Brownlie 2010: 41). Furthermore, the right to be free from sexual violence is a universal human right of human beings.
2.3 Causes and Consequences of Rape

Rape has an enduring effect on the lives of the victims. However in most cases it is not just the victim that experiences the calamitous consequences of sexual violence. In a patriarchal society like in India where the women have very low status the people closely connected to the victim, especially the family members are also affected as a result of the negative social reactions (Karmen 2010: 269).

Gang rape is a common type of sexual violence in India and the victims raped by multiple assailants (gang rape) is inflicted with more serious distress than the victims raped by a single assailant. The victims of gang rape mostly avoid disclosing the issue to authorities fearing retaliation from the criminals and societal stigmatization (Karmen 2010: 269). In India gang rapes mostly occurs when the women is visible in a sphere which is dominated by the men especially certain places men considers as their territory (such as a bar). The women if gets raped in this situation, even if a women has the right to enter the territory will be blamed by the society for being responsible for the crime in some way, partly or fully (Peters and Wolper 1995: 16). The women is blamed for provoking sexual violence because the male sexuality is considered to be masculinity which means power or aggression and the opportunity for sex would be never refused by men when presented (Anderson and Doherty 2008: 06). The victim blaming or stigmatizing the victim by the society mostly motivates the victim towards suicide. According to Williams (1984), ‘the society and community also becomes offenders’ by displaying unsupportive behavior (Williams ctd. in Anderson and Doherty 2008: 10).

Rape is mostly accompanied by extreme violence or torture and the perpetrators are not in all cases frustrated by the sexual inactivity or lust, but rape can also be caused by displaced aggression. Displaced aggression is when someone is enraged by a person or situation the individual then discharges that anger towards another unconnected person or situation. In most cases people have a tendency not to direct aggression towards the source of frustration, in this situation the aggression might be then redirected towards another available person suitable to be victimized. However, this is mainly due to the reason that when compared to the original source where the anger is produced the chances of retaliation will be less likely from the victim of displaced aggression. Displacement can occur in long chains and is visible in societies commonly among minorities (Coon 2006: 463). On one hand, in India with the increased opportunity for women in education and employment, the modern women are entering a well-fortified position to which the traditional male reacts with violence (The Hindu, Dec 19, 2012). On the other hand, the growing concentration of wealth due to the
changing scenario of the country’s socio-economic system and the government’s obsession to growth creates disparity between the rich and the rest. The people from the lower sections of society, mainly slum dwellers left with poverty unemployment or underpaid rapes women on account of revenge or envy (Blau and Moncada: 2005).

Furthermore, victims of sexual violence experience a wide range of physical and psychological problems. The rape victims might suffer from serious reproductive health problems and chronic illness, the victim can also have a high risk of being infected by HIV/AIDS or STIs especially when sexually assaulted by strangers. Psychologically, the victim may experience fear, anxiety, low esteem which can also result in social adjustment problems. The most common long term issues are depression and posttraumatic stress disorder (PTSD). The victim can be affected with a poor health condition and even pregnancy (Mcanulty and Burnette 2006: 102-104).

CHAPTER 3
Introduction to the Chapter

This chapter consists of four sections. In the first section, the three cases of sexual violence in India will be presented. In the subsequent section, the three intersectional identities, gender, class and caste will be described. Under the third sections, the history of gender discrimination and the status of women in India will be described. In order to perceive the position of women in present social structure it is essential to know the history because some standards and values the affects the contemporary women are rooted in the past. The fourth section discusses the state obligation.

3.1 Introduction to the Cases

In this thesis, I will use three different cases of rape committed by and against adults in India. The cases used in this study are 2004 Thangjam Manorama Devi Case, 2011 Soni Sori Case and 2012 Jyoti Singh Case. I focus on adults because the rape of children compared to that of adults differs significantly, especially with societal views and legal procedures a child cannot give consent that works as a defense to rape conviction under any legislation (Megan Smith 2008:10-11). The sexual violence mentioned in all the three cases involves more than two assailants. The rape committed by a group of men, which is also termed as gang rape is the
most common kind and it is at times employed as a method of punishment or social control even though the intentions of each individual rapist may differ. The victims of gang rape are often pressured to drop charges or reluctant to report the case as they fear multiple reprisals (Merril Smith 2004: 19, 86).

The reason to select the specific three cases for this study is because the cases are connected to the research question. The cases are similar and the victims in the cases share the same identities of intersectionality. Both, the structural and societal system is connected to the cases and also in some ways influences the outcome of the cases.

CASE I: 2004, Thangjam Manorama Devi Case

In June 2004, Manipur, which is the northeastern state of India with the majority of its population belonging to the ethnic tribal group, witnessed the abuse of the Armed Forces Special Powers Act. Thirty two year old, Thangjam Manorama Devi was brutally tortured, raped and executed by personnel of the paramilitary force of 17 Assam Rifles (Human Rights Watch Report, September 15, 2008).

Devi’s house was raided by the soldiers around midnight on suspicion of her association with the People’s Liberation Army which is an insurgency outfit. According to the victim’s family, no explanation was provided by the armed military personnel as they rushed in and searched the house. Devi was dragged out from her bed and her family members were mishandled when they tried to obstruct, even her elderly mother was threatened under the gunpoint (Human Rights Watch Report, September 15, 2008).

The soldiers demanded her family wait outside while they interrogated her. Devi’s family claimed that she was brutally tortured during the interrogation by the soldiers as they could hear her cry in pain. The military personnel approached and informed the victim’s family that was forced to wait at the courtyard for long hours from midnight that she will be taken into custody. An ‘arrest memo’, which is an official acknowledgement of detention that is put in place to prevent ‘disappearances’ was signed by the soldier’s after they briefed the family members. The terrified family was also forced by the soldier’s to sign on some papers that they had no understanding about. However, according to reports it was a ‘no claim certificate’ that Devi’s elderly mother and brothers were asked to sign which said, ‘that the family had no claims against members of the Assam Rifles who had searched the house and made the arrest
and that the troops haven’t misbehaved with women and not damaged any property’ (Human Rights Watch Report, September 15, 2008).

According to the Human Rights Watch report, Devi’s bullet ridden body with no proper clothing was found later outside a nearby village. The bullet wounds including on her genitalia raised suspicion that bullets had been used as an attempt to hide evidence of rape. Even though, a case has been registered and the state government was forced to respond by authorizing Justice Upendra to conduct the government inquiry the report is yet to be made public as it remains sealed and no arrests have been made to date. However, Justice Upendra had blamed the security forces and Devi’s family Counsel claimed that “neither the Prime Minister nor the Home Minister, nor the Defence Minister has made the report public and told the women of Manipur, what are the findings of the commission that was appointed by the government itself” (Asian Human Rights Commission Report, 29 July 2004). Even though, the protests in the state through which the people displayed their anger over the brutal killing succeeded in pressurizing the authorities to some extent. On the other hand, the case still lacks a positive legitimate action to provide justice to the victim without being effected by the power position of the perpetrator.

CASE II: 2011, Soni Sori Case

Soni Sori, a 35 year old Adivasi (an ethnic and tribal group claimed to be the aboriginal population of India) from a village in Chhattisgarh has been accused of assisting the banned Communist Party of India (Maoist/Naxals) without any substantial proof and currently is facing trial. (The Indian Express, 30 Apr 2013)

According to Amnesty International, Sori an activist and school teacher was imprisoned and allegedly tortured for speaking out against the Maoists/Naxals as well as state forces for human rights violations in the armed insurgency in India. Amnesty International termed her as a prisoner of conscience in 2012 (Amnesty International, Report March 7, 2012). Kumar, Himanshu a member of the Chhattisgarh chapter of the People's Union for Civil Liberties (PUCL), commented that “Chhattisgarh, has an unwritten set of rules about how an Adivasi or a lower caste should behave. You don't organize, you don't agitate, you don't protest against human rights violations, you don't protest against the state, and you certainly don't protest against industrial houses that are in Bastar to usher in the industrial revolution,” The strong
statement indicates the influence of the caste system in the society and proves that position provides power to dominate in certain Indian communities (CNN IBN, Jan 04, 2013).

Sori was subjected to the most degrading treatment while in custody at the orders of then-district police superintendent Ankit Garg, the district police superintendent who initiated many operations against the Maoists/Naxals in the central Indian state. According to Sori in her letters submitted to the Supreme Court of India, the investigating officer Garg, abused her verbally and directed his police personnel to torture her. In name of interrogation she was stripped naked and tortured with electric shocks in the presence of the officer, Garg. The mother of three was tortured without any limits and raped while in custody (The Indian Express, 30 Apr 2013).

Sori who suffered from serious health complications due to torture was denied treatment by AIIMS (All-India Institute of Medical Sciences) first, the most trusted medical organization in India, because she was brought in after admission hours and without prior intimation by the police, even though the medical help was directed by the Supreme Court of India (THE HINDU, May 10, 2012).

The evidence of gross sexual torture was exposed following a Supreme Court directive for medical examination. In the examination doctors found and removed stones that had been inserted into her genital tract and rectum during the torture (The Indian Express, 30 Apr 2013).

Ankit Garg, the police superintendent who allegedly supervised the torture of Sori was awarded the Police Medal for Gallantry (the President's gallantry award) on Republic Day 2012 for his role the 2010 raid on Maoist terrorists. Despite the evidence, the perpetrator of sexual torture received the medal as a distinctively designed mark of honor denoting heroism and the victim who was framed without any substantial proof is still fighting her case under the custody of the same state police that inflicted her serious torture (The Hindu, January 26, 2012).

CASE III: 2012, Jyoti Singh Case

On December 2012, Jyoti Singh, a 23 year old student died from her injuries after been gang raped by six men in a bus traveling on main roads in the Indian capital, Delhi. Singh who was a medical student in the midway of completing her education consistently performed well and besides her studies had to work night shifts to pay her way through college. She worked 7 to 3
am in an international call centre, IBM for a minimal wage of just 35 pence after attending her regular course of study as her family sacrificed everything for their only daughter’s future career. Singh’s family had hopes that she would succeed with her career and help them out of the abject poverty. However, things changed as the victim accompanied with her male companion, a software engineer boarded a chartered bus on their way home on the night of the incident. The bus they boarded was driven by a group of men consuming alcohol in the bus. In the bus, besides the victim and her friend there were only six others including the driver and a minor (The Times of India: Dec 18, 2012).

The group of men on board taunted the couple questioning them what they were doing alone at that late hour when Singh’s male friend who became suspicious and objected as the bus deviated from its normal route. The skepticism of the woman’s male companion ensued to a scuffle with the others in the bus. Singh was dragged to the rear end of the moving bus and when he resisted, both Singh and her male friend were battered by the joyriders. The woman was brutally tortured and gang-raped, and when he tried to intervene her male companion was knocked unconscious with an iron rod. As the victims, Singh and her friend fell unconscious due to the torture they were subjected to and the attackers robbed them off their clothes and belongings and threw them both out of the moving bus (The Hindu: Dec 23, 2012).

Singh’s internal injuries caused by the iron rod that the brutal attackers used to torture her were so severe that in the effort to save her life the doctors had to remove her intestine. The government of India transferred the critically-ill gang-rape survivor to Singapore for emergency treatment. Singh died from her injuries thirteen days later while undergoing treatment in Singapore. Experts have questioned the government’s decision to airlift the woman who was on the ventilator and already provided with the best possible care by an expert group of doctors in India, alleging that it was not a medical decision but more of a political move (The Hindu: December 28, 2012). Her case however sparked mass protests across India and captured international media attention.
3.2 The Intersectional Systems of Society (Gender, Class, Caste)

All individuals possess a gender, class and caste status (in certain communities), characteristics which are socially constructed and play a large role in our identities and are transformed into systems of inequality that creates violence. However, being different from one another is not always a disadvantage, and inequalities or discrimination is not necessarily the result of differences. Instead, a great deal of richness can be added to lives due to the existence of these categories of differences and the unfavorable conditions in life are the result of the values and meanings applied to these difference (Ore 2009: 01, 08)

Identity has always been a major concern in India both during colonialism and in post colonialism. The conception of identity on religious grounds combined with other factors or variables has been the basis of the creation of a separate state for Muslims of India. In India, under British colonial control the concern among the minority Muslim population of having a separate Muslim identity as opposed to majority Hindu identity is one of the reasons that separated and created Pakistan from India in 1947 (Khan 2007). During the struggle for power dominant forms of masculinity were demonstrated as the men used sexual violence against women to display their domination and degrading women is an approach that men use to prove their masculinity (Goonesekere 2004). Since then a huge tension exist between the two countries which resulted in four wars and other repeated issues (Khan 2007).

Three intersectional systems of society or social identities which are gender, caste and class are applied in the study in order to understand the vulnerability of women to the converging systems of domination.

Even though individuals are not born with gender, this concept is used to describe the social distinctions between women and men. Gender represents the sexual identity of an individual in spite of the term sex which is used to denote biological differentiation. It is a specific kind of social structure with socially constructed roles within which individual conducts themselves in a way that a particular society considers appropriate for men and women. However gender is not just about identity, power or sexuality but a multidimensional social structure which includes all these factors. Masculinity and femininity are attributes of gender identity and the distinguishable conduct of both men and women in social relations may sometimes result to gender inequalities (Connell 2009: 10-11).

Class is a way in which individuals in society group themselves according to economic positions or social status. It positions individuals in different class which may be superior or
inferior in the society depending on the individual’s acquisition of education, wealth or other achievements and opportunities of social mobility are possible by improving the social status (Andersen et. el 2008: 241). Warner (1963) has defined social class as being,

‘…two or more orders of people who are believed to be, and are accordingly ranked by the members of the community, in socially superior and inferior positions…A class system also provides that children are born in the same status as their parents. A class society distributes rights and privileges, duties and obligations, unequally among its inferior and superior grades’’ (Warner cited in Crompton 2008: 95). Even though it is possible for an individual to improve the social status, the class system creates inequality in the community by categorizing the people into different groups.

The caste system is the traditional classification in India which is distinctly to a greater extent connected to the country’s own religion, Hinduism. Even though in India discrimination on the basis of caste is illegitimate, the system still continues in some communities and therefore government has introduced reservations in education and employment (Sekhon 2000: 39). According to Sharma, the definition developed by (1964) Green is more convincing. Green defines caste as,

‘‘a system of stratification in which mobility, movement up and down the status ladder, may not occur. A person’s ascribed status is his life-time status. Birth determines occupation, place of residence, style of life, personal associates and the group from among whom one can find mate. A caste system always includes the notion that physical or even some form of social contact with the lower caste people is degrading to higher caste persons. A caste system is also protected by law and sanctified by religion’’ (Green cited in Sharma 2004: 149-150).
3.3 The Indian History of Gender Discrimination & the Status of Women

Women’s security is closely connected to global security still they suffer simply because they differ in gender. According to the UN Commission on Human Security, ‘the security of one person, one community, one nation rests on the decisions of many others, sometimes fortuitously, sometimes precariously’. However, in the interrelated world everyone is influenced either positively or negatively by the decisions of individuals or states (UNIFEM 2003). To understand the status of the Indian women it is important to understand the history gender discrimination in the country.

In 1947, the Indian history of violence against women was perceivable in the violent nature of the nation’s partition. The women were raped, abducted and their bodies were used as a medium of men’s evil expression as Indian Hindus and the Pakistani Muslims battled for power to defend their countries. This tactic of humiliating the opponent by using women’s bodies as a tool of power dominance is still being practiced in the Indian society and is visible in the cases of Devi and Sori (Dobhal 2011: 598).

Mother India, commonly termed as Bharat Mata in Sanskrit is the national personification of India as a mother goddess which is widely depicted as a woman clad in a saffron sari holding the national flag. The position of women was high in India and some might argue that degrading positioning of women in the society is influenced by the impact of colonialism. However, the women’s status in India declined prior to the arrival of the colonial power with the existence of corruption and caste system. The people’s obsession with hierarchy and with the extent of gender discrimination and sexual violence humanity gets stripped away from mother India (Walter 2001: 101).

The women’s feeling that her position in the society is subordinate to men was introduced through religion and the religious traditions that shaped the societal practices in the early India (Mohanty 2004: 309). India is the birthplace of Hinduism and the country’s dominant religion has an immense number of characters as gods. The benevolent gods are boundlessly forgiving and bribable which means by ritual redemption a person can wash away almost any sins, as a matter of fact no real concept of moral problems existed within the traditional Hindu community (Varma 2004: 30-31). In Indian’s history, Hinduism had a significant role in the state’s society regarding the women’s status and inequality which is visible in its tradition of system and practices. Sati is an inhumane form of violence against women which is the practice of the immolation of the widow on her dead husband’s funeral pyre performed by Hindus of superior class in society. The term sati means ‘good wife’ which indicates the duty
of a wife towards her husband and religion. Even though the colonial powers in India banned the practice it was prevalent mainly in the rural regions. The reformers and activists in the country campaigned against the practice of sati pressurizing the Central Government to enact a prevention Act in 1987 (Peters; Wolper 1995: 55). The caste system is a Hindu traditional classification method that structures society into a hierarchy which is a complete system of social exclusiveness. It determines an individual’s social position through life as every human belonging to the Hindu religion is born into a certain caste. The preamble of the Indian Constitution mentions, that India is “sovereign, socialist, secular, democratic, republic” even so caste system is a concern in community and consequently reservations, which can also be phrased as positive discrimination. The members at the bottom of society or if belonged to lower caste were called ‘untouchables’ in the past, but the people that enjoy upper caste status rapes the women they consider inferior at present (Singh 2009).

The women when married loses her previous identity by adopting her husband’s name yet the identity of the bride’s parents are valued on the dowry brought by a woman to her husband at marriage. Dowry can be money or property including the bridal ornaments which could be seen as a sign of enslavement. Even though in 1984 the dowry prevention act was amended following dowry deaths and terrible torture, parents are still willing to offer dowry since marriage is considered the most desirable goal (Peters; Wolper 1995: 53-54).

In India, the societal role of women is to reproduce the nation. Even though they giving birth to citizens including men who are considered as their protectors, the women’s vulnerability to sexual violence and its prevalence prove that they are not provided with the same rights and privileges as men. The birth of a girl child is considered as a curse for the family even now within some educated and modernized community. In the Indian community women are not conceived as complete citizens because they are considered as men’s sexual property (Dobhal 2011: 598). For instance, honor killings occur as intimation that women’s sexuality should be contained when they make the choice to infringe the boundaries of the families and the community. On the contrary, when men unleash their sexuality and involve in sexual violence then women the victim is blamed for provoking their attacks especially with the subject of clothing. The victim of rape is commonly assumed or accused by courts, religious groups, and the society in general of bearing some kind of responsibilities for her rape. In India, the women are commonly addressed in the national language Hindi as ‘aurat’ which is a word acquired from the Arabic term ‘awrah’. In Arabic it means, the parts of the body to be clothed in order to take care of one’s dignity. The concept of victim blaming might be connected to the word since it a common claimed that women dressed provocatively does not care about
dignity and is seeks for of sexual activity. Independence is an essential criterion for citizenship, but the patriarchy in the society deprives the women’s freedom and dignity while includes the elements based on masculine attributes under independence since the nation positions men as providers and protectors (Dobhal 2011: 598-599; Smith, Merril 2004: 45).

However, the providers and protectors in the Indian patriarchal society interpret violence as a method of controlling women who have subordinate status in society. The act of rape can be perceived as an expression of strict controls over women’s sexuality that are necessary to protect patriarchy. The men from upper class, especially the police and military members use rape as a tool to subjugate women from lower class or caste (Agnes 1990). The International human rights institutions endorse empowerment of women as a crucial tool to eradicate violence against women (UNIFEM 2003). Nevertheless, India has equality in politics but do all women in power promote equality and women’s rights. In a community where hierarchy has become more frenetic the preservation of position or status is preferred significant. The women in politics and even in public have preferred not to protect but to promoted violence against vulnerable women for the recognition of status and the projection of power. For instance, Maya Kodnani, the former state minister for Women and Child Development was the first female to be convicted in a post riots (Gujarat, 2002) case for her role in promoting mass rape and murder (Reuters: Aug 31, 2012). On the other hand the Hindu women rejoiced while Muslim women were gang raped and supported the Hindu men in torturing and setting them on fire during the (Mumbai, 1992) communal violence (Haleh; Barrientos 1999: 38-42).

India seems to be still living in the shadow of the past as sexual violence continues in the community leaving the women unprotected with curtailed status.
3.4 State Obligations

B.R Ambedkar, member of the committee that drafter India’s democratic constitution, pointed out that, ‘we are going to enter a life of contradiction with the instauration of the Indian Republic with its new constitution. In politics we will have equality and in social and economic life we will have inequality’ (Rodrigues 2002). India and its patriarchal society with a hierarchical structure have a long history of gender violence. On one hand, the discrimination in India on the basis of gender is decreasing with the increasing rates of women contributing in the work force as the quotas and reservations system introduced by the government have provided the women with better opportunities. The women in India have a significant position in politics and the demand for gender equality in politics generated the idea of reservation based on gender. The Constitution (108th Amendment) Bill or the Women's Reservation Bill have been put forward to make changes in the Constitution of India in order to consider the reservation of 33 percent seats for women (The Times of India: Mar 09, 2010). On the other hand, the transformative potential of the progress in the women’s social and economic life is often interrupted by the power imbalance caused by the patriarchal system in the society that considers the men as superior to women (Dobhal 2011: 598).

The women in India have struggled in the past, especially since 1980s to achieve a public recognition of sexual violence as a violation of their human rights and a crime requiring action by the criminal justice. The women's rights movement in India launched campaigns on violence against women and they succeeded in attaining a national character with an anti-rape movement in the year 1980 which resulted in a legislative reform of rape laws in favor of women. They have created a systematic change since the struggle in understanding and responding to end gender violence (UNIFEM 3003: 10; Fried 2003: 89).

In India, the most recent social movement was connected to the 2012-Delhi gang rape case. Even though, India in the post-independence period has amended a few provisions in order to respond to problems such as rape and sexual violence. The 2012-case lead to mass demonstrations across India with the public demand for a transformation in systems that discriminate against women and to enacting new stringent legislations that respects the dignity of women in law and practice (UN News Centre: 31 Dec 2012). The UN High Commissioner for Human Rights (OHCHR), Navi Pillay, described rape in India as a ‘national problem’ and suggested the state to “widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women’’ (UN News Centre: 31 Dec 2012). The new anti-rape law (the Criminal Law {Amendment} Act, 2013) was sanctioned by
the President of India. The new law included certain recommendations by the committee (the Justice Verma Committee) which was formed after the 2012-Delhi gang rape case and provides life imprisonment and even death sentence for rape convicts (Section 376 A) besides stringent punishment for other related offences (Criminal Law Amendment Act, 2013: 02 Apr, 2013).

However, Amnesty International did not have a favorable opinion regarding India’s new anti-rape law since it had provisions such as death penalty (for certain sexual violent offences) which failed to meet the level of international standards (AI Media Centre, 22 Mar 2013). The international law clearly condems death penalty carried out by the state party. The ICCPR distinctly provides its view on death penalty under the Article 6; in Article 6.6 it specifically states that ‘nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant’ (Brownlie 2010). The human rights organization, Amnesty suggested the state authorities to address the issues it ignored and take positive measures against the prevalence of the violence against women. The new law overlooks certain recommendations by the Verma Committee on accountability of the police and it also failed to withdraw the Armed Forces (Special Powers) Act that provides legal immunity to the members of security forces accused of sexual violence since the suspect can be prosecuted for criminal offences only if the government permits, which is infrequent. The prohibitions and problems in the constitution is also a reason the government of India fails to fulfill its duties related to the women’s rights (AI Index: ASA 20/026/2013, 17 May 2013).

India has ratified a series of international human rights treaties and other instruments, such as CEDAW, ICCPR, ICESCR, CRC, CAT, CERD and CRPD, apart from the constitution and laws at the regional level (Ministry of Home Affairs, Govt. of India). The state by becoming part to the international human rights treaties have an obligation to respect, protect and fulfill the rights within the treaty. The international treaties and laws have established clear obligations by the state party/governments to prohibit sexual violence and rape. The state government has a commitment to ensure that the state legislation is compatible with the international human rights treaties (UN OHCHR). In the regional level, the Constitution of India emphasizes on the states obligation to women under the Fundamental Rights chapter in the Articles 14 and 15 (1)\(^3\). The Article 14 talks about equal treatment for women and the

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3 Article 14,”The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.
Article 15(1) mentions that the state has a responsibility not to discriminate any citizen on the basis of sex (The Constitution of India, Part III Fundamental Rights).

The state violates its obligation to respect by providing legal immunity to the accused members of security forces that disrespects the women and interferes with the women’s enjoyment of rights by employing sexual violence. Inhumane acts such as rape and extreme torture are used by the security forces and the police as methods of government oppression and control. Devi (2004 case, Manipur), is a victim of the Armed Forces (Special Powers) Act (Asian Human Rights Commission Report: July 29, 2004). Rape or sexual violence is not only a violation of individual rights by other individuals but it is also used by the state authorities (military and police) as a tool of domination against vulnerable women from an inferior class or caste. In most cases the government fails to protect or provide justice for the women victims when the state authorities are involved. Sori (2011 case-Chhattisgarh) a victim of torture and rape by the police still remains in the prison controlled by the perpetrators (The Indian Express, 30 Apr 2013). The high prevalence of rape in India proves that the Indian government is weak in promoting or fulfilling the human rights, especially the rights of the women. The people had to protest and pressurize the government of India to amend the constitution for a new law with the death of the gang-rape victim, Jyoti (2012 case-Delhi). Even though, a law has been implemented rape prevails as the government failed to employ positive measures (The Times of India, Dec 18, 2012).

The recognition that women suffer discriminated and are not treated equal to men resulted in the establishment of CEDAW (adopted in 1979 by the UN General Assembly), in order to provide special attention and to address their issues in a human rights perspective. The CEDAW requires the governments for a positive implementation of human rights at the regional level. The General Recommendation 19 in CEDAW states that the law should provide all women with adequate protection as well as respect the women’s integrity and dignity. The state parties to the CEDAW have an obligation to take all positive measures including legal in order to prevent sexual violence and rape (Brownlie 2010). The responsibilities of the state party is mentioned in ICCPR & CAT, The ICCPR General Comment 31 (P: 03, No. 08) mentions that the state parties have a duty to “take appropriate measures to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities” (UN HRC, CCPR/C/21/Rev.1/Add.13). The General Comment 02 of the CAT (P: 05, No. 18) State bears responsibility to exercise due

Article 15 (1)"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them".
diligence to prevent, investigate, prosecute and punish if acts of torture or ill-treatment are being committed by non-State officials or private actors and the state have an obligation to prevent and protect victims from gender-based violence, such as rape (UN HRC, CAT/C/GC/2).

Rape is the fastest growing crime in India alongside the swift changes in the economic, social and political conditions in India. The transition societies that experiences crucial economic, social and political transformation is a common platform for serious human rights violations therefore the main focus in both, the domestic and the international level should be to enhance the standard of human rights (Horowitz and Albrecht 2004: 03). The United Nations promotes democracy as the best system to secure women's dignity and rights, but India the world's largest democratic country fails to protect its women. Indian shows less progress in the field of human rights. According to the failed state index 2012 annual report by the Fund for Peace (FPP), India is placed 78th out of 177 countries with a score of 78 which displays less signs of improvement when compared to 2011, where the state was better placed at 76 (Fund For Peace, Index: 2011, 2012).

The Indian government obsessed with the economic growth, provides less attention to the issues of the internal migrants and women. India has an approximation of 15 million to 100 million migrants from lower class and caste, both men and women. These migrants are landless peasants from the rural areas that move to the urban areas for job (UNICEF, 2012). However, only 10 percent of the migrants were employed by the industries while the rest were forced into the informal sector. They work in the streets and live in the slums frustrated since disregarded by the state and even the society (Lynn 2001: 104).

In India, the government’s uncompromising strategy focused on the unlimited economic growth has negatively influenced the people in the lower sections of society. The country’s patriarchal economic models that are developed on the idea of immense growth discriminates the women by discounting their contribution. On one hand, the women especially in the rural India have a very high influence on the development in the agricultural sector as they contribute more than sixty percent in seed production (Das,Vidhya: 02 Feb 2012). However, what they produce or contribute to the welfare of the family and society are not considered as productive since in the Indian economic model the production for sustenance or self-sufficiency is seen as an economic deficiency due to the reason that the economies are limited to the market place (Shiva, Vandhana: 03 Jan 2013).
people employed mainly in the agricultural sector in the rural areas are underpaid. As stated by Vidhya Das, a development researcher, the government discriminates the women by discounting their contribution even if they are subsidizing food production in this country annually while being underpaid and the corporates gets benefitted out of it. (Shiva, Vandhana: 03 Jan 2013; Das, Vidhya: 2 Feb 2012).

According to Vandhana Shiva, the violence against women is connected to the unfair economic policies since the rape cases in the country have increased along with the implementation of economic policies in India. India economy shaped by capitalist patriarchy provides opportunities only to the powerful and permits them to utilize the resources related to people from the lower sections of society. The country’s culture and societal values are easily influenced by the economic models and the vulnerability of women caused by the economic reforms excludes them and makes the women more vulnerable to violence and rape. Furthermore, the India governments economic reforms focused on the growth are colonizing and discrimination the people from the lower sections of the society with no economic security. It increases the gap between the rich and the poor in the society and the people may lose their morals as they focus mainly on economy (Shiva, Vandhana: 03 Jan 2013).

Moreover, India with a high rate of rape case rejected the United Nations Human Rights Council’s (UNHRC) recommendation to enact comprehensive reforms to address sexual violence and all acts of violence against women. The state also rejected suggestions for establishment and implementation of a National Human Rights Plan which included concrete measures to eliminate the gender based violence. This shows that the state is unable to fulfill its obligation to protect its citizens by maintaining order and security of its own society and to uphold the women’s rights (Deccan Herald Jan 14, 2013). According to Rashida Manjoo, the UN Special Rapporteur on violence against women, said in her report after her visit in India that even though the new reforms introduced by the state were commendable “the opportunity to establish a substantive and specific equality and non-discrimination rights legislative framework for women, to address de facto inequality and discrimination, and to protect and prevent against all forms of violence against women” did not exist. The India government failed to address the structural causes of violence against women in the new rape law which was introduced (UN News Centre, 03 May 2013).
CHAPTER 4

Introduction to the Chapter

In this chapter I will attempt to answer the research question. The analysis done by combining the facts will be discussed.

4.1 Analysis

Intersectionality as a theoretical framework explains discrimination or violence against human beings because individuals possess different sets of identities and when these identities combine they can create unfavorable situations. India which is a diverse state in many ways differentiates its people socially through gender, class, caste, religion, region, tribe, and language, but this study will not cover all the identities (Collins, 2000: 42).

Even though, the subordination of women is prevalent in many parts of the world the extent and type of subjection depends on the social and cultural conditions in which the women is situated. In India the extreme expression of stratification in the society was introduced by the religion since the social practices were highly influenced by it. The hierarchical social structure was development as the principles of religious social order and gender, class and caste the salient social identities were used for categorizing the people (Mohanty 2004: 271, 272). The intersectional identities gender, class and caste are used in this study specially because of the significance it has in the Indian society.

On one hand, the rationale behind my choice of cases for the grounds for comparison is because they seem interesting in terms of my study. On the other hand this choice is also due to factors such as the significance each case hold in the state’s history of sexual violence, the amount of atrocious cruelty applied and the diverse actors involved in the rape. In this study, among the three significant cases of rape that have been used from different states in India, the method of sexual violence employed is very similar although the situation and other factors might vary. Even though, the term used to mention the kind of sexual violence is gang rape it could be placed under aggravated rape. In aggravated rape the crime is committed by a stranger and multiple offenders participate in the brutal act. It causes significant physical injury or use of violence. The offender will be armed with some sort of weapon and the victim is prevented from resisting by threats of immense and immediate bodily harm (Estrich 1987: 04).
The perpetrators in the first two cases share a comparable social status not only as authority figures employed by the state, but also as specific authorities (public servants) that are supposed to protect or provide security to the citizens. Dissimilarly, the perpetrators in the third case are criminals from the slum, surviving under the situation of high population, poverty and inferior living conditions. The victims in the first two cases have been accused of assisting or associating with insurgent or illegal group but the victim in the third case was a medical student who hoped with a successful medical career to move out of extreme poverty.

In order to analyze why the police in India have inconsistent response to rape cases in the country by understanding the intersectionality of the salient social identities, three cases are used. In all three cases, gender has been used as a tool of domination over women by the military as well as the police in the first two cases and in the third case by the poor criminals from the slum. The victims in the three cases share a similar socio-economic background as they all belong to an inferior class and caste. Although, the perpetrators in the first two cases possess corresponding class or social status based on their possession of position, power or prosperity, on the contrary the class of the culprits in the third case is comparable with the victims. According to Dr. Mohini Giri the former chairperson of the National Commission for Women, the increasing amount of rape cases reveals the patriarchal mindset in Indian societies that reflect a very low status of women. Women from a lower class or caste are a common victim of sexual violence especially because the chances of retaliation will be less likely (CNN IBN: April 23, 2013).

Apparently, the cases from the rural areas created limited societal response than the one that occurred in the metropolitan capital and one could argue that the geographic location might contribute to a certain extent in the outcome and outcry of the cases. On one hand as the conditions in the country are changing, components such as power, wealth and knowledge become more significant in society and less connected to caste. The caste system is considered less critical among the people who are located in the urban areas compared to that of the rural regions of India (Sekhon 2000: 39). On the other hand the geographic locations also contribute towards classes by reflecting on their social status. It is common that the urban communities have more access to resources such as knowledge and wealth (Allen 2004: 95). However, the NCRB report indicates that Delhi, the metropolitan capital produced 572 incidents of rape cases in the year 2011 which failed to create any outcry; this shows that sexual violence exists in all societies including the rural and urban region and the geographic location does not influence the outcome of the cases (The Times of India, Dec 27, 2012).
In spite of the fact that India has a history of many incidents of sexual violence against women such as those in the cases of Devi (2004) and Sori (2011) in which the amount of torture applied was not less inhumane compared to the Singh (2012) case. It was the recent 2012 case of Singh that galvanized a large scale of public response and pressurized the government to impose a new rape law. The huge participation in the prominent protest by both men and women from all walks of life, across the country overshadowed the smaller protests in the state and beyond by the supporters of Devi and Sori (CNN IBN: Jan 04, 2013).

On one hand, the protests in the militarized state of Manipur demanding justice for the victim Devi faded out and the situation remain unchanged as the security forces have absolute immunity under the Armed Forces Special Powers Act. Despite having minimal members and limited outcry, the Manipuri women did demonstrate their disapproval against the authority as the perpetrators. The women’s group protested naked in front of the Assam Rifles headquarters, wrapped in a banner that said, "Indian Army Rape Us" which forced the state government to respond by ordering a judicial enquiry. Although, the report of the inquiry conducted by the committee headed by a judge of Supreme Court has been submitted, it has yet to be made public and no arrests have been made (Human Rights Watch, Sep 15, 2008).

On the other hand, Sori, who was termed as a prisoner of conscience by the Amnesty International in 2012 still remains in prison while a few organizations and people fight for justice to free her from the hands of the perpetrators. In the context of the social movement on violence against women which evolved with the Singh case in the capital city, several activists invoked Sori’s issue demand an immediate release as her human rights being grossly violated (The Hindu: Jan 03, 2013).

The police that have the responsibility to protect proved their inefficiency and showed less empathy in the 2012-Singh case, similar to the other cases. Even though, the police found the victims, Singh and her friend lying on the street severely injured and bleeding, instead of arranging immediate medical help the police wasted time arguing over jurisdiction as there were three police vehicle (CNN: Jan 5, 2013). In the cases the structural system in India, especially the police proves to be a failure in discharging their duties more effectively or positively. However, the perpetrators in one case (2012-Singh case) has been arrested and convicted, which shows that the police system does not responds consistently to different rape cases (Times of India: Dec 21, 2012).
The Xenophobic Society:

The victims in the three cases shared same gender, class and caste and suffered similar savage treatment, but the police responded only to one case. In India, both Mumbai and Delhi are populous metro cities however Delhi was scrutinized recently after the infamous 2012-Jyoti Singh rape case. Article 19 in the Constitution of India gives the right to all citizens to “move freely throughout the territory of India; to reside and settle in any part of the territory of India”. However, in Mumbai continual violent clashes based on regionalism and outrageous conduct towards occupants from other parts of the country have been displayed creating a rift between people along regional lines within the country. The xenophobia in the state was initiated by an ethnocentric political party that campaigned against the growing influence of internal migrants who move due to regional imbalances (Outlook 2008: 32-36).

The xenophobia or outrage towards the vulnerable migrants could be one of the central reasons for the large scale public response in the 2012-Singh case since the perpetrators were from the slum and the slum residents belong to the internal migrant group. The discrimination towards internal migrant that started in Mumbai should have spread to Delhi. According to the Overview of Internal Migrants in India by UNICEF, from India’s total population of 1.21 billion, an approximation of 15 million to 100 million migrants belong to socio-economically disadvantaged groups from lower class and caste with minimal education, limited assets and inadequate resource (UNICEF, 2012). Moreover, there was a fast response by the police because the identities of the offenders the 2012-case varied from the perpetrators in the other cases.

Feminizing the others:

Patriarchy is a type of society where both men and women participate. However in a patriarchic society the men are superior to women and it creates inequality. According to Sylvia Walby, patriarchy is “a system of social structures and practices in which men dominate, oppress and exploit women” (Walby 1990: 20). Masculinity and femininity are properties of gender identity which is socially constructed. Masculinity is associated to power and it positions the male in the role of breadwinner and since the men are considered as protectors and the women is protected by the men, femininity is associated to weakness. The women are not considered as complete citizens especially in certain patriarchal communities as the social framework creates a definitive separation between the public and the private spheres. The men are commonly connected with the public sphere (such as, work and public life) and the women with the private sphere (such as, household and motherhood), which
deprives the women’s independence and dignity. Moreover, this social construct could be applied across sex such that groups of marginalized men can be feminized and thus devalued in similar ways to how the women are devalued (Pateman ctd. In Nash 2000: 239-241).

The internal migrant’s situation in India is an example of how the feminizing and devaluing the works. The internal migrants (the perpetrators of the 2012 case from the slum) are considered as a weak community and are positioned in the society under the lower level. The contemporary definition of masculinity is closely connected with behaviors and attitudes (Haywood and Mairtin 2003: 07). In the society when certain men fails to perform and match consistently to the perceptions of the dominant masculinities these men are devalued or feminized (described as women) and placed under the same groups as the women. Masculinity is connected with individual’s positions or power in the society hence the men placed under the lower levels of the social stratification may be understood in a gender specific way and assigned with a different identity such as "women" that is related to weakness. The negative perception in the Indian society towards the internal migrants may devalue and feminize them; the migrants might not be considered as complete citizens and are placed under the same group as the women since femininity is associated to weakness (Haywood and Mairtin 2003: 27, 29).

4.2 An Intersectional Perspective

In this part, the assumption of the structural and societal response to multiple rape cases is delineated. India and its patriarchal society with a hierarchical structure have a long history of gender based violence. The reason to use gender, class and caste, the salient social identities in the sexist society is because these factors plays a significant role in shaping structural aspects (the police response) of gender based sexual violence against women in Indian. The common thread in rape cases is the underlying patriarchy. Patriarchy is a social construct that considers men as superior to women and is based on an unequal system of power relations in which men and women are categorized according to sex and not according to their abilities. Pateman claims that, “the patriarchal construction of the difference between masculinity and femininity is the political difference between freedom and subjection” (Pateman 1988: 207). Patriarchy in practice mostly motivates men to exercise patriarchal power over women. In the cases the men exerts their patriarchal power over the women by using rape as a weapon and the police did not respond to the cases in which masculinity was involved.
Comparing the three cases of sexual violence or rape, in the primary case Devi was a victim of an extra-judicial killing in which the Indian military is accountable. Sori in the second case is still locked in the prison controlled by the perpetrators (the state police) without any substantial proof against her. In the third case the victim Singh was forced to death by poor criminals from the slum. In these three cases, gender, class and caste (major components of the overlapping power systems of the Indian society) intersect in the sexist society resulting in inconsistent police response influenced by the societal patriarchal mindset.

Although, the victims in the three cases of the gender based violence shared a similar class and caste, different police response outcomes developed depending on the status or identity of the perpetrators. The evidence would appear to suggest that the intersection of gender, class and caste will show that police response varies according to the position the perpetrators hold in the power structures. From this one can proceed by assuming that the police will respond to rape cases with perpetrators from lower class/caste but not to rape cases in which the perpetrators are from the authority and their position of power structure in the society are higher than those of the victim.

The police response toward lower class/caste perpetrators is in part because these perpetrators have been feminized within the intersecting power structures. The negative perception and the prevalence of xenophobia towards the internal migrants in India (the lower class/caste perpetrators) influence the police response and societal reaction. It devalues the internal migrant similar ways it devalue the women and feminizes them.

This study does not focus on why social movements start but rather what their impact is once they get involved, which is to understand the societal role and reaction towards the gender based sexual violence. I expect that the social outrage will prompt the police to respond to the rape cases, even though the findings show that it works only in some cases and has an inconsistent impact. However, I could find that the social response will pressurize the authorities or the government to act because the governments are democratically elected to power by the people and in some situations the state might fear the loss of power to govern or the damage of political image. Although this result was not expected, I find it relevant as the state should be reminded by its people about the importance of their duties to protect women and ordinary citizens.
CHAPTER 5

Introduction to the Chapter

This is the final chapter and consists of two sections, discussion and research findings and conclusion and summary.

5.1 Discussion and Research Findings

As mentioned in the study, sexual violence or rape not only violates the women’s human rights but also has a long lasting effect on their lives (Fried 2003: 88, 96). Even though, the three cases were similar as the three victims were raped and subjected to extreme torture, the victims share the same gender, class and cast, and the cases received some sort of social response the police response was inconsistent. The police responded only to one case, the case in which the perpetrators were internal migrant from the slum who belonged to the lower levels of the society. The internal migrants or criminals from the slum were understood in a gender specific way and was associated to femininity (Haywood and Mairtin 2003: 27, 29). Hence, by placing the perpetrators of the 2012 case in the same gender group as the victims of the 2011 and 2004 cases one can perceive that the Indian police system does not respond consistently to different rape cases in India and they differ on various factors such as gender, class and caste.

The negative perception or the prevalence of xenophobia in the society towards the internal migrants in India highly influences the structural and societal reaction. It devalues the internal migrant similar ways it devalue the women (Outlook 2008: 32-36). In all the three rape cases used in this study, there is a certain level of social outcry when the women are in a vulnerable situation. Moreover, it is evident that a public outcry does not work in all situations or cases but still it is an effective measure against the prevalence of the gender based sexual violence as it pressurizes the authorities to respond positively.

The Indian government fails to protect the women especially when the authorities in the name of interrogation sexually exploit the women and subject them to the most degrading treatment. The police superintendent, who allegedly supervised the torture and rape of a victim, was awarded the Police Medal for Gallantry (the President's gallantry award). The victim who was framed without any substantial proof is still under the custody of the same police that inflicted
her serious torture despite the evidence proving the police superintendent as the perpetrator of sexual torture (The Hindu, January 26, 2012).

The India economic reform shaped by capitalist patriarchy influences the culture and societal values. It discriminates the people from the lower sections of the society, especially the women with no economic security by excluding them which makes the women more vulnerable to violence and rape (Shiva: 2013). India as a state also failed to fulfill its obligation to protect the women by rejecting the recommendation provided by the domestic and international human rights advocates (UN News Centre, 03 May 2013).

In the Indian patriarchal society where the existence of individual status is in the hierarchy of power, the police response was not consistent but different and varies according to the position the perpetrators hold in the power structures. The women provided with a low status in the society is commonly subjected to gender based sexual violence but state authorities who holds the responsibility to protect fails to maintain the human rights standard in the state.

5.2 Conclusion and Summary

To summarize, Sexual violence or rape violates the rights of the women and it interferes with the women’s ability to function as full citizens. India has ratified the international human rights treaties and is obliged to protect the rights of the women. In India the most recent social movement was connected to rape and it pressurized the government to implement a new anti-rape law in the country. The new anti-rape law had provisions such as death penalty for certain sexual violent offences which were not welcomed by human rights organizations such as Amnesty International. However, apart from the fact that it failed to meet the level of international standards, the main problem with the new legislative reform was that it overlooks certain recommendations and the state authorities failed to address the main issues on accountability of the police and withdraw the legal immunity enjoyed by the security forces. This provides the opportunity to the police system to respond inconsistent to rape cases base on the individuals social identities (gender, class, caste) (AI Index: ASA 20/026/2013, 17 May 2013).

To conclude, the high prevalence of rape in India proves that the Indian government is weak in promoting or fulfilling the human rights, especially the rights of the women. As explained in the study the intersection of the identities gender, class and caste shows that the police response towards rape cases in India is not consistent. On one hand, the police will respond to
cases when the perpetrators are from the lower sections of the society with lower class/caste but on the other hand the police fails to respond when the perpetrators are from the authority and the position of power structure in society are higher than those of the victim.

The power structure in the Indian patriarchal society is a reason for the inconsistent police response to rape. In a patriarchal society dominated by power the act of rape can be perceived as an expression of strict controls over women’s sexuality. The patriarchal nature of the Indian society is based on a hierarchal system of power relation where men control women. The communities have a deeply rooted belief that women are subordinate to men due to the existing patriarchy in the society and the women mostly accept this belief as normal which is imposed on them. Even though, the nation positions men as providers and protectors it is the women that produces these men and it is important for the women to get rid of the feeling that her position in the society is subordinate to men because it deprives her freedom and dignity. The women have a significant role in the society as in the contemporary world the women contributes considerably in the private and public sphere and also to the country’s economy (Smith, Merril 2004).

The patriarchal mindset influenced the police to respond dissimilarly when perpetrators were the authorities employed by the state to protect the citizens and when the perpetrators were from the lower levels of the society gendered as women. This proves that with the existence of power imbalance in society, some people possess more power than others and consequently the risk of being harmed by their power seems substantially high (Dunne et. al 2010: 68).

In India, for a consistent police response on rape cases reformation of national laws to recognize the acts as crimes will be effective only when the positive recommendations are included. The domination of masculinity in the Indian society along with the country’s obsession towards economic growth, dictates the GDP (Gross Domestic Product) as gross domestic problem for the women (Shiva: 2013). Even though in social and economic life in India have inequality, there is equality in politics and the women in Indian politics should work more effectively to fight against discrimination and prevalence of sexual violence than to preserve their status. Apart from the legal obligations the state has towards promoting women’s rights, the individuals also have a moral obligation to change their patriarchal mindset that discriminates the women.

The subject of sexual violence can be further studied in more detail. However, in the study I found that the social response will pressurize the authorities and further research could be done on the social protests in India, which can be of any kind.
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